

**MINUTES OF THE  
IDAHO STATE BOARD OF PHARMACY  
April 13-14, 2017**

**Capitol 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; Fred Collings, Chief Investigator; Lisa Culley, CPhT, Jaime Thompson, and Wendy Shiell, Compliance Officers; Andy Snook, Deputy Attorney General; Carl Withroe, Deputy Attorney General; Ellen Mitchell, Program Information Coordinator, and several members of the public.

Dr. Henggeler motioned to approve the January 12-13, 2017 minutes with minor corrections. Mr. Sperry seconded, and the motion carried unanimously.

Dr. Chopski motioned to approve the March 9, 2017 minutes as written. Dr. Henggeler 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. Henggeler motioned to approve the Consent Agenda minus the Exercises of Delegated Authority document. Dr. de Blaquiére seconded, and the motion carried unanimously. Following discussion, Dr. Henggeler motioned to accept the Exercises of Delegated Authority document, Dr. de Blaquiére 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:

- Lucas Snell, PharmD – During the annual inspections of Luke's Family Pharmacy in 2015 and 2016 the inspector noted outdated drug products in the pharmacy's stock of anticipatory compounded products. The Board has the authority to impose an administrative fine of \$2,000 per occurrence. However, by signing the Stipulation and Consent Order, Dr. Snell agreed to pay a \$1,000 administrative fine.
- David W. Tomey, PA – Entered into a Stipulation and Order with the Board of Medicine agreeing to take record keeping and pain management classes as well as other conditions outlined in the Order. By signing the Board of Pharmacy Stipulation and Consent Order, Mr. Tomey agreed to perform a PMP check on each patient prior to providing any opioid prescriptions and documenting such search.
- Walgreens 04942 – Failed to pay a previously imposed administrative fine. By signing the Stipulation and Consent Order they have agreed to pay an additional \$500 administrative fine in addition to the previously assessed fine of \$1,000 within 30 days of the date the Order is signed.
- Walgreens 05565 – Failed to pay a previously imposed administrative fine. By signing the Stipulation and Consent Order they have agreed to pay an additional \$500 administrative fine in addition to the previously assessed fine of \$2,000 within 30 days of the date the Order is signed.

Mr. Sperry motioned to approve the Consent Agenda with the exception of both Walgreens cases and Lucas Snell. Dr. de Blaquiére seconded, and the motion carried unanimously. Dr.

Adams provided the Board with an email from Dr. Snell requesting his fine be lowered. Following a brief discussion, Dr. Henggeler motioned to accept the Stipulation as written, Dr. Chopski seconded, and the motion carried unanimously.

In the matter of Walgreens 04942, Mr. Sperry motioned to reject the Stipulation and replace the \$500 fine with a 24 hour suspension of pharmacy operations. Dr. Chopski seconded. During discussion Dr. de Blaquiere expressed his surprise that the fine was so low. Following discussion, Mr. Sperry withdrew his motion. Dr. de Blaquiere motioned to reject both Walgreens 04942 and Walgreens 05565 Stipulation and Consent Orders, Dr. Chopski seconded, and the motion carried unanimously.

Dr. Adams sought direction from the Board for future stipulations of this nature. The Board suggested that in future cases of failure to pay an administrative fine within the required timeframe, the Board would assess a \$2,000 fine for facilities, or a \$500 fine for individuals.

The Board took up the matter of Alan Maxwell, RPh. Mr. Maxwell attended the meeting without legal counseling. He is requesting the Board remove the restrictions on his pharmacist license, returning it to a non-conditioned status. Following discussion Dr. Henggeler motioned to grant Mr. Maxwell's request, Dr. Chopski seconded, and the motion carried with Mr. Sperry abstaining.

