

**MINUTES OF THE
IDAHO STATE BOARD OF PHARMACY
October 26-27, 2016**

**Idaho State Capital Building
Boise, Idaho**

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

Chairman Kristina Jonas, PharmD, called the meeting to order at 9:00 a.m. In attendance were Vice Chairman, Nicki Chopski, PharmD; Board members Rich de Blaquiére, PharmD; Holly Henggeler, PharmD; and Ed Sperry, Public Member. Also in attendance were Alex J. Adams, PharmD, MPH, Executive Director; Berk Fraser, RPh, Deputy Executive Director; Lisa Culley, CPhT, Jaime Sommer and Wendy Shiell, Compliance Officers; Misty Lawrence, Management Assistant; Andy Snook, Deputy Attorney General; Ellen Mitchell, Program Information Coordinator, and several members of the public.

Dr. Henggeler motioned to accept the minutes of the August 3-4, 2016 meeting with minor corrections. Mr. Sperry seconded, and the motion carried unanimously.

The Board took up the matter of the Consent Agenda, which contained the following matters:

- Board Performance Dashboard
- Travel Calendar
- Exercises of Delegated Authority
- Director's Expenses

Dr. de Blaquiére requested to exclude the Board Performance Dashboard from the Consent Agenda. Drs. Henggeler and Chopski noted there were an abundance of exercises of delegated authority. Mr. Fraser explained the Boards of Medicine, Dentistry, Nursing, and Veterinary Medicine notify licensing staff of non-renewal of professional licenses, without which prescribers may not maintain their Controlled Substance Registration in Idaho. The Board granted staff delegated authority to cancel registrations in this situation. Dr. de Blaquiére motioned to approve the Consent Agenda excluding the Board Performance Dashboard, Dr. Chopski seconded, and the motion carried unanimously.

Dr. Adams answered questions regarding the Board Performance Dashboard, specifically the PMP usage numbers for pharmacists. The Board approved use of Appriss Gateway® in August with Kroger pharmacies (e.g., Fred Meyer and Smith's) being the first to implement the program in Idaho.

From August 1 through September 30 the following searches were conducted:

- 47,173 through Gateway
- 41,228 through the Board's online PMP

Thus, PMP Gateway significantly increases PMP use. The 16 Idaho Kroger pharmacies conducted more PMP searches than every other pharmacy in the state combined. Taking into account the PMP Gateway data, pharmacists searched on 17.34% of the prescriptions

dispensed, a significant increase over the prior reporting period. Dr. Henggeler motioned to accept the Dashboard, Dr. de Blaquiere seconded, and the motion carried unanimously.

The Board took up the matter of the Consent Agenda: Stipulation and Consent Orders, which contained the following matters:

- Lawrence Vanty, PA – Mr. Vanty surrendered his Controlled Substance Registration on October 18, 2013, and it was subsequently revoked by the Board on October 30, 2013. By signing the Stipulation and Consent Order, Mr. Vanty agrees to not prescribe any Class II controlled substances for 3 years and shall only provide written or electronic prescriptions for Class III, IV or V controlled substances (thus, no phoned-in prescriptions).
- Professional Center 205 Pharmacy – Facility is a mail order pharmacy that provided prescription medication to Idaho patients without a valid registration. By signing the Stipulation and Consent Order they have agreed to pay \$2,000 in administrative fines.

Dr. de Blaquiere motioned to accept the Consent Agenda: Stipulation and Consent Orders, Mr. Sperry seconded, and the motion carried unanimously. Dr. Chopski reiterated that she believes the fine for unlicensed activity by mail service pharmacies is too low and wants to see higher penalties in the future.

The Board took up the matter of Allen Leavitt, PharmD. Dr. Leavitt voluntarily surrendered his Pharmacist License and Controlled Substance Registration on February 19, 2015 and they were subsequently revoked by the Board on March 3, 2015. Dr. Leavitt attended the meeting without legal counsel and is requesting reinstatement of his license and registration. Katie Davis, Compliance Monitor from Southworth Associates testified that Dr. Leavitt is in compliance with his Pharmacy Recovery Network (PRN) contract and she and John Southworth support Dr. Leavitt's return to practice. Following questions from the Board and a brief discussion, Dr. de Blaquiere stated seeing people succeed in the program and return to practice is one of the enjoyable parts of being on the Board. Dr. de Blaquiere motioned to approved Dr. Leavitt's reinstatement application the following conditions: Continued compliance with PRN contract, follow all state and federal laws, not act as PIC for the duration of his PRN contract, inform the board of change in practice site within 15 days, not work in more than 2 locations, and not work more than 40 hours a week. Dr. Chopski seconded, and the motion carried with Dr. Henggeler opposed.

The Board took up the matter of John Bronsell, PharmD. Dr. Bronsell voluntarily surrendered his Pharmacist License and Controlled Substance Registration on October 2, 2014 and they were subsequently revoked by the Board on December 24, 2014. Dr. Bronsell attended the meeting telephonically without legal counsel and is requesting the removal of the stipulations (specifically compliance with his PRN contract) placed on his license and registration when the Board granted his request for reinstatement on January 26, 2016. Dr. Bronsell read from a prepared statement indicating he did not feel being under contract with Southworth Associates was necessary as he does not believe he is a drug addict. He stated that following a fall, he suffered a concussion that he purports to have caused issues with his cognitive function, memory and judgement. He believes he was coerced into giving false confessions and surrendering his license. Katie Davis, Compliance Monitor from Southworth Associates testified that Dr. Bronsell has been non-compliant with his PRN contract on multiple occasions

since the reinstatement of his license and registration. Following questions from the Board and a brief discussion, Dr. Chopski motioned to deny Dr. Bronsell's request, Mr. Sperry seconded, and the motion carried unanimously.

