

**MINUTES OF THE  
IDAHO STATE BOARD OF PHARMACY  
April 9, 2015**

**Rendezvous Building, Pocatello, Idaho**

This meeting of the Board was held to conduct regular Board business.

Chairman Holly Henggeler, PharmD, called the meeting to order at 8:12 a.m. In attendance were Board members Nicki Chopski, PharmD; Rich de Blaquiere, PharmD; Kristina Jonas, PharmD; Mark Johnston, RPh, Executive Director; Berk Fraser, RPh, Deputy Executive Director; Lisa Culley, CPhT, Wendy Shiell and Jaime Sommer, Compliance Officers; Colleen Zahn, Deputy Attorney General; Ellen Mitchell and guests. Ed Sperry, Public Member was unable to attend.

Dr. Jonas motioned to approve the minutes of the January 19, 2015 meeting with minor corrections; Dr. de Blaquiere seconded, the motion carried unanimously. The minutes from January 20, 2015 will be available at the May meeting.

Mr. Johnston received a request from Shawn Andreasen, PharmD, for a determination if CutisPharma's *'First Unit-Of-Use Prescription Compounding Kits'* are subject to the Board's new compounding rules. After much discussion, via unanimous consent, the Board exempted all such products from adherence to the Board's compounding rules, if the manufacturer's directions were followed. The Board directed Mr. Johnston to research how these kits obtain FDA approval (and thus a single NDC number) and to draft language for Board consideration that would exempt the preparation of drug products if prepared according to the manufacturer's labeling.

Mr. Johnston presented the Board with a request from the Office of the Inspector General (OIG) for the Board to provide copies of orders and investigative reports for cases that may qualify for the OIG exclusion list. Currently, the OIG reads the Board's Newsletter each quarter and makes public records requests for potential cases that might qualify. The Idaho Public Records Act requires that the Board respond to requests, but not vague, blanket requests like this. Additionally, investigative reports are protected from discovery. After discussion, by unanimous consent, the Board directed Mr. Johnston not to report action to the OIG unless specifically directed to do so by the Board, as detailed in rule 15.05. Mr. Johnston will pen a letter to the OIG notifying them of the Board's decision.

Dan Fuchs, RPh, has requested a pilot program whereby a new pharmacy may obtain a pharmacy license prior to an inspection in order to open with wholesaler and third party contracts in place. Mr. Fuchs would like to be a test site for a new pharmacy approval system enabling pharmacies to contract as such, while they complete the process of opening a pharmacy. Mr. Fuchs suggested the following restrictions for the pilot program:

1. The new pharmacy must already have a Registered Pharmacy in Idaho.
2. Pharmacist in Charge must be licensed in Idaho.
3. No shipments of inventory can be received by the pharmacy from the drug wholesaler until the final license is issued.
4. All signage that refers to Pharmacy or Drug must remain covered until the final inspection is approved and the final license is issued.

Much Board discussion ensued. Dr. de Blaquiere detailed the contracting issue. Dr. Henggeler was concerned about the risk of drug diversion. Mr. Johnston thought the requirement to

already have a pharmacy registered in Idaho would curtail the very real possibility of insurance fraud, and he pointed out the absence of a rule or statute that requires an inspection prior to being issued a pharmacy license. Dr. de Blaquiere motioned to address the issue during the rule making process. Dr. Chopski seconded, the motion carried unanimously. Dr. Jonas then motioned to approve the pilot program with the suggested restrictions except for item three, which will read 'final inspection is completed'. Dr. de Blaquiere seconded, and the motion carried unanimously.

Dr. Jonas recently completed the *Patient Safety & Medication Error Prevention for Pharmacists* continuing education program created by OSU. She stated it took her 8-9 hours to complete, had good ideas on preventing errors and offers ideas on how to talk to a patient about an error. The course is \$350 and provides 18 CPE. Idaho has had 2 pharmacists mandated to complete the course due to errors in lieu of the previous penalty of \$500 and 6 CPE related to medication errors. Dr. Jonas believes it is appropriate for the Board's use in addressing errors that come before them and thought that pharmacy corporations might benefit from its use too.

