

**MINUTES OF THE  
IDAHO STATE BOARD OF PHARMACY  
August 2, 2018**

**State Capitol Building  
Boise, Idaho**

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

Chairman Nicole Chopski, PharmD, called the meeting to order at 9:00 a.m. In attendance were Vice Chairman, Holly Henggeler, PharmD; Board members Ed Sperry and Kristina Jonas, PharmD. Also in attendance were Alex J. Adams, PharmD, MPH, Executive Director; Berk Fraser, RPh, Deputy Executive Director; Amy Hickerson, CPhT, Jaime Thompson, 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. Board member Rich de Blaquiére, PharmD was unable to attend.

Dr. Jonas motioned to approve the minutes from the meeting of July 12, 2018, with minor corrections. Dr. Henggeler seconded and the motion carried unanimously.

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

- a. Board Performance Dashboard
- b. Travel Calendar
- c. Exercises of Delegated Authority
- d. Director's Expenses
- e. Remote Dispensing Update

The Board discussed matters pertaining to the Travel Calendar. Dr. Jonas was appointed to the National Association of Boards of Pharmacy (NABP) Task Force to Develop Regulations Based on Standards of Care and will attend a meeting in Chicago October 9-10, 2018. Mr. Sperry will attend the pharmacy technician conference in Washington, DC. He will provide the dates to Board staff when available. Dr. Chopski will attend the Board Member Forum in Chicago on September 24-26, 2018. Following discussion Dr. Henggeler motioned to approve the Consent Agenda with discussed modifications to the travel calendar. Dr. Jonas seconded and the motion carried unanimously.

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

- Prescription Center
- Burley Family Health Services
- Pharmaceutical Specialties dba Hoyes Pharmacy
- Valley Apothecary
- Allen Drug

Dr. Jonas motioned to accept the Stipulation and Consent Orders, as written. Dr. Henggeler seconded, and the motion carried unanimously.

Bruce Hanebutt, RPh, PIC, Animal Rx Pharmacy attended the meeting to request a waiver of rule 27.01.04.040.04 which requires pharmacy technicians be certified. Animal Rx Pharmacy is a limited service pharmacy that dispenses veterinary medications; they do not carry controlled substances, nor do they have a DEA registration. Mr. Hanebutt indicated it is difficult for them to retain Certified Technicians as they are trained for human pharmacies and the work at Animal Rx Pharmacy is much more limited than in a human pharmacy. Animal Rx Pharmacy delivers to farms, dairies, and feed lots. They have had success in transitioning associates from the MWI Animal Health warehouse. The associates have then had difficulty passing the certification exam as it is based on human medications, whereas their experience is with veterinary medications.

Dr. Adams suggested granting a waiver for rule 27.01.03.101 as it directly relates to the delegation of pharmacy functions. This would allow Mr. Hanebutt to delegate duties to individuals that are not pharmacy technicians or pharmacy students. Following a brief

discussion Dr. Henggeler motioned to approve a waiver of rule 27.01.03.101 in this setting. Dr. Jonas seconded. The motion carried with Mr. Sperry opposed.

Robert Wechsler, MD attended the meeting to discuss the proposed repeal of 54-1770 Notification of Drug Product Selection for Epilepsy and Seizure Drugs. Following discussion, Dr. Adams recommended retaining 54-1770 as it is written and establish a mechanism that requires a review of the evidence in three years. Dr. Wechsler is supportive of Dr. Adams recommendation as well as legislation that would require a diagnosis code on all prescriptions.

Following a brief break the Board addressed the proposed Stipulation and Consent Order of Bengal Pharmacy at Challis. Per the Board's direction at the last meeting the parties negotiated changes to the proposed stipulation. Kim Wynn, PharmD is the new PIC of the pharmacy and attended the meeting with Rex Force, PharmD, V.P. for ISU Health Sciences, to address the Board's concerns. Dr. Wynn conducted an extensive review of the Bengal Pharmacy site prior to submitting the written plan of action that was submitted to the Board prior to the meeting. She and her staff have implemented monthly technician forums, group meetings, and additional trainings. These meetings and trainings will be conducted at all sites to ensure consistency.

