



Idaho State Board of Pharmacy

1199 W Shoreline Lane Ste 303 Boise, Idaho 83702-9103 <http://bop.idaho.gov>
P.O. Box 83720 Boise, Idaho 83720-0067 208.334.2356 208.334.3536 fax

MINUTES OF THE IDAHO STATE BOARD OF PHARMACY October 28-29, 2015

Idaho State Capital Building Boise, Idaho

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

Chairman Rich de Blaquiére, PharmD, was unable to attend the meeting. Vice Chairman Kristina Jonas, PharmD called the meeting to order at 8:35 a.m. In attendance were Board members Nicki Chopski, PharmD; Holly Henggeler, PharmD; Ed Sperry, Public Member; Alex J. Adams, PharmD, MPH, Executive Director; Andy Snook, Deputy Attorney General; Berk Fraser, RPh, Deputy Executive Director; Fred Collings, Chief Investigator; Lisa Culley, Jaime Sommer, and Wendy Shiell, Compliance Officers; Ellen Mitchell, Program Information Coordinator, and several members of the public.

Dr. Henggeler motioned to approve the minutes of the August 12-13, 2015 meeting with minor corrections. Dr. Chopski seconded, motion carried unanimously.

Dr. Clifton 'CJ' Cahoon, pharmacy director for St. Luke's Magic Valley, attended the meeting to apprise the Board of the status of the investigation into the recent death of a seven month old patient due to a medication error at his hospital. Dr. Cahoon indicated there had been cooperation among state agencies in investigating the error, and it was ultimately determined not to be a pharmacy or pharmacist error. A solution infused with potassium phosphate intended for an adult patient was mistakenly administered by a nurse to a pediatric patient.

Dr. Adams stated there is no standard operating procedure for Board staff when an error occurs as such errors are rare. Dr. Adams indicated that Board staff coordinated closely with its sister agencies and the Twin Falls Police Department. In addition, Board staff conducted a full pharmacy inspection at St. Luke's Magic Valley just one week after the error occurred. A copy of the full inspection report, provided to the Board, indicated strong compliance with Idaho pharmacy law. No system-wide issues or concerns were identified by the Board inspectors. Dr. Adams noted that the Board's primary responsibility is protecting public safety, and responding quickly to any system-wide issue was the Board staff's top priority. He noted that one challenge in responding to the error was that the Board only became aware of the event through media reports, and that because of the media interest and potential for litigation, it was difficult for the Board to initially ascertain the facts from the facility. Dr. Adams mentioned that other states have a process in place for a facility to notify the Board of errors with certain outcomes, such as fatalities. Dr. Adams mentioned a recent conversation he had with

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Jay Campbell, Executive Director of the North Carolina Board of Pharmacy, regarding their law that requires notification of all fatalities reasonably believed to have been attributed to a medication, though one limitation is that the law is not limited to fatalities stemming from errors. Notably, the Board already requires notification of other events, such as loss or theft of controlled substances, or a change in pharmacist-in-charge employment. Dr. Chopski suggested requiring reporting to the Board within days of such an incident and would like staff to research other state requirements and bring back suggestions in January 2016.

The Board took up BOP Case 15-003 relating to the registrations of Larry Meyer, RPh, Jan Poreba, RPh, St. Luke's Elmore Hospital and St. Luke's Elmore LTCF. Scott Zanzig, DAG presented an overview of the case indicating Mr. Poreba had chosen to challenge Rule 262 and is not part of this settlement. Mr. Zanzig asked the Board to withdraw the violation of rule 262 and accept the remaining violation per agreement of the parties.

St. Luke's began operating the Elmore facilities in 2013 and have taken this opportunity to improve processes. In light of the investigation St. Luke's admits to the following violations, asserting there was no intent to divert drugs:

- Did not employ a PIC in compliance with IDAPA 27.01.01.300; St. Luke's now employs a full-time pharmacist as PIC
- Failed to maintain a Schedule II controlled substance inventory separately from Schedules III, IV, and V, in compliance with IDAPA 27.01.01.201.01. St. Luke's now maintains separate inventories.
- Failed to maintain separate prescription forms outside of the patient's medical record for patients that have died or been released from the LTCF. St. Luke's now treats prescription forms for these patients in compliance with IDAPA 27.01.01.008.01.
- Failed to maintain complete and accurate records of controlled substances disposed of through EXP in violation of U.S.C. 827(a)(3) and 21 C.F.R. 1304.21(a)
- Violation of IDAPA 27.01.04.140.12 while administering controlled substances to patients in the LTCF
- While pharmacist-in-charge of St. Luke's Elmore Pharmacy, Mr. Meyer was responsible for every part of the pharmacy and its compliance with the law as provided in IDAPA 27.01.01.301 and 27.01.01.600.02