Dr. Adams introduced Erik Sevillano, the Board's newest staff member. Mr. Sevillano is the Board's new IT Systems Integration Analyst and will support board staff in all aspects of IT. Mr. Sevillano will play a critical role in the Board's licensing system request for proposals.

The Board took up the matter of Benjamin Cook, PharmD. Dr. Cook attended the meeting without legal counsel to request release from the stipulations placed on his license upon reinstatement on May 11, 2012. Dr. Cook has successfully completed his contract with PRN and graduated on October 25, 2016. He is appreciative of the Board and PRN. He stated he had been out of compliance only one time during his 5-year contract when he forgot to call-in to a random screening; he has otherwise been compliant with all program aspects. Following questions from the Board and a brief discussion, Dr. Henggeler motioned to approve the request, Dr. Chopski seconded, and the motion carried unanimously. Dr. Chopski congratulated Dr. Cook on his accomplishment and recognized the difficulty involved.

The Board took up the matter of Karleen Lynes, RPh. Ms. Lynes attended the meeting without legal counsel. Ms. Lynes has been noncompliant with her PRN contract on multiple occasions since reinstatement of her license and registration on June 18, 2015. Noncompliance issues include not submitting meeting attendance sheets, payment issues, and working without a worksite monitor. Ms. Lynes indicated she lives in a rural area and at times has internet connectivity issues that have caused delay when submitting her attendance sheets. She states that the payment issues are due to her time off work and that she is currently working 37 hours per week. Katie Davis, Compliance Monitor from Southworth testified to Ms. Lynes noncompliance and their efforts to bring her into compliance. Dr. Chopski indicated that if Ms. Lynes does not get in compliance and stay in compliance she would recommend she start the five-year PRN contract time over. The Board encouraged Ms. Lynes to do what she needs to get compliant.

John Southworth presented to the Board regarding an idea for early detection of substance use issues. He recommended that the Board consider a three to five day evaluation when a person is convicted of their first DUI. He believes the first DUI can be an indicator of a larger problem and that early detection can help change the trajectory of the individual. The Board thanked him for attending the meeting and his work in the field of addiction.

Misty Lawrence presented the Board's financial report. Mrs. Lawrence highlighted the following points:

- As of October 11, 2016, 28% percent of the fiscal year has elapsed, and that all expenses are in line for this time of year. Specifically:
 - The Board has had no Capital Outlay (CO) expenses as of yet;
 - Personnel Costs (PC) are currently 27.52% expended
 - Operating Expenses (OE) are 32% expended
- The cash fund balance as of as of October 11, 2016 was \$2,079,700; the Board began the fiscal year with a balance of \$2,411,780.

- The fiscal year 2018 (FY18) budget has been submitted to the Governor's office for review. The requested budget is \$1,865,800 down from the Board's fiscal year 2017 budget request of \$2,020,300. Specially, the FY18 budget includes the following items:
 - The PC budget request is \$1,136,600, which is 2.5 % or \$27,100 over last year. The increase includes changes to healthcare costs, variable benefits, and the salary multiplier for employee compensation.
 - The OE budget request is \$720,800, which is an increase of 15.3% or \$95,300 over last year. This includes an increased budget for disciplinary hearing fees of \$31,500, which is consistent with the direction of the legislature in moving more hearings to external officers in order to minimize the perception of bias. The request also increased credit card fees of \$45,400. Credit card fees are not an addition to the budget as the Board has been paying them for several years; breaking them out allows for increased transparency in the budget.
 - Lastly, the Board requested CO in the amount of \$8,400 for replacement of Board member laptops, as this year coincides with the state's usual replacement cycle.

The Board thanked Mrs. Lawrence for her comprehensive update.

Dr. de Blaquiere motioned to move the agenda item "Establishing 2017 Board Schedule" from Day 2 to Day 1, Dr. Chopski seconded and the motion carried unanimously. The following dates were set for 2017 Board Meetings, per unanimous consent all meetings will be held in Boise.

- January 12-13, 2017
- March 9, 2017 (Strategic Planning)
- April 13-14, 2017
- June 8, 2017
- July 12, 2017 (Conference Call)
- August 1-2, 2017 (Negotiated Rulemaking)
- October 25-26, 2017 (Proposed Rulemaking)

Following the lunch break Chairman Jonas asked Dr. Adams to present the Legislation and Rule Review Public Comment Period.

Dr. Adams brought forth **Docket 27.01.01.16.01**. Dr. Adams indicated this docket updates Board rules to conform to several pharmacy-related bills that passed during the 2016 Idaho legislative session. Dr. Adams reviewed the written comments received in advance of the meeting:

- Lauren Berton, PharmD, Director of Pharmacy Regulatory Affairs with CVS Health noted that proposed Rule 635 is a sub-rule of 633, and thus it would be prudent to make the following amendments:
 - Add Rule 633 to the docket and remove 'institutional facility' from the title to alleviate confusion; not all emergency kits are supplied by an institutional facility

- Amend Rule 633.05 by removing ‘and other appropriate personnel of the institutional facility’ as not all emergency kits are supplied by an institutional facility.

In addition to the written comments, Dr. Adams noted the following:

- He recently met a nurse practitioner at a conference who requested that Patient Assistance Program (PAP) medications be removed from the definition of Prescriber Drug Outlet in a manner similar to drug samples. The thought is this would increase access to needed medications for indigent patients, as some manufacturers will only mail PAP medications to the prescriber for dispensing.
- The National Association of Boards of Pharmacy (NABP) recently released a memo on expiration dates, suggesting that boards allow products such as epinephrine auto-injectors be dated according to the manufacturer’s original expiration date in order to cut down on waste. This issue is germane to proposed Rule 140. Dr. Jonas mentioned she believes most patients follow the manufacturer’s original expiration date to begin with, as opposed to the date listed on the pharmacy label. Dr. Chopski noted her belief that if the Board pursues this, it should not be product-specific and should apply to any medication dispensed in a sealed manufacturer’s container.

