MINUTES OF THE
IDAHO STATE BOARD OF PHARMACY
October 28 & 29, 2009

SpringHill Suites
424 W Parkcenter Blvd
Boise, ID 83706

This meeting of the board is held to conduct regular board business.

Chairman Chopski called the meeting to order at 12:00 p.m. In attendance were Berk Fraser, RPh; Kitty Gurnsey, Holly Henggeler, Pharm D; Dwayne Sheffler, RPh; Jenifer Marcus, DAG; Melissa Moody, DAG; Teresa Anderson, PMP Program Information Coordinator; Lisa Culley, Compliance Officer; Gina Knittel, Compliance Officer; Ellen Mitchell.

Mr. Sheffler motioned to approve the minutes of the August 14, 2009 meeting. Mr. Fraser seconded; motion carried unanimously.

Mr. Fraser motioned to accept the minutes of the August 25, 2009 conference call. Dr. Henggeler seconded; motion carried unanimously.

Mr. Fraser motioned to accept the minutes of the August 26, 2009 conference call. Ms. Gurnsey seconded; motion carried unanimously.

Dr. Henggeler motioned to accept the minutes of the September 2, 2009 conference call. Mr. Sheffler seconded; motion carried unanimously.

Ms. Moody presented the Order to Revoke in the matter of Daylene Tyree, Pharmacy Technician and the Order to Revoke in the matter of Carl Thulin, RPh. Ms. Moody requested the Board adopt both orders. Mr. Sheffler motioned to accept. Ms. Gurnsey seconded; motion carried unanimously.

Ms. Moody presented the Order to Revoke the Controlled Substance registration of Christopher Sundquist, PA. Dr. Henggeler motioned to accept the order; Mr. Fraser seconded; motion carried unanimously.

Ms. Moody presented the Stipulation & Order in the matter of Keri Woodall, RPh. Mr. Sheffler motioned to accept the order; Mr. Fraser seconded; motion carried unanimously.

The matter regarding Chelsea A Aiken, Pharmacy Technician was vacated.

Ms. Moody presented the Stipulation & Order in the matter of Chad Jungert, RPh. The Board amended the Order by interlineations in paragraph 6 to read ‘to ensure compliance with’. Dr. Henggeler motioned to accept the stipulation with the amendment. Mr. Sheffler seconded; motion carried unanimously.

Ms. Moody presented the Stipulation & Order in the matter of Jo Lynn Van Horn RPh. Mr. Sheffler motioned to accept the stipulation and order; Mr. Fraser seconded; motion carried unanimously.

Ms. Moody presented the Order to Show Cause in the matter of James Tanzini, RPh. Mr. Fraser motioned to find Mr. Tanzini out of compliance with the February 2009 Board Order. Dr. Henggeler seconded. Mr. Sheffler provided history of this case recalling Mr. Tanzini initially addressed the Board indicating he was not doing anything illegal, he was providing a service. Mr. Tanzini had closed his store without following proper procedure. Mr. Sheffler asked Mr. Collings to check Mr. Tanzini's records as it was our duty to do so. Mr. Collings found Mr. Tanzini's records to be in very poor condition. Mr. Sheffler believes Mr. Tanzini forfeited his opportunity to explain himself by leaving the 2/6/09 Board meeting early, and by not renewing his license, he consciously placed himself in this position. Motion carried unanimously.

The Board believes Mr. Tanzini received adequate notice of their prior decision and his responsibilities in this matter.

Mr. Sheffler motioned to allow Mr. Tanzini to reapply for licensure in Idaho once his fine is paid, and he cannot be a PIC until the passage of the 5 year period beginning February 2009 outlined in the stipulation. Mr. Fraser seconded. After discussion Mr. Sheffler amended his motion to include meeting continuing education requirements. Mr. Fraser seconded; motion carried unanimously.

Ms. Moody presented the Stipulation & Order in the matter of Christopher Partridge, MD. Mr. Sheffler motioned to accept the stipulation and order, Mr. Fraser seconded; motion carried unanimously.

Ms. Moody presented the Board with a request for Delegation of Authority to the Board's Executive Director. Ms. Moody indicated it is a matter of procedure for several boards to delegate authority to their executive to enter into stipulations with registrants. Ms. Marcus clarified Board of Pharmacy orders are public record.