After discussion Dr. Chopski motioned to withdraw the violation of rule 262 in this case. Mr. Sperry seconded, after further discussion Dr. Chopski withdrew her motion. Both parties agreed to remove paragraph 18 of the stipulation, referencing rule 262.

Dr. Chopski motioned to accept the stipulation with the removal of paragraph 18, Mr. Sperry seconded. Motion carried unanimously.

Dr. Chopski motioned to assess no penalty to Mr. Meyer, Mr. Sperry seconded. During discussion Mr. Sperry indicated his displeasure with both PICs, Larry Meyer and his

predecessor Jan Poreba, not being present at the pharmacy a 'substantial' amount of time. Motion carried with Dr. Henggeler opposed.

Dr. Henggeler motioned to fine the pharmacy \$250 per event/category for a total of \$750, Dr. Chopski seconded, motion carried unanimously.

Dr. Henggeler motioned to fine the LTCF \$250, Dr. Chopski seconded, motion carried unanimously.

The Board took up the matter of Travis Leeah, RPh whose Non-Resident Pharmacist application was denied by board staff based on his responses to the question regarding previous alcohol or substance abuse that may interfere with his ability to practice pharmacy. Mr. Leeah attended the meeting without legal counsel. Following Mr. Leeah's presentation and discussion Mr. Sperry motioned to approve Mr. Leeah's application, Dr. Henggeler seconded, motion carried unanimously.

The Board took up the matter of Gina Stapleton whose Pharmacy Technician-in-Training application was denied by board staff due to a prior felony conviction. Ms. Stapleton attended the meeting without legal counsel. Following Ms. Stapleton's presentation and discussion Mr. Sperry motioned to approve Ms. Stapleton's application, Dr. Chopski seconded. Following discussion Mr. Sperry amended his motion to approve Ms. Stapleton's application with PRN monitoring, Dr. Chopski seconded. Motion carried with Dr. Henggeler opposed.

The Board took up the matter of William E. Crofts, DDS. During a review of wholesale reports and further investigation, the Board's investigator found Dr. Crofts had ordered a controlled medication, testosterone, for his own personal use. Following Mr. Zanzig's presentation of the Stipulation and Consent Order signed by Dr. Crofts, which orders that Dr. Crofts shall abstain from the personal use or possession of controlled substances, except those prescribed, administered or dispensed to him by another so authorized by law. Dr. Chopski motioned to accept the order as written. Dr. Henggeler seconded, motion carried unanimously.

The Board took up the matter of Kristy Fordyce, PharmD. Dr. Fordyce engaged in unprofessional conduct by filling a controlled prescription earlier than had been ordered as the "fill on" date by a prescriber who had issued multiple prescriptions for a schedule II substance. Following Mr. Zanzig's presentation of the Stipulation and Consent Order signed by Dr. Fordyce, which orders that Dr. Fordyce complete an eighteen credit hour online continuing education course entitled *Patient Safety and Medication Error Prevention for Pharmacy*. Dr. Henggeler motioned to accept the order as written. Dr. Chopski seconded, motion carried unanimously.

The Board took up the matter of Tyler Higgins, PharmD. Dr. Higgins engaged in unprofessional conduct by inadvertently filling a prescription with the wrong medication. A prescription written for Sertaline was filled by Dr. Higgins with Quetiapine. Following Mr. Zanzig's presentation of the Stipulation and Consent Order signed by Dr. Higgins, which orders that Dr. Higgins complete an eighteen credit hour online continuing

education course entitled *Patient Safety and Medication Error Prevention for Pharmacy*. Dr. Henggeler motioned to accept the order as written. Dr. Chopski seconded, motion carried unanimously.