The Board took up the matter of Richard Pines, DO. Dr. Pines attended the meeting with legal counsel Dan Skinner. Dr. Pines' Controlled Substance Registration was revoked on July 17, 2013, he is requesting the Board allow reinstatement of his registration. Following a brief presentation by Mr. Skinner, Dr. Henggeler motioned to mirror the Board of Medicine (BOM) Order, Dr. de Blaquiere seconded. During discussion Mr. Snook commented the Board may consider mirroring only the relevant BOM prescribing conditions, if any. Following further discussion Dr. Henggeler amended her motion to grant reinstatement of Dr. Pines' Controlled Substance Registration without conditions upon a completed application and that there are not extraneous issues, Dr. de Blaquiere seconded, and the motion carried unanimously.

The Board took up the matter of Kenneth Blackner, MD. Dr. Blackner attended the meeting with legal counsel J.D. Oborn. Dr. Blackner's Controlled Substance Registration was restricted January 20, 2015 for controlled substance record keeping violations. Dr. Blackner is requesting his Controlled Substance Registration be returned to a non-conditioned status. Following a brief presentation by Mr. Oborn, Dr. Chopski motioned to remove the restrictions on Dr. Blackner's registration, Dr. Henggeler seconded, and the motion carried unanimously.

Dr. Adams presented the Board's financial report.

- As of March 31, 2017, 75% of the year had elapsed and 56% of the budget had been expended. There have been no Capital Outlay (CO) expenses, though there is \$10,050 from the sale of two vehicles that will be used to set up the conference/board room; the remaining \$250,000 will go toward a new licensing system. The Board received carryover appropriation to use the \$250,000 in the next fiscal year.
- Personnel Costs (PC) are 72% expended with \$28,000 in one-time salary savings due to vacancies and delays in filling the IT position. Change in Employee Compensation (CEC) has been distributed according to a matrix that used each employee's evaluation and comp-ratio to determine increases. Due to salary savings increases were effective March 26.
- Operating Expenditures (OE) are 51% expended. The building contract, Appriss contract, and the licensing system renewal contract are all outstanding. Once these contracts are in place, the expenditures will be in line with the timing of the year.
- The fiscal year began with a cash fund balance of \$2,411,780. Disbursements are still exceeding revenue, though this should even out after renewals begin later this month.
- The budget is currently in line this time of year. Currently trending an 8.2% increase in revenue over last year at this time and a 14.9% increase in expenditures

Chairman Jonas asked Dr. Adams to frame the discussion of Corrective Action Plans (CAP). Anne Lawler, executive director of the Board of Medicine (BOM) presented information to the Board at their March 2017 meeting, indicating BOM had begun using CAP this past December as a way to regulate registrants and licensees without formal discipline. Dr. Adams indicated CAP would be a subset to the Delegated Authority (DA) that has already been granted by the Board. Exercises of DA have traditionally been reported to HPDB as disciplinary action, whereas CAP would be an informal agreement between Board staff and the registrant/licensee and wouldn't carry a monetary penalty of more than \$250. In a case where CAP was not successful, the Board still has the authority to pursue a Stipulation and Consent Order or go to hearing.

Following the lunch break the Board took up the matter of Andrew Welch Reinstatement Hearing. Mr. Withroe informed the Board that Mr. Welch's attorney, Mr. Pendlebury had emailed him indicating Mr. Welch was withdrawing his application for reinstatement. Neither Mr. Welch nor Mr. Pendlebury will be appearing today. Dr. Chopski motioned to vacate the agenda item, Dr. Henggeler seconded, and the motioned carried unanimously. Mr. Sperry commented that Mr. Welch had withdrawn a previous application, Mr. Snook will review current policies to determine when Mr. Welch will be able to request reinstatement again.