Dr. Adams brought forth the **Docket 27.01.01.16.02**. Dr. Adams indicated this docket updates the telepharmacy rules to align with recently granted Board waivers. Dr. Adams reviewed the written comments received in advance of the meeting:

- Adam Chesler, PharmD from Telepharm/Cardinal Health spoke to his written comment which requests:
 - Rule 071.03 be amended to add ‘This mileage restriction does not apply to a pharmacy located in or associated with a hospital or clinic.’ Dr. Chesler believes the mileage restriction will discourage and limit hospitals and clinics that provide services to Idaho’s medically underserved population from using telepharmacy. Dr. Chesler provided a study that demonstrates improved patient care outcomes are achieved when patients have access to their medications upon discharge.
 - Rule 710.04(a) be amended to allow a Pharmacist-in-Charge (PIC) to oversee three (3) telepharmacy sites instead of 2 as many sites won’t process a high number of prescriptions. Dr. Chesler indicated his belief that limiting PICs to 3 sites limits the feasibility of telepharmacy in rural areas.
 - Rules 710, 711 and 12 be amended to read ‘Outpatient’ instead of ‘Retail’ as the current terminology may incorrectly suggest there are other rules for hospitals or clinics.
- Dylan Atkinson, PharmD candidate from University of Pittsburgh School of Pharmacy submitted written comment requesting that Rule 071.03 be amended to specify that the 15 road miles would only apply to pharmacies located within Idaho. He raised concerns related to interstate commerce and increased access within Idaho.

- Paul Cady, PhD, Dean of Idaho State University, reviewed written comments that he submitted, as well as those submitted by Kim Wynn, pharmacy manager at Bengal Pharmacy. Dean Cady noted that Bengal Pharmacy had already been granted a waiver for a PIC to oversee three (3) telepharmacies, and thus the proposed rule is a step back from the current practice. He indicated this may make it challenging to operate. Dr. Chopski noted the difference between the PIC ratio and the pharmacist-on-duty ratio, and that the language regarding a PIC spending a “substantial” amount of time on site at the pharmacy was being removed.

Dr. Jonas called for additional verbal comment on the telepharmacy rule docket:

- Michael Mone, RPh, JD, of Cardinal Health discussed the PIC ratio, and noted that it may be preferable to have a consistent PIC who has oversight responsible for all telepharmacy remote dispensing sites, as opposed to relying on multiple pharmacists. This may promote consistency in compliance.
- Dr. de Blaquiére raised Rule 071.02.b, and felt that it would be more appropriate to inquire about both current and proposed levels of staffing since some potential sites may not have current staffing. He also inquired about 710.01 Independent Entity Contract, and the potential benefits of having a regular review process for this contract.

Dr. Adams brought forth **Docket 27.01.01.16.03**. Dr. Adams indicated this docket updates and modernizes the roles that certified technicians with appropriate training may perform. Dr. Adams reiterated that the Board’s intent during the discussions to date has been to free up pharmacists for higher order care. The Board has reviewed evidence validating the safety and effectiveness of such modernization with national experts, liability insurers, researchers, and other Boards of Pharmacy. Dr. Adams reviewed the written comments received in advance of the meeting:

- Dylan Atkinson, PharmD candidate from University of Pittsburgh School of Pharmacy submitted written comments thanking the Board for its rules on technician modernization, which he indicated he fully supports. He made requests as follows:
 - Rule 330.03(b) - Request to amend or to remove ‘intramuscular, subcutaneous, and intranasal’ as there are other forms of vaccines available that technicians could be trained on, such as intradermal. He suggested removing the specific routes and instead amend it to “appropriate immunization administration techniques.”
 - Rule 400.03(g) – Request to strike as it raises concerns about pharmacy technician supervisors and their ability to perform technical and administrative duties that free up pharmacists for patient care.
- Tim Frost, PharmD candidate from the University of Toledo College of Pharmacy submitted a recent peer reviewed journal article on advanced clinical pharmacy technician roles in the military. Mr. Frost indicated his belief that this added additional evidence to validate the Board’s rule docket.

- Matt Williams submitted public comment expressing his support for the proposed rules and asking for clarification of when a technician could complete work from remote data entry sites. He was unclear if the pharmacy had to be open or if the work could be completed afterhours. The Board called on Dennis McAllister from the Arizona Board of Pharmacy, a state that currently allows remote data entry technicians and has more than 500 practicing as such, to see how their state has approached this topic. Mr. McAllister indicated that the Arizona law is silent on this topic, but since the work feeds into a queue that a pharmacist will ultimately review, he does not see any issues with it from a regulatory standpoint. The Board agreed with this approach and directed Dr. Adams to provide Mr. Williams with the clarification that a remote entry technician could work at times when the supervising pharmacist is not on duty.
- Dennis McAllister, RPh, Express Scripts Regulatory Affairs, expressed his organization's support of Board's rules, and further requested that the Board remove the technician ratio and allow the pharmacy to determine the staffing needs of their specific facility.
- LeAnn Bolster, CPhT ISHP Director and Chair of Technician Affairs submitted written comment expressing her full support of the Technician Modernization Rules and thanked the Board for its leadership on this topic.
- Lorri Walmsley, RPh, Senior Manager Pharmacy Affairs for Walgreens submitted written comment expressing their support for the Board's technician rules and requested the removal of the technician ratio.
- John D. Watts, Legislative Advisor for Northwest Grocery Association submitted written comment expressing his organization's strong support for the Board's proposed technician modernization rules.
- Lis Houchen, State Government Affairs for the National Association of Chain Drug Stores, affirmed her organization's support for the Board's technician rules and requested the removal of the technician ratio.
- Mike Podgurski, Rite Aid, indicated his support for the Board's proposed rules, and requested that the Board add the language "within the limits of federal law" to the language regarding technician's transferring of prescriptions. The Board felt this language was implied and that all pharmacy practice is bounded by federal law.