Dr. Adams presented the Board with tentative meeting dates for 2016. Following discussion the following meeting dates were set for 2016:

- January 18-19, 2016 – Boise
- April 7-8, 2016 – Pocatello
- June 2, 2016 – Coeur d'Alene in conjunction with the Northwest Pharmacy Convention
- July, 11, 2016 – Conference call (if needed)
- August 3-4, 2016 – Boise
- October 26-27, 2016 – Boise

The Board added a second day to the Pocatello meeting in April 2016, which will be used to hold a strategic planning meeting of the Board.

Ann Beebe, Special Assistant to Governor Butch Otter and Mitch Toryanski, Legal Counsel for the Idaho Bureau of Occupational Licenses, presented information regarding the recent Supreme Court decision, *N.C. State Bd. Of Dental Examiners v. FTC*, in which the state dental board was found to have engaged in anticompetitive and unfair conduct that violates federal anti-trust law. The Governor's office is coordinating a state action plan to ensure that Idaho's Boards and Board members are protected from anti-trust claims. In discussion, several important distinctions were made between the "active state oversight" in Idaho relative to North Carolina: gubernatorial appointment and removal of Board members; the presence of public members on Boards; legislative review of pending and temporary rules; and substantive review of rule concepts by the Governor's office prior to rule promulgation. Mr. Toryanski also noted the presence of the Board's administrative counsel, housed out of the state Attorney General's office, as an additional factor that protects the Board.

Dr. Jonas asked Dr. Adams to begin the Open Public Comment period. Dr. Adams shared that the germane joint House and Senate subcommittee reviewed the Board's proposed rules and did not file any objections. The Board's proposed rules were published in the October 7, 2015 Idaho Administrative Bulletin, Volume 15-10, pages 478-505. These proposed rules had been previously discussed through an open, public, negotiated rulemaking session on August 13, 2015.

Dr. Adams noted that the Board received four written public comments in response to the proposed rules. Two of the entities submitting public comments were unable to attend the Board meeting, and Dr. Adams reviewed the substance of the comments:

- Faculty at the University of Nebraska Medical Center submitted comments on Rule Docket No. 27-0101-1505, commending the Board for adding "ordering and interpreting laboratory tests" to the definition of Pharmaceutical Care Services. The comments noted that while this is a beneficial addition to rule, the act of ordering and interpreting of laboratory tests is currently widespread in Idaho, with

more than 30% of pharmacies in the state already holding a CLIA-waiver. Thus, the University highlighted that this rule change is codifying existing practices as opposed to expanding the scope of practice of pharmacists.

- Healthcare Ready, a Washington, DC-based public-private organization dedicated to improving the health resiliency of every American, submitted comments on Rule Docket No. 27-0101-1504. The comments commended Idaho for taking a proactive approach to emergency preparedness, and encouraged other states to use these changes to inspire their own improvements and reforms.

Mark Johnston, Director of Regulatory Affairs for CVS Health, commented on the presentation related to *N.C. State Bd. Of Dental Examiners v. FTC*. Mr. Johnston indicated that the National Association of Boards of Pharmacy (NABP) has held many conversations on this case, and submitted that some states are considering strategies to increase the size of their licensing and regulatory boards to dilute out potential conflicts of interest. He also noted that some states have considered “umbrella boards,” but noted significant challenges that such structures present in terms of constructively transacting business.

Pam Eaton, executive director of the Idaho State Pharmacy Association (ISPA) and the Idaho Retailers Association, commented on Rule Docket No. 27-0101-1501, specifically the proposal to require the prescriber’s address and phone number on all prescriptions. She noted that ISPA members expressed concern that if a prescription is invalid without the prescriber’s phone number or address, a third party auditor could deny payment of such claims. ISPA also questioned if a pharmacist received a verbal prescription drug order, would they be required to record a phone number and address on these prescriptions, and expressed concern about such burden to a pharmacist. Ms. Eaton also commented on the *N.C. State Bd. Of Dental Examiners v. FTC* presentation. She indicated that her members have expressed interest in expansion of the Board to include a technician and an additional pharmacist to maintain an odd number of members. Mr. Sperry added that he would like to see an additional public member on the Board. Dr. Chopski maintained her previous position of the sitting Board not addressing the composition of the board, and Dr. Henggeler voiced agreement with Dr. Chopski.