During the March 2017 meeting of the Board, the Board asked Mr. Snook to research the Board's authority relating to unlicensed practice of pharmacy in Idaho. Currently, the Board's authority to impose discipline is limited to those persons or entities with, or applying for the issuance or reinstatement of, a license or registration issued by the Board. If a licensee or registrant were to engage in the unlawful practice of pharmacy, the Board has the authority to discipline the license or registrations. However, if a person or entity who is not licensed or registered with the Board engages in unlawful practice of pharmacy, the Board wouldn't have any authority to discipline that person or entity. These types of cases would fall under the jurisdiction of local law enforcement or the US Food and Drug Administration or the US Drug Enforcement Agency. If the Board desires to expand its authority to encompass any persons or entities practicing pharmacy in, or into, Idaho, regardless of licensure or registration, statutory amendments would be needed. Such amendments could be similar to the Idaho Board of Veterinarian Medicine or the Idaho Public Contractors License Board where, generally, administrative authority extends beyond licenses to the actual individual or entity that holds, or should hold, the license. The Board decided no action would be pursued regarding this in the upcoming year.

The Board held a brief discussion on House Bill 191, which passed the legislature near unanimously (69-0; 33-1), which grants the Board rulemaking authority to designate which drugs, drug classes, or devices pharmacists may prescribe, as long as they fall within the statutorily authorized parameters. The Board discussed drafting some general requirements related to education, patient-prescriber relationships, notification, etc.

Dr. Henggeler motioned to adjourn, Dr. Chopski seconded, and the motion carried unanimously. Meeting adjourned at 3:08 p.m.

#### **April 14, 2017 – State Capitol – Senate Majority Caucus Room**

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 Thomas and Wendy Shiell, Compliance Officers; Andy Snook, Deputy Attorney General; Ellen Mitchell, Program Information Coordinator; Erik Sevillano, IT Systems Integration Analyst, and several members of the public.

Chairman Jonas asked Dr. Adams to frame the discussion regarding License Statutes and Rules. A full discussion on the Board's direction was held in January and detailed in the January minutes. Board staff worked diligently to update rule language pursuant to the Board's direction, and copies of the drafts were made available to members of the public online in advance of the meeting.

The Board requested the addition of the following definitions to Chapter 1:

- Accreditation Council for Continuing Medical Education (ACCME)
- Continuing Medical Education (CME)
- Flavoring agent

The Board requested the following changes to Chapter 2:

- 021.07 Reinstatement of License or Registration: Add 'consideration of a request for reinstatement' and 'as applicable' after fingerprint card
- 023. Fee Schedule
  - License and Registrations—Professionals: Include 'Student Technician' in the fee for technicians at \$35
  - License or registration reinstatement fee changed to 'one-half of the amount of the annual renewal'
  - Add Administrative Services fees for experiential hours certification and duplicate pharmacist certificate of license
- Add 035.02 to describe CME credits that may be acceptable, and cap the amount of CME at three (3) hours
- 038.02.a add 'Following graduation, if a pharmacist license application has been submitted, the pharmacist intern license will be extended at no cost for up to six (6) additional months from the date of application as a pharmacist, after which time the individual will need to submit a new application to continue to be a pharmacist intern.'
- 038.02.b add 'be obtained'
- 041.02 & 043.03 add 'The Board's executive director may grant a brief extension for the purposes of employment continuity to a technician-in-training who is awaiting the completion of the education requirement necessary to become a certified pharmacy technician.'
- Add 050.03.a Temporary Pharmacy License Issued Prior to Operation. Upon request on a Board form, the Board may issue a temporary pharmacy license prior to the pharmacy being open for business provided that the applicant owns another registered pharmacy in Idaho and has designated a PIC. Prescription drugs may not be delivered to the pharmacy until successful completion of a new drug outlet inspection.
- 050.05 add 'record' of controlled substances

Idaho State University student pharmacists James Hunt and Mervan Newbold presented a rule concept to the Board regarding the addition of a diagnosis code to each prescription. After discussion, the Board tasked staff with additional research.

Hearing no further discussion Mr. Sperry motioned to adjourn, Dr. Chopski seconded, and the motion carried unanimously. Meeting adjourned at 3:57 p.m.