MINUTES OF THE
IDAHO STATE BOARD OF PHARMACY

August 14, 2009

SpringHill Suites
Boise, ID 83706

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

Chairman Nicole Chopski, Pharm D called the meeting to order at 8:05 a.m. In attendance were Berk Fraser, RPh; Dwayne Sheffler, R.Ph; Holly Henggeler, Pharm D; Mark Johnston, RPh, Executive Director; Mike McPeek, Deputy Attorney General; Jan Atkinson, Senior Compliance Officer; Mike Brown, Compliance Officer; Lisa Culley, Compliance Officer; Regina Knittel, Compliance Officer; Fred Collings, Chief Investigator; Ellen Mitchell.

Dr. Henggeler motioned to accept the minutes from the June 19, 2009 meeting, Mr. Sheffler seconded. After discussion, Dr. Henggeler amended her motion to include spelling and date corrections. Motion carried unanimously.

Mr. Johnston spoke with Board of Medicine and the End of Life Coalition regarding the definition of physician's 'agent'. Mr. Johnston has drafted an article for the upcoming newsletter to clarify the definition.

Mr. Fraser motioned to approve minutes of July 29, 2009 conference call with corrections. Dr. Henggeler seconded. Motion carried unanimously.

Michael Kane and Lorraine Fortunati from Central District Health Department addressed the Board regarding legislation allowing practical and/or professional nurse dispensing of contraceptives and antibiotics in the public health districts. Dr. Henggeler was understanding of the need, but concerned about the patients receiving proper counseling. Mr. Kane clarified they are asking for labeling and delivery ability not prescriptive authority for the public health nurses, i.e. LPN or RN's. Dr. Chopski asked for information regarding preventative prescription and 'after' products. Ms. Fortunati indicated they are working from a formulary for antibiotics to treat sexually transmitted diseases and contraceptives. All products are purchased by the State, formulary is cost based. They will supply the Board with their formulary; Board has no concern regarding prenatal vitamins or TB antibiotics with refills, but there is concern with continued antibiotic treatment without seeing a practitioner. There is also some concern regarding antiviral medications. Medicaid and insurance patients have prescriptions filled outside; clients that qualify for the health district services don't have insurance. Continued discussion resulted in the Board directing Mr. Johnston to work with Mr. McPeek, Russ Duke and Ms. Fortunati to clarify the proposed legislation.

Rachel Cutler, Forensic Scientist with Idaho State Police addressed the Board regarding the definition of an isomer. ISP is asking the Board to correct the statute. Mr. Johnston has contacted Legislative Services about introducing the legislation; he has not received a definitive

answer, but will follow-up. Dr. Chopski directed Mr. Johnston to add this change to our legislative agenda.

Gayle Gray, CEO Rx Rescue presented information on the product she's developed for safe disposal of unused medications. Her company would provide a container with polyurethane inside which would be mixed with the unused medications and water. The polyurethane expands roughly 300%, surrounding the medications and filling the container. The container is shipped to a postal facility in Salt Lake City to await pick-up and incineration by Argonot. Ms. Gray indicates the process and chemical is safe for the public and believes they will be willing to pay for safe disposal of unused medications. Cost would range from $10 to $25 depending on the size of the container.

Steve Millard, Executive Director Idaho Hospital Association, Taylor Neilson, Pharmacy Director, West Valley Medical Center and Robert Brower, Rx Knights addressed the Board regarding telepharmacy across state lines. Dr. Chopski shared her concerns regarding this issue and believes the Board was misled in previous presentations of information. Mr. Fraser expressed his concerns and believed the Board was approving Cassia Regional Medical Center specifically, not approving all institutions to conduct telepharmacy across state lines. Mr. McPeek indicated the Board needs to have rules in place as per the statute. Mr. Johnston and Mr. McPeek to draft rules for Board review during a conference call next week.

Dr. Chopski opened the floor for public comment. Michael Dickens, R.Ph. addressed the Board representing Idaho State Hospital Pharmacists (ISHP). Mr. Dickens indicated the membership of his association wants institution to be defined as a hospital; common ownership and adjacent states to be written into rules pertaining to telepharmacy across state lines.

Mr. Johnston requested direction from the Board regarding the rules for telepharmacy across state lines; specifically the restriction to critical access hospitals, Mr. Sheffler would like institutions to be authorized by the Board under a Pilot program so the definition could be broadened but wants to see a proposal first. Mr. Fraser still wants adjacent state and critical access hospitals to be part of the rule, reiterating there has to be a cutoff somewhere, especially in the beginning. He is not comfortable in broadening the scope until there is more specific information available and wants to see a proposal. Dr. Henggeler is in agreement.

Mr. Fraser motioned to have temporary rules drafted to include the facility must be a critical access hospital and the provider must be in an adjacent state, common ownership is not required. Dr. Henggeler seconded. After further discussion a poll of the Board results in 2 in favor. Dr. Henggeler opposed. Mr. Sheffler abstained. Dr. Chopski opposed. Motion failed.

Mr. Sheffler motioned to edit proposed language to include critical access hospital, or other facility operating in a rural area 24/7, located in an adjacent state. Rules would be temporary. Ms. Gurnsey seconded. After discussion the vote was 2 for 2 opposed (Dr. Henggeler and Mr. Fraser), Dr. Chopski votes in favor, motion carried.