Matt Rohnane, Regional Manager for Fred Meyer Pharmacies, and who also serves on the Washington State Quality Assurance Committee, shared that Washington has recently worked on emergency preparedness rules. Washington has put a 7-day limit on emergency refills of controlled substances, whereas the Board’s proposed rule would allow a 30-day emergency fill of both controlled and non-controlled substances. Dr. Adams indicated that he had received similar verbal feedback from the Idaho Department of Health & Welfare Bureau of Emergency Medical Services (EMS). In addition, Dr. Adams indicated that EMS provided feedback for Board’s consideration on who should have the authority to declare an emergency, ensuring a statewide protocol lists an effective date range, and ensuring that a mobile pharmacy can be located outside of a disaster area.

Ben Steinmetz, Pharmacist-in-Charge for Pharmacy Solutions Inc., asked for clarification from the Board regarding emergency kits and where they can be used. Pharmacy Solutions is a specialty infusion pharmacy that would provide emergency kits to home health nurses, containing epinephrine and diphenhydramine, for use during an anaphylactic reaction. Currently, Board rules require emergency kits to be stored at state-licensed or Medicare-certified home health or hospice agencies. Upon questioning, Mr. Steinmetz indicated that patient safety could be at risk if a nurse was unable to quickly react to an anaphylactic reaction, and noted that the Board rule predates the advent of specialty infusion clinics. Mark Johnston of CVS Health concurred, noting similar issues with CVS' subsidiary Coram. Dr. Chopski motioned to exercise discretion in Board enforcement regarding the use of emergency kits supplied to nurses of home infusion facilities. Mr. Sperry seconded, motion carried unanimously.

John Sullivan, speaking on behalf of the Idaho Health System Pharmacists (IHSP), spoke on Rule Docket No. 27-0101-1502. Dr. Sullivan followed-up on a question ISHP raised in August, regarding the addition of hospital volunteers to the list of individuals a hospital may dispense medications to for use outside an institutional facility. Dr. Adams confirmed that the approved minutes of the August 12, 2015 meeting reflect that the Board determined volunteers are already included under current definition. Dr. Sullivan also made a recommendation to break out the categories of permissible dispensing into categories to clarify that the restriction that dispensing for a limited and reasonable time not apply to hospital employees, medical staff, or students at the hospital and their dependents.

Starla Higdon, RPh, executive director of the Treasure Valley Food Allergy Network presented information to the Board regarding draft legislation to increase access to epinephrine auto-injectors that her organization is considering for the 2016 legislative session. The draft legislation would expand the qualified entities that could stock epinephrine auto-injectors for emergency use beyond schools, and would confer prescriptive authority for pharmacists in a manner similar to opioid antagonists. After discussion, the Board decided to remain neutral on the legislation.

Ross Edmunds, Administrator for the Division of Health and Brady Dowding, PharmD from the Department of Health and Welfare presented draft legislation to amend the Legend Drug Donation Act. The draft legislation would define the Department's Regional Mental Health Clinics as both a qualified donor and recipient of donated legend drugs. It would also enable the Department's clinics to provide unused Patient Assistance Program medications to indigent patients if certain criteria were met. Mr. Edmunds indicated the draft has been reviewed by the Governor's office and has their support. Representative Sue Chew, original sponsor of the Legend Drug Donation Act, attended the meeting and voiced support for the amendment. Following a brief discussion the Board is in agreement to support the changes to this legislation. Mr. Edmunds will work with Dr. Adams on final language before submission.

The Board took up the matter of Gary Mondell, RPh. Mr. Mondell attended the meeting without legal counsel. Dr. Henggeler recused herself due to a professional relationship

with Mr. Mondell. Mr. Mondell is accused of unprofessional conduct by failing to follow the instructions of the person writing the prescription, specifically by failing to recognize common red flags suggestive of prescription drug abuse, including the filling of controlled prescription medications for a patient too early and for cash. In some instances, 30-day supplies of a controlled substance medication were filled within one to two days of a prior fill for a 30-day supply. All told, 10 fills for the same patient, for the same medication, each for a 30-day supply, were dispensed within a two month period. Colleen Zahn, DAG represented the Board in this matter. Mr. Mondell was sworn in by Dr. Jonas, confirmed that he was fit to proceed (recently underwent a medical procedure), and offered his testimony. Following Mr. Mondell's testimony, Ms. Zahn asked the Board to impose a \$2,000 fine for filling the prescriptions early and a time of probation. Following deliberation, Mr. Sperry motioned to fine Mr. Mondell \$2,000, 1 year probation and 1 hour of CE related to 'red flags' and/or drug abuse on top of the annual CE requirement. Dr. Chopski seconded. Following further discussion, Mr. Sperry amended his motion to impose a \$2,000 fine and completion of up to six hours of 'red flags' CE. Dr. Chopski seconded, motion carried.