First request: Allow the executive director to sign orders revoking a license or a CS registration based upon the receipt of a signed voluntary surrender form.

Second request: allow the executive director to extend the time for payment of a Board-imposed fine for an additional 180 days from the time the fine was imposed. The second request of the Delegation of Authority was approved via Unanimous consent.

Third request: allow the executive director to enter into stipulations that restrict their CS registrations by forbidding controlled substance samples in the office and requiring that all prescriptions be written.
Mr. Fraser motioned to accept all three Delegation of Authority requests with the following changes to request #3: in addition to samples, CS obtained for dispensing or administration must not be kept in the office and the stipulation must allow the Board staff access to the practitioner's

office, drug stock, and record keeping. Dr. Henggeler seconded. The motion carried unanimously.

Dr. Henggeler motioned to approve an additional Delegation of Authority: for the executive director to sign 'mirrored' orders, as per statute 37-2718(g). Mr. Fraser seconded; motion carried unanimously.

Via unanimous consent the Board directed Mr. Johnston to email the Board members as said orders or stipulations are signed, as well as including in the discipline portion of the Board's Newsletter.

Ms. Moody presented the Board a probable cause memorandum using a hypothetical situation to gain insight and guidance on how to proceed without presenting as facts things that have not been entered into evidence. The Board commented that intent would be taken into consideration in determining its suggestion for further action. The Board believes ignorance of the law is no excuse, but if it is ignorance then education is in order. There are multiple compounded prescriptions involved; companies that are involved in misbranding and/or not keeping proper controlled substance inventory should not grossly profit from their activities. Mr. Sheffler has experience with PCCA's teachings and asserts PCCA has software available to help track inventory and create NDC information. Dr. Chopski believes lack of inventory and misbranding are potentially 'fatal errors' because those are commonly understood pharmacy law practices.

Mr. Fraser requests the Board set guidelines to determine which cases are also referred to the prosecuting attorney. Other Board Members state each situation should be handled in a case by case manner. In this case, the Board agrees to share initial information regarding any criminal activity with prosecutors; it is up to the prosecutor to determine pursuit.

Board granted approval to appoint a hearing officer if they are unable to reach a stipulated agreement.

Mr. Johnston acknowledged Ms. Gurnsey's 25 years of credited state service by presenting her with a certificate signed by Governor Otter and reading a biographical sketch of her accomplishments in state government.

During public comment Sam Hoagland presented the results of ISHP's survey on the telepharmacy rules, as well as ASHP telepharmacy practice standards that were released in September 2009. Dr. Chopski expressed her appreciation to Mr. Hoagland for conducting the survey and bringing usable information to the Board.

Dorsie Sullenger, Director of Pharmacy at Madison Memorial Hospital in Rexburg addressed the Board seeking solutions for the hospital's lack of overnight pharmacy coverage. Mr. Sullenger specifically asked if the new telepharmacy rules would help him with this issue. The Board informed Mr. Sullenger that draft language restricting Idaho institutional pharmacies to contracting with another hospital of common ownership was removed, thus the Board believed that Mr. Sullenger could find an institution that could provide this service under the current rules.

Taylor Nielsen, Director of Pharmacy at West Valley Medical Center wanted to know if the Idaho institutional pharmacy (central pharmacy) was liable for work performed by a contracted telepharmacy.

Paul Cady, Interim Dean ISU College of Pharmacy, expressed his support of the Board office no longer tracking student hours and encouraged us all to "Buy Idaho".

Pam Eaton, Idaho Retailers Association addressed the Board regarding proposed rules. Her members are concerned the new telepharmacy rules may prohibit the ability of retailers to participate in central fill; it is not the intention of this rule to interfere with retailers.

Ms. Eaton also expressed concern from her members regarding Rule 180 Differential Hours; they are concerned there are no exceptions or an emergency clause within the rule. Dr. Henggeler would like to see language addressing holidays as well.

Ms. Eaton expressed her members' opposition to changes in 54-1721, as presented by the Central District Health Department at the 8/14/09 meeting of the Board.

Steve Millard of The Idaho Hospital Association expressed his association's support of the proposed telepharmacy across state lines rules.

Teresa Anderson presented on the Board's Prescription Monitoring Program and its Controlled Substance Database.