Mr. Johnston presented the *Multi Board Statement of Understanding* created by the Boards of Medicine, Pharmacy, Dentistry, Nursing and the Bureau of Occupational Licensing at the request of Senator/Doctor Schmidt. The document supports the treatment of pain, if conducted appropriately. Mr. Johnston asked the Board to approve the document. After discussion, unanimous consent approving the document was granted.

Mr. Johnston presented the *FDA Draft Compounding Guidance* documents, discussing several problem areas. Mr. Johnston is asking the Board's approval to respond to the FDA during the official public comment period in hopes they will change portions of the MOU and guidance documents. The Board granted unanimous consent for Mr. Johnston to comment for the Board.

Evan Hathaway, DDS, attended the meeting telephonically to request termination of his current Board stipulation. The current stipulation states Dr. Hathaway may petition the Board for release from the terms stipulated after 2 years of compliance. Dr. Jonas recused herself citing a professional relationship with Dr. Hathaway. Dr. de Blaquiere motioned to approve the termination of the Order, and Dr. Chopski seconded; the motion carried unanimously. Dr. Hathaway thanked the Board and Fred Collings, the Board's Controlled Substance Investigator, indicating this has been a positive experience for him and that he will continue to practice what he has learned through this process. Mr. Johnston commended Mr. Collings on his willingness to help registrants be compliant with the law.

Rex Force, PharmD, presented the quarterly update for Bengal Pharmacy and the telepharmacy in Arco. Dr. Force provided a written report (see attached). As part of the original waiver issued, the pharmacy is required to audit three controlled substance drugs every other month. Bengal Pharmacy conducted a full audit as part of the purchase of Lost Rivers Drug in June 2014 and began their bi-monthly audits in August 2014. Bengal Pharmacy has conducted additional audits of 107 medications since June 2014 and they have not had any losses or diversion. Section 1.i of the waiver required the development and implementation of a continuous quality improvement program. This task was accomplished within the first three months of operation as outlined in the attached report. The pharmacy tracked Quality Related Events (QRE) and true errors. From October 13, 2014 through March 20, 2015, 15,690 prescriptions were dispensed; of these prescriptions there were 10 true errors (0.064%) and 175 QREs (1.12%). The pharmacy has experienced some counseling issues as some patients are uncomfortable with the counseling room. Dr. Force and the pharmacy staff have been brainstorming ways to increase patient willingness to be counseled. In consideration of future, additional telepharmacy locations in Challis, Mackay and Council, Dr. Force asked the Board to consider changes to the original waiver that would allow a pharmacist to supervise a telepharmacy from another telepharmacy within their system, as opposed to supervising from the Bengal Pharmacy. Dr. Force would like each community to benefit from direct pharmacist contact. Additionally, Dr. Force requested

that the ratio of 5 to 1 be struck, allowing Bengal Pharmacy to utilize a 6 to 1 ratio like other pharmacies utilize. Lastly, Dr. Force asked that the limitation of only being PIC at one telepharmacy be lifted. The Board did not act upon Dr. Force's request, but did ask Mr. Johnston to schedule a full telepharmacy review for the next meeting.

Mr. Johnston presented three public comments related to pharmacist continuing education.

1. Ed Snell is having trouble complying with the requirement for sterile preparation CE. He has been able find two day seminars, but nothing that is feasible to meet the one credit requirement. Mr. Johnston will have his next intern search for CPE and place links on the Board's website, to include a link to the ISU CE page.
2. Michael Higbee, PharmD wrote to express his concern over the Board disallowing CPR/First Aid training to count toward the annual CE requirement. He is asking the Board to reconsider their decision. After discussion, the Board decided to stand by their previous decision to not count CPR/First Aid toward the annual requirement, as it is already required in order to be an immunizer, though Dr. Chopski was in disagreement.
3. Susan Wilson, PharmD submitted a request to change the current process of the Board's approval of CE programs. Her suggestions include:
  - a) Change the current online form to allow electronic submission of the application and supplementary materials.
  - b) Shortened submission time to 14 days.
  - c) Require Board of Pharmacy staff to respond within 3 working days of receipt of the application.
  - d) Eliminate the requirement for a CV of the presenter if the program is sponsored by a drug company.
  - e) Eliminate the requirement of submission of the materials to be presented.
  - f) Implement fast-tracking approval of the same program with the same presenter being given at different location (for example, if a speaker is presenting one night in Pocatello and one night in Idaho Falls).