Dr. Chopski motioned to adjourn until tomorrow morning, Mr. Sperry seconded. Meeting adjourned at 5:02 p.m.

October 29, 2015

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

Chairman Rich de Blaquiere, PharmD, was unable to attend the meeting. Vice Chairman Kristina Jonas, PharmD called the meeting to order at 9:06 a.m. In attendance were Board members Nicki Chopski, PharmD; Holly Henggeler, PharmD; Ed Sperry, Public Member; Alex J. Adams, PharmD, MPH, Executive Director; Andy Snook, DAG; Berk Fraser, RPh, Deputy Executive Director; Fred Collings, Chief Investigator; Lisa Culley, Jaime Sommer, and Wendy Shiell, Compliance Officers; Ellen Mitchell, Program Information Coordination; and several members of the public.

Dr. Jonas asked Dr. Adams to lead the discussion on legislation and rule review. Dr. Adams indicated that the Governor's office has approved all five legislative idea forms submitted by the Board for the 2016 legislative session. The proposed legislation is publicly posted on the Board's website and was discussed at an open, public meeting in August. Dr. Adams indicated that the Board can make modest changes to the to the draft legislation if submitted by December 4th. The Board made two edits to its draft legislation with unanimous consent:

- Section 54-1734 was amended pursuant to public comment to clarify that home health nurses or agencies, or hospice agencies, may possess emergency kits in their usual course of business.
- Section 37-2720 was amended to ensure "Drug Storage" was reflected in the header.

Dr. Adams discussed that under Idaho's Controlled Substance Act, if a substance is rescheduled by the Drug Enforcement Administration (DEA), the Board shall similarly control the substance within 30 days of the publication in the Federal Register unless the Board objects to the rescheduling. On September 11, 2015, the DEA removed [123I]ioflupane from Schedule II of the Controlled substances Act. This rescheduling took place after the deadline for submitting executive agency legislation, but the Division of Financial Management has granted an exception given the Board's requirement to maintain the schedule. Dr. Adams presented a draft to the Board, and unanimous consent was granted to pursue this additional piece of agency legislation in 2016.

Dr. Adams next discussed the Board's five proposed rule dockets. He reiterated that the germane joint House and Senate subcommittee reviewed the Board's proposed rules and did not file any objections. Dr. Adams reviewed the five rule dockets individually, raising the public comments that were submitted both in writing and verbally as part of the open public comment period on October 28. The Board made the following edits to the rule dockets by unanimous consent:

- Docket No. 27-0101-1501: The Board clarified that prescribers must store their controlled substances in a securely locked, substantially constructed cabinet. This change was made pursuant to public comment, and is in alignment with federal law. The Board also changed the word "shall" to "must" throughout.
- Docket No. 27-0101-1502: The Board clarified the permissible and impermissible dispensing scenarios for institutional pharmacies pursuant to public comment. The Board clarified that the limitations of quantity and duration do not apply to current hospital employees, medical staff and students at the hospital, or their dependents.
- Docket No. 27-0101-1503: The proposed change of requiring a prescription to include the prescriber's phone number was withdrawn based on public comments, and the new proposal restores the original text as codified.
- Docket No. 27-0101-1504: The Board made several changes based on public comment. The changes remove the requirement that the Board approve a temporary pharmacy facility or mobile pharmacy *prior* to operation in a declared emergency. It also clarifies that a hospital director may oversee a temporary pharmacy in an emergency. In addition, it removes the requirement that a statewide protocol be in place prior to emergency refill authorization being permissible in a declared emergency. Lastly, minor edits are made to collaborative pharmacy practice agreements with prescribers, clarifying the parties to these voluntary agreements, and harmonizing the record-keeping requirements with existing state law.
- Docket No. 27-0101-1505: No changes were made and the pending rule will be adopted as originally proposed.