Dr. Jonas called for additional verbal comment on the technician modernization rule docket:

- John Sullivan, RPh, and LeAnn Bolster, CPhT presented on behalf of the Idaho Society of Health-System Pharmacists, noting their organization's support for the Board's proposed technician modernization rules.

- Pam Eaton, representing the Idaho State Pharmacy Association reiterated her organization's strong support for the Board's proposed technician modernization rules. She indicated she is supportive of the Board removing the ratio on technicians and noted that she is unaware of any patient care issues that arose since the last time the ratio was relaxed from 3:1 to 6:1.
- Mark Johnston, RPh, CVS Health noted that CVS does not allow the scheduling of more than four (4) technicians to any pharmacist, even in states with no technician ratio, and thus raising the ratio is unlikely to lead to a flood of new technicians. He noted that one practice scenario in which the ratio has been an issue is student health fairs.
- The Board called on Michael Mone from the Ohio Board of Pharmacy and Dennis McAllister of the Arizona Board of Pharmacy to share their experiences. Although neither state has a technician ratio, both states indicate that no patient safety issues have arisen. If an issue were to present itself, each board retains jurisdiction over the pharmacy and the PIC.

Following a break, the Board took up **Docket 27.01.01.16.04**. Dr. Adams indicated that this rule docket encompasses several pharmacy practice concepts. Dr. Adams reviewed the written comments received in advance of the meeting:

- John D. Watts Legislative Advisor for Northwest Grocery Association submitted the following written comment:
 - Rule 500 – Opposed to the requirement to report fatal outcomes involving medication errors is unnecessary as reporting is already required under federal law. He recommends if the rule goes forward, allow a period of more than 2 days for reporting.
 - Rule 605 - In support of proposed security requirement changes.
- Laura Berton, PharmD, Director of Pharmacy Regulatory Affairs with CVS Health submitted written public comment indicating concerns with the proposed additions of Rule 500. CVS provided two examples from other states, suggesting that the two (2) day reporting requirement should be longer.
- Lis Houchen, State Government Affairs for the National Association of Chain Drug Stores, expressed her organization's concern with the proposed addition to Rule 500. She noted examples of quality improvement reporting in other states, and expressed a willingness to work with the Board to pursue such a concept in 2017.

Dr. Jonas called for additional verbal comment on the pharmacy practice rule docket:

- Pam Eaton, Idaho Pharmacy Retailers Council, indicated her members' concerns with Rule 500.

In addition to the public comment, Dr. Adams shared a recent issue that arose at the NABP Executive Officers forum. Several states have looked at capping NAPLEX attempts at five (5)

instead of taking up subsequent attempts on a case by case basis. This concept is germane to proposed Rule 32.

Dr. Adams brought forth **Docket 27.01.01.1605**, regarding the scheduling of U-47700 as a Schedule I controlled substance. Dr. Adams noted that no action is needed on this docket as the Board adopted a temporary rule in August. He did, however, want to share a written comment from Detective Zeb Graham of the Bonneville County Sheriff's Office, who noted his support for the scheduling of U-47700 and shared details of a recent case he had been involved in which an individual had acquired this substance.

Dr. Adams brought forth **Docket 27.01.01.1606**. Dr. Adams noted that this proposed rule did not go through negotiated rulemaking, but had been published in the October edition of the Idaho Administrative Bulletin so public notice had been given. This rule stems from a recent change in federal law, which occurred too close to the negotiated rulemaking session to take up in August. Specifically the federal law change enabled pharmacists to partial fill Schedule II substances in non-emergency situations. The goal is to reduce the quantity of pills dispensed after certain procedures, such as dental work. Dr. Adams noted he had shared this proposed rule broadly with stakeholders since it came up after negotiated rulemaking. No comments were submitted in writing, however NABP did send a memo to member states encouraging them to adopt this change. Dr. Jonas called for additional verbal comment on this docket and none were received.

Upon conclusion of the rule review, Dr. Adams referred the Board to several comments that were received on miscellaneous topics:

- James Matteucci, Merck Sharp & Dohme State Government Affairs and Policy submitted public comment regarding 37-2709(f) suggesting the addition of 'or injection' to the exemption language. The Board agreed to add this exception to its agency bill updating the Controlled Substances Act in conformance with federal law.
- A group of national pharmacy associations, including the American Pharmacists Association, National Community Pharmacists Association, National Association of Chain Drug Stores, submitted public comment asking the Board not to act on USP 800 until 2021. The Board indicated it does not have plans to pursue additional rule changes related to USP 800 in the near future.
- Tyson Spencer, PharmD submitted a request for the Board to require prescribers to label prescriptions with their professional practice and the diagnosis or treatment purpose for the medication being prescribed. The Board asked Dr. Adams to thank Dr. Spencer for his engagement, and reiterate its position that these areas are best left to pharmacist professional judgment.
- Request from several Patient Advocacy Groups to support law changes allowing access to cannabidiol once the product is approved by the FDA. The Board noted it will consider this product as any other, if approved by the FDA and scheduled by DEA.