Mr. Fraser motioned to recess the meeting until 8:00 a.m. October 29, 2009. Mr. Sheffler seconded; meeting recessed at 5:33 p.m.

October 29, 2009

Chairman Chopski called the meeting to order at 8:09 a.m. In attendance were Berk Fraser, RPh; Kitty Gurnsey, Holly Henggeler, Pharm D; Dwayne Sheffler, RPh; Jenifer Marcus, DAG; Lisa Culley, Compliance Officer; Gina Knittel, Compliance Officer; Ellen Mitchell.

Roger Hefflinger, Pharm D requested the Board's support for the Idaho Health Data Exchange (IHDE). The program is an effort to network the hospitals in the state in an effort to save healthcare dollars for patients, allowing for statewide sharing of patient information to enhance patient care. Patients can opt out of the program. Mr. Fraser and Mr. Sheffler expressed concern for patients giving information to the database and would prefer to see an option for the patient to 'opt in' versus 'opt out'. IHDE is state run database with one employee housed at H & W. There have been discussions regarding regional access. Dr. Chopski sees the benefit of this information in MTM situations. Dr. Chopski asked for unanimous consent to support IHDE. Consent granted.

During discussion of the Board's PMP, Mr. Johnston discussed that the PMP program will be presented to students at the end of the P3 year, in hopes that the student's influence, during their 4th year, will increase pharmacist participation.

Allen Frisk, RPh. from the Capital Pharmaceutical Association addressed the Board with Elisha Figueroa, MSW Community Service Coordinator with Meridian Police Department. Ms. Figueroa discussed the Rx Drug Drop-off Program currently in operation in Meridian. Currently any resident of Meridian can bring medication to the Meridian Police Department (MPD) to request disposal of the medications. An officer escorts the resident to the safe drop and witnesses the drop. Drugs are logged, packaged as evidence and shipped to Utah for incineration. The program began October 1, 2009, since that time MPD has filled four boxes with a variety of OTC, antibiotics, and pain medications. Since MPD is not requesting identification, they are assuming they are getting medications from more than just Meridian residents. Ms. Figueroa and Mr. Frisk are here to ask the Board if there is anything else they should be doing and share promotional materials with the Board. Mr. Johnston thanks them for putting this program together and ensuring compliance with existing laws. He also indicated Congress has 4 bills in front of them addressing pharmaceutical waste. The current cost for incineration at the Logan, Utah facility is $164 per ton plus transportation costs. Currently, Sanitary Service Corp (SSC) provides sharps containers to Meridian residents.

Russell Duke, Executive Director of Central District Health Department, Lorraine Fortunati, NP and Mike Kane, Legal Counsel addressed the Board regarding proposed changes to 54-1721 Unlawful Practice; proposed changes would allow prescribed contraceptives to be dispensed by an LPN or RN versus a practitioner. Mr. Duke reiterates the health department is not competing with the private sector as the patients with insurance or financial resources are given prescriptions and to be filled at local pharmacies. The Board will support this legislation if proper language regarding refills is added. Mr. Duke will provide the final language prior to the legislative session.

Discussion of the recent vaccination clinics brought to question that district health departments have not recognized pharmacists as qualified health care providers to assist with and receive vaccinations. Mr. Duke explained the 7 health districts are independent of each other per legislature, each district works closely with H & W. Mr. Kane will work with Dr. Cady to get this issue brought before the H & W Board. Mr. Johnston and Mr. Fraser will write a letter to all Idaho health departments sharing the education and abilities of pharmacy students.

Mr. Johnston presented Legislative Services Office's research and legislation staff's review of all proposed rule dockets. The summary states that all changes are authorized under current statute.

Following discussion of the telepharmacy language and the presentation of ASHP's recently released guidelines, the Board directed Mr. Johnston to add language concerning communication, training, problem resolution, and drug regimen review, as well as removing the out of state restriction for all central order entry facilities, for review at a future conference call.