The Board will submit the pending rules to the Idaho Administrative Bulletin for open publication in the December 2, 2015 edition.

The Board took up the matter Allen Frisk, RPh. Mr. Frisk was granted reinstatement of his pharmacist license and controlled substance registration on October 31, 2014 conditioned on the completion of a seventy-two (72) hour substance abuse evaluation through the PRN administered by Southworth Associates and successful compliance with any subsequent treatment recommendations. Mr. Frisk petitioned the Board to waive this requirement or provide an extension of time to obtain a second opinion. Mr. Snook indicated that the Board did not establish a time frame under which Mr. Frisk could obtain another evaluation, and thus the Board did not need to take action to extend the time. Mr. Frisk attended the meeting without legal counsel. Mr. Frisk was sworn and indicated he would not be calling witnesses. Mr. Frisk offered his testimony indicating he has been very active in the pharmacy community over the years and offers multiple pharmacy continuing education courses through the Capital Pharmacy Association. Mr. Frisk also provided a copy of his CV to the Board. Following Mr. Frisk's testimony, Mr. Sperry questioned Mr. Frisk if he was currently submitting to random UAs. Mr. Frisk indicate he has not done any in three years. Mr. Frisk also indicated he is addressing the Oregon Board of Pharmacy in November and plans to sit for the Oregon MPJE. Following deliberations, Dr. Chopski motioned to deny Mr. Frisk's request, Dr. Henggeler seconded, motion carried unanimously.

The Board took up the matter of Richard M. Sutton, RPh. Mr. Sutton applied for reinstatement of his pharmacist license and controlled substance registration. Mr. Sutton attended the meeting without legal counsel. He was sworn and indicated he would not be calling witnesses or offering additional documents. Mr. Sutton offered his testimony indicating he has completed with all the requirements set by the Board during his last appearance before the Board in August 2015. Mr. Sutton indicated that he has been off pain medications for six to eight months and has been participating in AA and is being monitored by Southworth Associates. Following Mr. Sutton's testimony and questions from the Board Dr. Chopski motioned to allow the reinstatement application to move through, Mr. Sperry seconded, motion carried unanimously. Dr. Chopski and Mr. Sperry commended Mr. Sutton on the substantial progress he has made.

Dr. Adams presented a proposed policy on Reinstatement After Discipline to the Board. Currently, applicants for reinstatement may petition the Board at "reasonable intervals." The draft policy would define "reasonable interval" as once per twelve (12) month period, beginning on the date that the Board issues its disciplinary order. In any order disciplining a license or denying a request for reinstatement, the Board may set forth specific conditions as a prerequisite for any future reinstatement applications. In such cases, if an applicant submits evidence to the Board's staff that documents compliance with the conditions set forth in the Board's order, the applicant may be allowed to apply for reinstatement and appear before the Board at an appropriate meeting, even if the applicant has previously appeared before the Board for reinstatement in the same

twelve-month period. The policy received support from Board members, and will be reviewed at the January 2016 meeting when the full Board is together.

Rex Force, PharmD presented an update on the Telepharmacy project by Idaho State University (ISU) and Bengal Pharmacy. Dr. Force requested a modification to their current Board waiver by replacing the approved telepharmacy site in Mackay, ID, with Kendrick, ID. Kendrick lost their pharmacist at Red Cross Pharmacy to an unexpected death over a year ago. Gritman Medical Center operates three rural clinics in the general area of Kendrick and is in support of such a project to better serve local patients. Gritman Medical Center has provided financial subsidies to Red Cross Pharmacy to keep it in operation while maintaining the economic viability of their medical clinic. Following questions by the Board, Vice Chairman Jonas tabled this discussion until after lunch.

The administrative complaint hearing for Dee Atkinson, PharmD was vacated and postponed for a future Board meeting.

Dr. Adams updated the Board on the status of the Pharmacy Recovery Network (PRN) administration contract currently held by Southworth Associates. The contract is set to expire in March 2016, and Board staff is preparing an open, competitive request for proposal (RFP) document as required by the Division of Purchasing. The Board discussed parameters for the RFP, and encouraged Board staff to develop a formalized pharmacy technician PRN program as part of the new contract. Board staff will also pursue a request for information (RFI) in 2016 to identify monitoring programs for non-substance abuse cases.