The Board took up the agenda item Waiver Requests. Dr. Rich de Blaquiére of White Cross Pharmacy is requesting waiver of Rules 303.02(c) and 303.03 allowing him to use a remote

data entry technician. Dr. de Blaquiére proposes to have the waiver in place until the end of the 2017 legislation session. As part of his request Dr. de Blaquiére provided a copy of the Remote Data Entry Technician Agreement he proposes to use and has outlined the following conditions of his request:

1. The pharmacy will keep a list of any technicians who are performing remote data entry tasks as well as a record of their address and phone number and a description of the area of their home that they will use when performing data entry.
2. Each remote data entry technician will use a secure VPN connection and no data will be stored on their terminal. Equipment will be provided by the pharmacy and will not be used for any other function.
3. The prescription entry terminal will be locked and shut down when not in use and require a password in order to gain access.
4. No technician who will take part in remote data entry will have less than 2 years of experience as a certified pharmacy technician and less than 2 years of experience in our pharmacy.
5. No drug inventory will be kept at the remote site and no prescriptions will be dispensed.
6. Our pharmacy system will be able to identify the remote entry technician via their login credentials which automatically populates the initials of the person who is logged in and enters the prescription.
7. Have available to the Board the written agreement between the Pharmacy and the remote entry technician which outlines the policies that will dictate this practice.

Mr. Sperry motioned to accept the waiver as written. Mr. Sperry amended his motion to accept the waiver as written and modify the waiver as new rules come into effect, Dr. Henggeler seconded, and the motion carried unanimously.

Kimberly McKeirnan, PharmD, and Kyle Frazer from Washington State University College of Pharmacy presented a request for waiver of rule 330.04, Delegation of Administration. Dr. Henggeler recused herself as Sav-On has committed up to thirty (30) technicians to participate in the study if approved by the Board. According to proposed rule 330.04, a technician may administer an immunization if they have “successfully completed a course on intramuscular, subcutaneous, and intranasal technique by an ACPE accredited provider or comparable course.” Dr. McKeirnan proposes to conduct a pilot study designed to refine and advance an ACPE-accredited immunization training course that she has developed for pharmacy technicians who will begin providing immunizations. Up to 30 pharmacy technicians (to be named later) currently practicing in Idaho will take the 4-hour ACPE-accredited training program comprised of a 2-hour self-study online module combined with a live, 2-hour immunization training class. Once the technicians have successfully completed the training program the waiver will allow them to immediately begin administering immunizations in a community pharmacy setting (location to be determined) prior to final approval for Rule 330.04. Dr. McKeirnan indicated that the granting of this waiver will allow a pilot of the new training program she developed to go through an improvement cycle before the full rule takes effect and more technicians are seeking training. A list of participating technicians including

technician name, Idaho state registration number, and current practice location will be provided prior to utilization of the waiver. Their request is to allow this activity until adjournment of the 2017 legislature.

Dr. Chopski motioned to grant the waiver as part of the pilot program with 30 technicians, allowing the staff the flexibility to finalize details since Albertsons will need to submit the list of names. Mr. Sperry seconded, and the motion carried unanimously.

Mark Phillips, PharmD, MBA from Saint Alphonsus Regional Medical Center Pharmacy (SARMC) is requesting a waiver for a limited service pharmacy for the Carefusion Pyxis machines to be used for medication storage and distribution to SARMC nurses. The specific request is for the Behavior Health Unit and the Eagle Emergency Department owned and operated by Saint Alphonsus. The requested timeframe for this waiver is through the adjournment of the 2018 Idaho legislature. Request to waiver rules 300 PIC: Qualifications, 601 Pharmacy Space and Fixtures, 602.03 Pharmacy Technical Equipment, Separate Phone Line, 604 Pharmacy Product Storage and Removal and 605 Pharmacy Security.

Following questions by the Board and discussion, Dr. Chopski motioned to approve the waiver as written, Mr. Sperry seconded, and the motion carried unanimously.

Dr. Chopski motioned to grant Dr. Adams the authority to grant mirroring waivers such as the one granted to SARMC. The motion was withdrawn as the Board decided it would be more appropriate to take up this request on Day 2 during the discussion on Delegated Authority.

Curtis Hartin, RPh Director of Pharmacy Operations for Cardinal Health is requesting a waiver of rule 601.03.b which requires a lavatory facility in the pharmacy that is restricted to pharmacy staff. Cardinal operates community pharmacies in federally qualified health centers (FQHC's) and critical access hospitals in an effort to expand the resources of those entities to better serve the indigent population. They recently partnered with Syringa Hospital and Clinics in Grangeville to establish a pharmacy in their newly renovated clinic area. During construction of the clinic area the lavatory was omitted. Construction costs to add the lavatory exceed \$10,000. There is a lavatory adjacent to the pharmacy, though it is not staff only.

Following discussion, Mr. Sperry motioned to approve the waiver as the restroom is right outside the pharmacy, Dr. Henggeler seconded. During discussion Dr. Henggeler expressed concern that the plans were not approved prior to construction. Dr. de Blaquiere would like everyone to consider changing rule 601.03.b in the future. Chairman Jonas called for the vote, motion carried unanimously.

Mr. Sperry motioned to adjourn, Dr. Chopski seconded, and the motion carried unanimously. Meeting adjourned at 4:59 p.m.

October 27, 2016

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

Chairman Kristina Jonas, PharmD, called the meeting to order at 8:00 a.m. In attendance were Vice Chairman, Nicki Chopski, PharmD; Board members Rich de Blaquiere, PharmD; Holly Henggeler, PharmD; and Ed Sperry, Public Member. Also in attendance were Alex J. Adams, PharmD, MPH, Executive Director; Berk Fraser, RPh, Deputy Executive Director; Lisa Culley, CPhT, Jaime Sommer and Wendy Shiell, Compliance Officers; Misty Lawrence, Management Assistant; Andy Snook, Deputy Attorney General; Ellen Mitchell, Program Information Coordinator, and several members of the public.

Chairman Jonas called for last minute public comment. Hearing none she asked Dr. Adams to lead the discussion on Legislation & Rule Review.