Mr. Johnston presented public comment regarding Rule 380 Legend Drug Donation Act. The Board instructed Mr. Johnston to:
Keep 380.01.d, regarding refrigerated items, unchanged;
Keep 380.02.a, regarding drug formularies, unchanged;
Add nurse practitioner and physician's assistant, to 380.04.d, 380.05.b, 380.05.e;

Draft language to allow physicians, nurse practitioners, physician assistants, and pharmacists to receive donated drugs, but restrict the verification process to pharmacists; and
Eliminate 380.06.a, thus allowing the charitable clinic or center to remain open in the absence of a pharmacist, nurse practitioner, physician assistant, or physician, as the Rx items are secured in a locked area, as per 380.04.d;
These changes are to be reviewed at a future Board conference call meeting.

After discussion, the Board instructed Mr. Johnston to draft changes to Rule 180, Differential Hours, including reducing Board notification of changed hours of operation to 7 days and changing the 7 day notification from the Board to the public for changes in hours on state holidays. No new language concerning exceptions is to be drafted; the Board directed Board staff to use enforcement discretion for emergency situations. These changes are to be reviewed at a future Board conference call meeting

Mr. Johnston presented public comment for Rule 160, Prescription Transfer, and corresponding language that would eliminate Idaho from being more restrictive than the DEA, by allowing pharmacies with common databases to legally refill controlled substance prescriptions without necessitating a prescription transfer. Ms. Gurnsey motioned to approve the proposed changes. Mr. Fraser seconded; motion carried unanimously.

I, Berk Fraser, Member of the Idaho Board of Pharmacy, move that the Idaho Board of Pharmacy, pursuant to Idaho Code Section 67-2345(1)(f), convene in Executive Session to discuss with legal counsel the imminent litigation concerning a Human Rights complaint filed against the Board. Roll Call Vote: Those in favor Ms. Gurnsey, Mr. Sheffler, Mr. Fraser, Dr. Henggeler, Vice Chair, Dr. Chopski, Chair. Motion carried unanimously. Executive session convened at 12:56 p.m.; Ms. Gurnsey motioned to end executive session, Mr. Fraser seconded. Motion carried unanimously. Executive Session adjourned at 1:03 p.m.

Mr. Sheffler motioned to approve from proposed to pending language, without change, rules 142, 165, 184, and 321. Mr. Fraser seconded, motioned carried unanimously.

Mr. Johnston presented the findings and recommendations of the Legislative Services Office Management Reports for statutes 54-1718, 541723A, 54-1734, 54-1733, 54-1732, and 37-2701. By unanimous consent, the Board approved the recommended, minor changes.

Mr. Johnston presented on the Board's finances, as well as an overview of travel by the Board and Board staff.

Conference call set for November 4, 2009 at 8:00 a.m. MST; next full Board meeting December 10, 2009.

Ms. Gurnsey left the meeting at 3:30 p.m.

Lynette Berggren is present to answer questions regarding the Board Rule Revision Project. Board requests a clean and red-lined copy be provided to them no later than December 2, 2009

for discussion at the next Board meeting. Mrs. Marcus discusses the importance of differentiating between the Board and Board staff in the rules.

Mr. Johnston led a discussion concerning current rules. Pertaining to advertisement, the Board wishes to remove “drug and drugs” from the list of “descriptive terms” and to eliminate current advertising rules concerning consumer protection that are enforced by the AG’s office. The Board agrees to wait for the DEA’s rules concerning e-prescribing before addressing e-signatures within Idaho. The Board wishes to eliminate the requirement of having the patient sign the face of a CII prescription, outdated fax language, pharmacies daily record, controlled substance prescription file record, recording of prescription record, emergency room administration records reporting, the term non-pharmacist, and current rule #450. The Board agrees that current policy allowing an authorized user to allow one designated representative to utilize their user ID and password should be written into rule. The Board agrees that rule #452 can be expanded to define the statutory term “emergency medical reasons”. The Board agrees that the tech rule can be altered to read “the pharmacist on duty shall have the sole discretion, in the interest of public safety, to refuse to work with a ratio greater than 3:1. “Authorized personnel” needs to be defined. The Board does not want to repeat in rule what exists in statute, except for “purposeful redundancy”. A decision on whether to repeat CFR in rule is postponed to a later meeting. Dr. Chopski would like to revisit the subject of inducements at a later date also.

Dr. Henggeler motioned to adjourn, Mr. Fraser seconded, motion carried unanimously. Meeting adjourned at 5:53 p.m.

Minutes respectfully submitted by Mark Johnston & Ellen Mitchell