Ms. Zahn presented the Stipulation and Order signed by Airgas USA LLC, stipulating to a \$2,000 fine. Airgas was previously registered with the Board as a manufacturer to ship product into the state. Airgas' registration lapsed June 30, 2014, though they were notified by Board staff in October 2014 that they needed to apply for reinstatement. Airgas' application was not submitted until February 2015. During the time period of July 1, 2014 and February 12, 2015, Airgas continued to ship product into Idaho without a proper registration. Dr. Chopski motioned to accept the stipulation as written, Dr. Henggeler seconded, motion carried unanimously.

The Board re-convened its previous conversation on telepharmacy. Mr. Snook indicated that procedurally the agenda item is to update the Board on the current telepharmacy project and there has not been public notice of a waiver or modification published on the agenda. Following a brief discussion Mr. Sperry motioned to schedule a special Board conference call in November to discuss the matter, Dr. Chopski seconded, motion carried unanimously.

Mr. Fraser, Ms. Culley, Ms. Shiell, and Ms. Sommer presented the Compliance Officer Question & Answer Session. Compliance staff asked the Board for direction regarding:

1. What constitutes a "substantially constructed cabinet" in prescriber drug outlet facilities? Mr. Sperry suggested that staff bring photos of what they are seeing.

Dr. Chopski suggested making a photo array of good and poorly constructed cabinets to provide examples to registrants. In addition Mr. Fraser will gather additional information along with photographs for posting on the Board's website.

2. What temperature is to be collected under Rule 240.06.b? The Board indicated that the temperature log is to record the temperature of the refrigerator and freezer, not room air. Humidity is not required to be monitored under the current rule.
3. How should pharmacies report 'discount cards' to the Prescription Monitoring Program. Currently, many pharmacies report discount cards as commercial insurance. Per Board direction, discount cards need to be reported as cash. Dr. Adams shared that there is an article coming out in the December 2015 newsletter reiterating discount cards, specifically reminding pharmacists that they should be reported as cash, and noting that they are not a means of positive identification verification in filling a controlled substance.
4. What is an appropriate time frame regarding pharmacy remodel applications, i.e., how long should an application remain active from the time of application? Board determined time frame for remodel was 180 days from the time construction starts. The Board suggested that applicants also provide building permits as those are limited in time frame, possibly 180 days. The Board directed compliance staff to bring before the Board any remodels that are still unresolved after 180 days. The Board also recommended that staff work with applicants when unforeseen delays in construction occur.
5. Under Board Rule 143, can a prescriber drug outlet, not just a pharmacy, maintain the lot number of a medication in a separate log or does it need to be on the label? Dr. Chopski stated that Rule 143 is clear but recommends that language be updated to ensure a lot number is on all prepackaged products, regardless of setting.
6. Can title 21 of the Code of Federal Regulation (CFR) be added to the list of required pharmacy references? The Board indicated this should be pursued in 2016. Compliance staff asked if a veterinary reference could be added when relevant. Dr. Chopski believes the veterinary reference could fall under 'other' reference materials.
7. Under Board Rule 105 Patient Counseling Documentation, does the Board want to see those in violation of this rule? Drs. Chopski and Jonas said the violations should be prioritized and brought to the Board. Dr. Henggeler directed the compliance team to prioritize those pharmacies that do not have a proper system in place to document counseling. In addition, staff should consider bringing in corporations involved as well. Compliance officers were directed to gather data

and bring before the Board all of those companies not properly documenting counseling.

8. Can a distributor ship product to multiple locations? Currently, the Board rule requires distributors ship to only the address listed on the license. Mr. Collings shared there have been cases of physicians working with chiropractors and naturopaths and having legend drugs delivered to the chiropractor or naturopaths office instead of their own. Mr. Fraser clarified that the issue is with legend drugs, not controlled substances, as prescribers have a separate DEA registration at each location. The Board of Pharmacy does not dictate what is required on a license of a practitioner from their respective boards. Therefore the issue of license not containing an address is out of our control except for the fact our language requires wholesalers to only deliver medications to the address printed on a license. Dr. Adams will research how other states are handling this issue and bring suggestions to the January meeting.
9. On a question of how aseptic hoods should be cleaned, Dr. Chopski directed, hoods are to be cleaned according to manufacturer's specifications.
10. On Rule 241.06 regarding Hazardous Drugs are required to be stored separately from other drugs to prevent contamination. There is some confusion regarding this rule, Dr. Henggeler asked that it be put on the work list to be rewritten.
11. On a question on gloved fingertip sampling, Dr. Chopski suggested contacting the inspector from NABP for guidance.