Next item is the registration fee for pharmacists practicing telepharmacy across state lines. Dr. Henggeler motioned for fee to be $250. Mr. Fraser seconded. Motion carried unanimously.

Mr. Sheffler motioned to define central pharmacy as an institutional pharmacy or a central order entry (COE). Ms. Gurnsey seconded. Poll of the Board resulted in 2 for (Ms. Gurnsey and Mr. Sheffler), 2 opposed. Dr. Chopski voted for, motion carried. Mr. Johnston will research definitive language for COE.

In the matter of Carl Thulin, R.Ph. Ms. Moody requests for authorization to send contested case to hearing officer. Sam Hoagland has agreed to be the hearing officer with tentative date for hearing September 29, 2009. Mr. Sheffler motioned to send this case to the hearing officer. Mr. Fraser seconded. Motion carried unanimously.

Regarding Order to revoke the pharmacy technician registration of Stephanie Wold, Mr. Fraser motioned to approve the order to revoke. Ms. Gurnsey seconded. Motion carried unanimously.

Dr. Henggeler motioned to accept the stipulation and order in regards to Janene McNeal, R.Ph. Mr. Sheffler seconded. Motion carried unanimously.

Mr. Sheffler motioned to accept the stipulation and order in regards to Matthew Lysne, MD. Dr. Henggeler seconded. Motion carried unanimously.

Mr. Sheffler motioned to accept the stipulation and order with the correction of the spelling of cocaine, in the matter of Cody David Heiner, MD. Ms. Gurnsey seconded. Motion carried unanimously.

Allen Frisk, R.Ph addressed the Board to request a modification of his Board Order, he specifically asks for removal of the restriction from being a preceptor and a PIC from his pharmacist license. Mr. Fraser motioned to remove the requested restrictions from Mr. Frisk's license. Dr. Henggeler seconded. Motion carried unanimously.

Ms Moody asks that the matter of Terry Busch, R.Ph. be taken up in Executive Session due to the confidentially of the information involved. Mr. Fraser motioned to go into Executive Session for matters exempt from public record. Mr. Fraser identified Idaho Code Section 67-2345(d) to authorize the session. Ms. Gurnsey seconded. Motion carried unanimously. Mr. Fraser motioned to leave executive session. Mr. Sheffler seconded. Motion carried unanimously. Session ended at 2:45 p.m.

Dr. Moskowitz addresses the Board with his attorney. Ms. Moody requests the Board approve a temporary Controlled Substance registration for Dr. Moskowitz and move the case to a hearing officer. Mr. Sheffler motioned to approve the request. Mr. Fraser seconded. Motion carried unanimously.

Legislation & Rule Review:

- Rule 142 title change title from Standards of Conduct to Professional Responsibilities; unanimous consent granted.
- Rule 180 – Must remain open posted hours. Unanimous consent granted.
- Rule380 Legend Drug Donation Act –previously approved language has been condensed and reformatted. Senator Bock's requests exclusion of drugs that require registration within a federal program, such as Thalomid®. Unanimous consent granted
- Rule 184.04 – allowing the fill of 90 days when a lesser quantity is written. Unanimous consent granted.

- Rule 165: Language mainly from NABP's Model Act and rules allowing and regulating the "independent practice of pharmacy". Unanimous consent granted
- Rule 332: 2009 statute change to Wholesale Drug Distribution Act. Unanimous consent granted
- Rule 160: Mr. Sheffler requested language allowing the receiving pharmacist to store the required data electronically. Dr. Chopski requested language to allow required data to be kept on the front of the prescription hard copy, in addition to the back.
- 54-1734 Veterinary drug orders: 72 hours extended to 7 days. Unanimous consent granted.
- 54-1733 Faxed authorization to refill used as hard copy. Unanimous consent granted
- 54-1732 Legend Drug Disposal, allowing ultimate user to deliver Rx items to licensees for disposal. Unanimous consent granted.
- 54-1718 Fingerprint Based Background Checks for all registrants and licensees. Unanimous consent granted.
- 54-1724 RPh License Renewal Application Date extended from 6/1 to 6/30. Unanimous consent granted.

Mr. Fraser motioned to go into Executive Session for matters exempt from public record. Mr. Fraser identified Idaho Code Section 67-2345(d) to authorize the session. Dr. Henggeler seconded. Motion carried unanimously. Mr. Fraser motioned to leave executive session. Mr. Sheffler seconded. Motion carried unanimously. Session ended at 3:40 p.m.

Lynette Berggren, contracted paralegal attended the meeting to answer questions regarding Chapter 1 of the law book.

Ms. Gurnsey left the meeting at 4:00 p.m.

Board directed staff to

- create an application for analytical labs and researchers using controlled substances
- keep 'clinic' designation in rules
- research cost of exemption state facilities from paying fees to the Board
- Not refund for overpayment
- Not track student pharmacist hours, except for grad interns.
- Not register preceptor sites
- Promulgate a rule title only: dispensing practitioner

Conference call to review draft language set for August 25, 2009 at 2:00 MST. Next board meeting October 28 and October 29, 2009; October 28 start at noon.

Mr. Fraser motioned to adjourn the meeting. Mr. Sheffler seconded. Motion carried unanimously, meeting adjourned at 5:35 p.m.

Minutes respectfully submitted by Mark Johnston & Ellen Mitchell