Dr. Adams reviewed the public comment that had been submitted in writing in advance of the Board's meeting, as well as the verbal comments that were received during the preceding day's official comment period. Dr. Adams noted that the Board's proposed rules were published in the September edition of the Idaho Administrative Bulletin and thus the agency had provided more opportunity for comment than any time in the recent past and exceeded the requirements in the state's Administrative Procedures Act. Dr. Adams also referenced recent letters from the Legislative Services Office, indicating that the germane interim legislative committees did not file any objections to the Board's proposed rules.

The Board made the following edits to **Docket 27.01.01.16.01** pursuant to public comment:

- Rule 11.21 – the definition of “prescriber drug outlet” also exempted patient assistance program medications;
- Rule 140.10 – the expiration date rules were updated to allow pharmacies the ability to list the manufacturer's original expiration date on the label if a product is dispensed in an unopened, original manufacture's packaging. The amendment is designed to allow pharmacies to **either** label as they currently do today, or to label according to the new amendment
- Thus, if a pharmacy uses a computer system that defaults to the current labeling rule, no updates are expected to their system as this amendment is permissive rather than mandatory; and
- Rule 633 - this rule was added to the docket. The words ‘institutional facility’ were removed from the current title and Rule 633.05 was amended by removing ‘and other appropriate personnel of the institutional facility’

The Board made the following edits to **Docket 27.01.01.16.04** pursuant to public comment:

- Rule 032 - added “Candidates are limited to five total attempts to pass the NAPLEX and MPJE”; and
- Rule 500 - the proposed additions were vacated.

Mr. Sperry motioned to amend the agenda and move into Executive Session as authorized by Idaho Code 74-206.1. (f) To communicate with legal counsel for the public agency to discuss

the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. Dr. de Blaquiere seconded, a roll call vote showed all in favor and the motion carried unanimously. Entered executive session at 8:17 a.m. Dr. Chopski motioned to leave executive session, Mr. Sperry seconded, a roll call vote showed all in favor and the motion carried unanimously. Executive session ended at 8:44 a.m.

The Board made the following edits to **Docket 27.01.01.16.02** pursuant to public comment:

- Rule 071.2.b – amended to say “The operating specifications including location, ownership, current or proposed levels of pharmacist and technician staffing, and current or proposed number of supervised remote dispensing sites;”
- Rule 071.03 – the proposed language was vacated. Dr. Chopski motioned to strike, Mr. Sperry seconded. Dr. Chopski and Mr. Sperry in favor, Drs. de Blaquiere and Henggeler opposed, Chairman Jonas in favor, motion carried.
- Rule 710, 711, 712 – the titles were updated to remove the word “retail” and insert “outpatient”; and
- Rule 712.01.c – the requirement was struck because the expectation is that the monthly inspection will use a form specified by the Board, as provided in 710.13.a.

The Board made the following edits to **Docket 27.01.01.16.03** pursuant to public comment:

- Rule 330.03.b – amended to “Has successfully completed a course on *intramuscular, subcutaneous, and intranasal* appropriate immunization administration techniques by an ACPE-accredited provider or a comparable course”;
- Rule 400.03.g – language was struck; and
- Rule 607 – Unanimous consent to leave as written, and the Board will re-open the discussion on the ratio next year.

The Board adopted **Docket 27.01.01.16.06** as proposed with no amendments.

Dr. Adams reviewed the agency’s proposed legislation for 2017. All agency legislation has been discussed at previous meetings. The Board’s Legislative Idea Forms have received the requisite approvals. Dr. Adams indicated the following bills would be brought forth:

- Controlled Substance Act (CSA) Update – the Board annually updates the CSA to mirror federal law;
- Qualifications for Licensure by Reciprocity – this will update the language for reciprocity in conformance with the NABP Model Act. Individuals who are currently practicing in other states with a restricted license will be eligible for reciprocity into Idaho; such applicants would be taken up on a case-by-case basis where the Board would judge the severity of the offense and alternately, the Board could reject an applicant at its discretion if an offence is judged to be severe, consider mirroring stipulations or adding stipulations prior to issuing a license;
- PMP Updates – the Board would require pharmacists to register for PMP access. Registration is simple, one-time, and free. It would also enable student access to the PMP as a delegate of a licensed individual and it would establish a five-year data retention requirement;

- Direct Consumer Access to Smoking Cessation Services – this would allow consumers to exercise personal responsibility in accessing smoking cessation medications directly at pharmacies. The Board reviewed information from New Mexico, where such a model has been allowed for ten (10) years. No administrative or civil complaints are known to have resulted in New Mexico, whereas published studies document that pharmacists have effectively help reduce smoking rates; and
- Tuberculosis (TB) skin testing – this would allow trained pharmacists to perform TB skin testing as has become common in other states.

The Board took up the matter of Kasey Knowles, Pharmacy Technician-in-Training applicant. Ms. Knowles application was denied by board staff based on a past felony conviction and is currently on probation. She was candid about her experience and provided multiple certificates of completion related to substance abuse treatment. She can petition the court for early release from probation in three years. Ms. Knowles indicated that she is employed at Walgreens and hopes to move up into management. Following questions from the Board and discussion, Mr. Sperry motioned to accept the request for reconsideration on the condition of a one-year contract with Southworth Associates and the right to extend such contract as recommended by Southworth. Dr. de Blaquiere seconded. Following discussion Mr. Sperry amended his motion to accept the request for reconsideration subject to a three year contract with Southworth Associates with the right to extend based on Southworth recommendation at the end of the contract. Dr. de Blaquiere seconded and the motion carried with Dr. Henggeler opposed.