Mr. Fraser shared with the Board that he and Compliance staff have comprehensively enhanced all of the inspection forms and updated them based on recent changes to law. Dr. Adams asked the Board if the forms, once complete, could be posted online to allow pharmacies to conduct self-assessments to improve compliance. Dr. Chopski indicated that the Board can post the forms for informational purposes. The new forms will be implemented in 2016.

Misty Lawrence, Management Assistant updated the Board on the agency's financial status. The Board has expended 34% of the budget with 30% of the fiscal year elapsed. Ms. Lawrence noted that this variance is typical for this time of year. There have been significant savings in postage as staff is using email more and fingerprinting costs have gone down due to a discount realized by scanning our own cards.

Ms. Lawrence noted that there is a budget revision due in November to the Division of Financial Management (DFM). Ms. Lawrence briefly reviewed the challenges that four Idaho health regulatory boards have had since entering a contract in September 2012. Two boards went live with the licensing system: Pharmacy and Dentistry. Nursing and Pharmacy will both be requesting a full-time IT person to manage their licensing systems, launch new functionality, manage implementation, train staff, etc. Both boards currently have a management assistant handling these duties, and both aspire to move

their IT management to the IT person. Dr. Adams commended Ms. Lawrence for working closely with the Legislative Services Office (LSO) & DFM on the request for the position and completing the extensive work required for these requests, while managing the ongoing functionality issues with the Board's current licensing system. The Governor's office is aware of the IT problems the Idaho health regulatory boards have encountered over the last three (3) years, Pharmacy included, and has been extremely helpful in considering solutions.

Dr. Adams presented the Board with a comprehensive list of authorities that have been previously delegated by the Board to staff to act on since 2009. Delegated Authority was presented by category: 1) Pharmacists; 2) Technicians; 3) Facilities; 4) Practitioner Controlled Substance Registrants; and 5) Miscellaneous. As the supporting documents are lengthy it was agreed the Board would review the documents and be prepared to discuss them at the January meeting when the full Board is together. The Board was specifically asked to review the ongoing appropriateness of each violation for which the Board has granted staff authority to resolve, and the appropriateness of the accompanying penalties.

Dr. Adams asked for additional Delegated Authority specifically for:

- Mirroring Orders issued by a federal agency, such as the Drug Enforcement Administration (DEA); the Board granted unanimous consent for this request.
- Authority to send warning letters to licensees upon notification from the Pharmacy Recovery Network (PRN) administrator that a PRN participant is out of compliance with the plan developed by the parties; the Board granted unanimous consent for this request.
- Authority to cancel a license or registration upon lapse of other requirements to hold such registration, i.e., cancelling a technician registration when the registrant has failed to maintain the required national certification; the Board granted unanimous consent for this request.

Dr. Adams updated the Board on recent staff travel to the Idaho Society of Health-Systems conference, and the executive officer's forum held by the National Association of Boards of Pharmacy (NABP).

Dr. Chopski motioned to enter executive session pursuant to Idaho Code 74-206(1)(d) to consider records that are exempt from disclosure as provided in [chapter 1, title 74](#), Idaho Code, Dr. Henggeler seconded, motion carried unanimously. The Board entered executive session at 4:33 p.m.

Mr. Sperry motioned to exit executive session, Dr. Chopski seconded, motion carried unanimously. The Board left executive session at 5:23 p.m.

Mr. Sperry motioned to approve a teaching appointment for Dr. Adams at Idaho State University (ISU) under the following conditions:

1. The engagement is done as executive director of the Board of Pharmacy and not as an employee of ISU;
2. There is no enumeration other than reimbursement for travel and per diem;
3. The structure of the contract is reviewed and approved by Mr. Snook
4. The contract is approved by the State Board of Examiners; and
5. The contract is for one year appointment.

Dr. Chopski seconded, motion carried unanimously.

Mr. Sperry motioned to adjourn the meeting, Dr. Henggeler seconded, motion carried.
Meeting adjourned 5:33 p.m.

Approved