After much discussion the Board directed Mr. Johnston to change the current form to indicate electronic submission of the materials is acceptable. The Board declined to change the 21 day requirement. Dr. Chopski motioned for Mr. Johnston to create language for rule changes to address items c, d and e above. Dr. de Blaquiere seconded, and after discussion Dr. Henggeler called for the vote. Dr. Chopski voted aye and Drs. de Blaquiere and Jonas voted nay, so the motion failed. Dr. Chopski motioned to create language to eliminate Board approved and Live CPE. The motion died for lack of a second. Dr. Jonas then motioned to create language to eliminate Board approved CPE. The Motion died for lack of a second. The Board directed Mr. Johnston to have the next intern present a full report on CPE at the next meeting, including the availability of CPE in all required categories, including live CPE. Dr. de Blaquiere then motioned to create language eliminating Board approved CPE to bring to the next meeting for Board consideration, and Dr. Jonas seconded. Drs. de Blaquiere and Jonas voted aye, and Dr. Chopski voted nay. The motion carried.

Dr. Henggeler asked for public comment, hearing none the meeting broke for lunch.

Upon returning from lunch Dr. Jonas motioned to enter executive session pursuant to Idaho Code 67-2345(1)(f) to communicate with legal counsel regarding pending/imminently likely litigation. Dr. Chopski seconded, and the roll call vote determined that all were in favor. Executive session commenced at 1:30 pm. Dr. Chopski motioned to close executive session, and Dr. de Blaquiere seconded. The roll call vote all determined that all were in favor. The Executive Session closed at 2:24 pm.

Ms. Zahn presented the Stipulation and Consent Order signed by Tony Sandburg, PharmD, BOP Case 15-027. Dr. Sandburg did not attend the meeting and was not represented by legal

counsel. On July 30, 2014 Dr. Sandburg inadvertently filled a prescription for Levaquin 500 with Amoxicillin. Dr. Sandburg stipulated to completing the online course *Patient Safety and Medication Error Prevention for Pharmacy* provided by Oregon State University and to paying \$500 administrative fine for failing to document counseling. Dr. Chopski motioned to accept the stipulation, and Dr. Jonas seconded. The motion carried unanimously.

Ms. Zahn presented the Stipulation and Consent Order signed by Timothy Rambur, PharmD, BOP Case 15-037. Dr. Rambur did not attend the meeting and was not represented by legal counsel. Dr. Rambur admitted himself to a 90-day residential treatment program for alcohol addiction and subsequently signed a contract with PRN. Dr. Rambur stipulated to complying with all aspects of his PRN contract until its completion. Dr. Chopski motioned to accept the stipulation, and Dr. de Blaquiére seconded. The motion carried unanimously.

Ms. Zahn presented the Stipulation and Consent Order signed by David Allen, CRNA, BOP Case 15-038. Mr. Allen did not attend the meeting and was not represented by legal counsel. Mr. Allen disclosed on a renewal application that he had been treated for substance abuse in 2014 and subsequently signed a contract with PRN. Mr. Allen stipulated to complying with all aspects of his PRN contract until its completion. Dr. Jonas motioned to accept the stipulation, and Dr. de Blaquiére seconded. The motion carried unanimously.

Ms. Zahn presented the Stipulation and Consent Order signed by Thomas Walsh, DDS, BOP Case 12-040. Dr. Walsh did not attend the meeting and was not represented by legal counsel. Dr. Walsh purchased Diazepam and Zolpidem from a pharmacy for office use. Upon further investigation it was discovered Zolpidem was not used in his practice. Dr. Walsh stipulated to submit controlled substance administration and dispensing logs, perpetual inventory logs, invoices, and DEA 222 forms to Board staff every three months and to abstain from personal use or possession of controlled substances except those prescribed to him. Noted for the record, paragraph B.15 Hydrocodone/APAP 75/15 should read Hydrocodone/APAP 7.5/15. Dr. Jonas motioned to accept the stipulation, and Dr. de Blaquiére seconded. The motion carried unanimously.