The Board took up the Reinstatement Application submitted by Ryan Eklund, PharmD. Dr. Eklund attended the meeting without legal counsel. He voluntarily surrendered his Pharmacist License and Controlled Substance Registration on November 17, 2015. The Board subsequently revoked his license and registration on December 4, 2015. Katie Davis, Senior Compliance Monitor for Southworth Associates submitted a letter indicating Dr. Eklund's compliance with his PRN contract and Southworth Associates' support of his return to the practice of pharmacy. Dr. Eklund's probation officer also submitted a letter of compliance and support.

Following questions from the Board and discussion, Dr. Henggeler motioned to approve the application with the completion of required continuing education, continued compliance with his PRN contract, comply with all state and federal laws, not serve as PIC for the duration of his PRN contract, work at no more than 2 locations, work no more than 40 hours per week for the duration of his PRN contract, remain compliant with the terms of his probation, and provide one guest lecture to pharmacy students in conjunction with Southworth Associates and at their discretion. Mr. Sperry seconded, following a brief discussion the motion carried unanimously.

The Board took up the Reinstatement Application submitted by Brad Stoick, RPh. Dr. Henggeler recused herself based on a professional relationship with Mr. Stoick. Mr. Stoick was ordered by the Board to contact Southworth Associates (SA) within 10 days of the January 2016 meeting and schedule an evaluation. Mr. Stoick requested the Board reinstate his license and registration at the August 2016 Board meeting. The Board denied the request as Mr. Stoick had not complied with the Order executed after the January 2016 meeting. SA submitted a letter indicating Mr. Stoick has completed an evaluation and based on information

from Dr. Richard Soper, SA supports Mr. Stoick's return to the practice of pharmacy. Following questions from the Board and a brief discussion Dr. Chopski motioned to approve the application subject to an appearance at the June 8, 2017 meeting, he must provide documentation indicating compliance with the recommendations as outlined in SA's letter no later than May 8, 2017 to be included in the Board book, staff will not renew his license and registration until after the June 8th meeting. Dr. de Blaquiere seconded. Following discussion Dr. Chopski amended her motion to include reserving the right to return to an SA monitored program in the future as determined by the Board. The motion carried unanimously.

The Board took up the Compliance Update submitted by Mr. Fraser. The advent of NABP's CPE Monitor increases the efficiency with which Board staff can conduct the annual CPE audit. Mr. Fraser, using data pulled from NABP's CPE Monitor on July 27, 2016, identified 156 pharmacists licensed in Idaho who had completed fewer than 24 ACPE-approved credits over a two-year period (12 hours of ACPE-approved credits each year plus other allowed CPE for a total of 15 CPE's are required by rule). After a complete audit of 2014-2015 and 2015-2016 renewal years in which individuals were invited to submit statements of credit, Board staff determined 51 individuals did not appear to pass this year's audit.

Number of Valid Credits	Number of Pharmacists
Completed 25 to 29 hours	20
Completed 20 to 24	10
Completed 15 to 19	10
Completed 10 to 14	1
Completed 5 to 9	2
Completed 1 to 4	2
Completed 0	6
Total	51

Based on this information Board staff recommends the following:

- Use delegated authority to resolve cases with the following proposed penalties:
 - For pharmacists with 24 or fewer hours, \$500 per year the pharmacist falsely reported on license renewal that they were compliant with their CPE.
 - For each pharmacist, \$100 per missed CPE hour and the pharmacist must complete twice as many CPE hours for each hour missing within 60 days.

Mr. Fraser clarified that the CPE hours are in addition to the annual CPE requirement, and pharmacists may not double-dip their disciplinary CPE hours with their usual and customarily required CPE hours.

Dr. Chopski motioned to accept the staff recommendation to resolve the CPE cases with the addition that CE may not be used twice, if they are late submitting the penalty is \$50 per week they are late. Dr. Henggeler seconded and the motion carried with Mr. Sperry opposed. The Board requested Dr. Adams pen a newsletter article with explicit instruction to pharmacists to maintain copies of CPE certificates.

Drs. De Blaquiere and Dr. Henggeler shared their initial impressions of the Motivational Interviewing training program offered by the National Association of Chain Drug Stores. The

program may have some utility in cases of counseling violations, depending on the specifics of the case. Board staff will put together a “menu” of continuing education programs for the Board’s toolbox, which may be helpful in consideration for future disciplinary cases.

Dr. Adams presented a newly penned CPE program for Pharmacist-In-Charge for Board review. The Board envisions this as a free home study law program to assist current or future Pharmacists-in-Charge (PIC) in better understanding their roles and responsibilities of this position in Idaho. The program will be accredited for two (2) hours of Board-approved law CPE, and will be periodically presented as a live session once the Board takes over its new office space. The program will specifically review the following elements:

- Who may serve as a PIC
- What a PIC should do as they begin their new role
- What ongoing activities a PIC is responsible for with respect to reporting requirements, recordkeeping, and license maintenance for the pharmacy team
- What to expect on a pharmacy inspection
- How to handle an impaired employee
- What a PIC should do upon completion of the role

The Board will provide Dr. Adams with feedback within two weeks of the meeting end.

The Board reviewed the Delegated Authority document, and made annual updates. The following charts reflect the updated Board-approved delegated authority with fines at this meeting. Board staff will take into consideration the unique circumstances of each case and the delegated authority serves only as a guide for Board staff.