Ms. Zahn presented the Stipulation and Consent Order signed by Albert Middleton, RPh, BOP Case 15-052. Mr. Middleton did not attend the meeting and was not represented by legal counsel. Mr. Middleton inadvertently filled a prescription with Duloxetine HCL 60mg instead of Duloxetine HCL 30mg. Mr. Middleton stipulated to completing the online course *Patient Safety and Medication Error Prevention for Pharmacy* provided by Oregon State University and to paying \$500 administrative fine for failing to document counseling. Dr. de Blaquiére motioned to accept the stipulation, and Dr. Chopski seconded. The motion carried unanimously.

Ms. Zahn presented the Stipulation and Consent Order signed by MDS Medical, BOP Case 15-035. MDS Medical did not attend the meeting and was not represented by legal counsel. MDS Medical began shipping DME supplies to Idaho in March 2012, though they did not obtain a registration to do so until November 2014. MDS Medical stipulated to paying a \$2,000 administrative fine. Dr. Jonas motioned to accept the stipulation, and Dr. de Blaquiére seconded. The motion carried unanimously.

During public comment Dr. Jonas informed the Board she had received a prescription for Norco from Willamette Dental. The prescription was not properly executed, so she attempted to call the prescriber. The prescription blank had several office addresses but no phone numbers were listed. She was able to find an 800 number on their website, which connected her to a central switchboard. Subsequently she had to leave a message for the Boise office to return her call, which came two hours later. Dr. Jonas asked for unanimous consent to require the office phone number to be listed on prescription drug orders. The Board granted unanimous consent for Mr. Johnston to draft such language changes.

During Legislation and Rule Review Mr. Johnston informed the Board that all the rules and statutes presented by the Board had passed the 2015 legislature, and he detailed a few other bills that were also heard, including those affecting chiropractors, naturopaths, pharmacist prescriptive authority for naloxone, CBD oil, medication synchronization, pharmacy audits, and tele-health. Mr. Johnston then detailed newly drafted, potential 2015 statute and rule changes, including rewriting the portion of the Uniform Controlled Substances Act that addresses pharmacy practice issues that was not included in 2015's HB 0004. Additional draft changes included incorporating the federal "own use doctrine" into Idaho law, incorporating DEA physical security control law for practitioners into Idaho law, small changes to the Board's fee schedule, a cancellation provision for certified technicians who allow their certification to lapse, increasing foreign pharmacy graduate experiential hours to 1740, small changes to telepharmacy law, and adding midwives to Section 54-1743, Idaho Code, as requested by Senator Schmidt.

Mr. Johnston presented the Board's financial report. 75% of the year has elapsed and the Board has only expended 67% of their fiscal year 2015 budget. The legislature granted the Board's request to sell the two Monte Carlos and to purchase one replacement hybrid, although the Governor did not include this request in his budget recommendations.

Mr. Johnston presented the Board travel calendar. Mr. Johnston has taught several CPE programs throughout the state and will attend the NABP meeting in New Orleans in May with Mr. Sperry, Drs. Chopski, Jonas and Henggeler. A conference call meeting was scheduled for July 27, 2015 if needed. The Board scheduled August 12-13, 2015 and October 28-29, 2015 meetings in Boise. Drs. de Blaquiere, Chopski, Henggeler and Jonas will attend the NW Pharmacy Convention in May.

Dr. Chopski asked to hear from our new inspector for northern Idaho, Wendy Shiell. Ms. Shiell indicated she is enjoying her new position and things are going well.

Mr. Johnston presented Ellen Mitchell with a certificate commemorating her 20 years of state service and thanked her for a job well done. Dr. Jonas motioned to adjourn the meeting, and Dr. Chopski seconded. The meeting adjourned at 4:54 p.m.