Pharmacists

Code	Violation	Delegated Authority	Date Last Affirmed
DP1	1st criminal or alcohol-related offense (i.e. DUI)	No action; unless in violation of Rule 500 (Unprofessional Conduct)	03/15/16 10/27/16
DP2	Allowing a technician to take a new prescription order from a prescriber	\$500 per occurrence, up to a \$1000 fine	3/15/16 10/27/16
DP3	Allowing a technician to work with an expired registration	\$100 fine to pharmacist	3/15/16 10/27/16
DP4	Technician not identified by name badge; technician does not identify self as such on the telephone	\$50 fine to technician; \$100 fine to pharmacist on duty	3/15/16 10/27/16
DP5	Uncomplicated dispensing error	Complete the eighteen (18) credit online continuing education course Patient Safety and Medication Error Prevention for Pharmacy	3/15/16 10/27/16
DP6	Drug abuse or addiction	Pharmacy Recovery Network program	3/15/16 10/27/16
DP7	Exceeding the technician ratio of 6:1	\$200 fine	3/15/16 10/27/16

DP8	Failure to complete continuing education requirements	\$500 fine for falsifying Board application; \$50 fine per incomplete CE credit; and double the requirement for each missing CE credit the following year	3/15/16 10/27/16
DP9	Failure to obtain positive identification for controlled substance prescription	\$150 per occurrence	3/15/16 10/27/16
DP10	Failure to offer counseling	\$500 fine	3/15/16 10/27/16
DP11	Failure to renew Controlled Substance Registration/License (as long as respondent does not continue to work after notification)	\$200 fine to pharmacist \$100 fine to PIC	3/15/16 10/27/16
DP12	Failure to stop working once notified of nonrenewal of Controlled Substance Registration/License	\$1,000 fine to pharmacist \$500 fine to pharmacy \$500 fine to PIC	3/15/16 10/27/16
DP13	Failure to provide the Board office with required notifications (PIC change, employment change, etc.)	\$50 fine for first offense \$100 fine for second offense	3/15/16 10/27/16
DP14	Providing false information to the Board on a license application	\$500 fine	3/15/16 10/27/16
DP15	Failure to maintain recordkeeping for controlled substances	\$100 fine per occurrence	3/15/16 10/27/16
DP16	By request of respondent, extend time of fine payments up to 180 days from the date a fine was imposed	Executive director may execute	10/28/09 10/27/16
DP17	Revocation based on voluntary surrender of a license or CS registration	Executive director may execute	10/28/09 10/27/16

Technicians

Code	Violation	Delegated Authority	Date Last Affirmed
DT1	1st criminal or alcohol-related offense (i.e. DUI)	No action; unless in violation of Rule 500 (Unprofessional Conduct)	2/6/09 10/27/16
DT2	Drug abuse or addiction	Pharmacy Recovery Network Program	2/6/09 10/27/16
DT3	Failure of technician to identify themselves as such on the telephone; Not wearing name tag with proper identification as a technician	\$50 fine to technician; \$100 fine to pharmacist on duty	2/6/09 10/27/16
DT4	Failure to renew technician registration	Late fee + \$35 fine per week after expiration	2/6/09 10/27/16
DT5	Performing functions that are outside of the technician's scope of practice	\$200 fine	2/6/09 10/27/16
DT6	Unauthorized access to pharmacy	\$100 fine	2/6/09 10/27/16

DT7	National Certification lapsed beyond 30 day warning period	\$100 fine + cancelled registration	10/23/14 10/27/16
DT8	Falsified application due to lapsed National Certification	\$250 fine	10/23/14 10/27/16

Facilities

Code	Violation/Cause	Delegated Authority	Date Last Affirmed
DF1	Failure of pharmacy facility, PDO or veterinary drug outlet to register or renew registration	\$500 fine to facility	2/6/09 10/27/16
DF2	Signage violations (i.e. hours of business, generic substitution)	\$100 fine	2/6/09 10/27/16
DF3	Outdated or missing law book or required reference	\$200 fine	3/15/16 10/27/16
DF4	Out-of-state facility without current inspection from their state Board of Pharmacy	Can issue a license as long as proof is provided of a scheduled inspection in the next 6 months; Can cancel a registration if proof of an inspection not received within those 6 months	10/27/16
DF5	Waiver requests similar to the one granted to SARMC for 'Branch Pharmacy'	Executive Director may execute	10/27/16

Practitioner Controlled Substance Registrants

Code	Cause	Delegated Authority	Date Last Affirmed
CS1	Orders mirroring an order from another licensing board per statute 37-2718(g)	Executive director may mirror	10/28/09 10/27/16
CS2	Reinstatement of revoked controlled substance registration based on mirroring order	Executive director may mirror	4/5/12 10/27/16
CS3	Amend a mirroring order of a non-public Board of Medicine orders that is itself amended.	Executive director may mirror	3/4/11 10/27/16
CS4	Issue orders mirroring an order from a federal agency	Executive director may mirror	10/29/15 10/27/16

General Reasons

Code	Cause	Delegated Authority	Date Last Affirmed
GA1	Use Board seal on educational materials	Executive director must approve final document(s)	1/26/12 10/27/16
GA2	Assign cases to hearing officers as necessary	Executive director may execute	3/4/11 10/27/16

GA3	Deactivate user account based on inappropriate use of PMP system	Staff may deactivate accounts for cause	1/6/11 10/27/16
GA4	Complaint process	Staff may continue processing complaints per policy	4/23/10 10/27/16
GA5	Upon notification from Pharmacy Recovery Network (PRN) Facilitator, the Executive Director may issue a warning letter to a PRN participant who is out of compliance with the plan developed by the Facilitator, pursuant to a Board order.	Executive director may execute	10/29/15 10/27/16
GA6	In the event that a licensee or registrant fails to maintain regulatory requirements, the Executive Director may cancel the Board of Pharmacy's required registration.	Executive director may execute	10/29/15 10/27/16

Dr. Chopski motioned to grant delegated authority to Dr. Adams to approve waivers similar to the Branch Pharmacy waiver submitted by Mark Phillips, PharmD, and MBA. Mr. Sperry seconded and the motion carried with Dr. de Blaquiére abstaining.

Dr. Chopski motioned to adjourn, Dr. de Blaquiére seconded, and the motion carried unanimously. Meeting adjourned at 3:17 p.m.