Following discussion, Dr. Henggeler motioned to accept the stipulation as written. Mr. Sperry seconded and the motion carried unanimously.

Mr. Sperry commended Mr. Olsen and his staff for the work they have done for the Board on this and other stipulations.

The Board took up the matter of Thomas Forrey, Certified Pharmacy Technician applicant. Mr. Forrey attended the meeting without legal counsel. Board staff was unable to approve his application as the circumstances pertaining to the termination of his prior employment fell outside their delegated authority. Following Mr. Forrey's presentation and discussion Dr. Henggeler motioned to deny the application, Dr. Jonas seconded for discussion. The motion failed with Dr. Jonas and Mr. Sperry opposed. Dr. Jonas motioned to approve the application. Mr. Sperry seconded and the motion carried with Dr. Henggeler opposed.

The Board took up the request of Brian Christiansen, PharmD. Dr. Christiansen attended the meeting without legal counsel. He is requesting his pharmacist license be returned to unconditioned status. Following discussion Dr. Henggeler motioned to reinstate Dr. Christiansen's license to unrestricted status upon the expiration of his current contract with Southworth Associates. Dr. Jonas seconded and the motion carried unanimously.

Ms. Lawrence presented the Board's financial report for fiscal year 2018; 100% percent of the year elapsed and 89% of the budget expended.

- Personnel Costs - 98.86% expended – \$13,136 was reverted
- Operating Expenses - 78.49% expended - \$147,602 reverted
  - Although the Board typically reverts some operating money it is not normally this high. The following five items resulted in the reverted amount.
    - \$75,400 in the base budget for the licensing system annual maintenance, with \$19,761 expended to make transition updates to the legacy system, generating a savings of \$55,639
    - \$82,000 in the base budget for the PMP annual maintenance and any reporting or updates needed each year. The annual maintenance expense was incurred but no additional monies were needed, generating a savings of \$18,140
    - \$10,800 in the base budget for document management annual maintenance, none of this was expended as it is paid through the end of August and the transition to the new system will be concluded prior to the due date.
    - \$45,000 in the base budget for hearing officer costs, all hearing officer expenses incurred were through the Attorney General's office and do not affect this appropriation.

- The Board has historically spent \$3,000 per quarter to send the NABP newsletter to licensees and registrants. With approximately \$12,000 in the base budget, \$3,427 was expended. By adopting the electronic delivery of the newsletter, the savings was \$8,573.
    - The remaining \$9,500 in savings was derived from smaller items throughout the budget, i.e., printing services, building and vehicle supplies, office equipment services, fingerprinting costs, cell phone data charges, and others.
  - Operating Expenses for the Department of Health & Welfare contract - 99.97% expended and \$60 reverted.
    - The Board awarded 269 Gateway licenses and 601 NarxCare (which includes gateway) in FY18 and awarded an additional 1,100 Gateway Licenses in FY19.
  - Capital Outlay – 68.91% expended – \$557.92 or 0.2% reverted; \$87,692 was encumbered for use in FY19 to complete the contractually obligated payments for the new licensing system. Encumbering the funds was necessary as the system was not live until July 9<sup>th</sup>. The system had to be tested and accepted prior to payment.

**Current Cash Balance**

- At the beginning of the fiscal year, the cash balance was \$2,610,200. At the end of the year, the balance was increased by \$88,870.

**4-Year Budget Trend Comparison FY15-FY18**

- The four year comparison shows we are in line with revenue, expenditures, and Cash Fund growth. Expenditures are up 0.07% over last year mostly due to one-time spending for the licensing system.
- Figures include the revenue from the Health & Welfare contract reimbursements and show an increase of 8%, or \$170,100 over last year.
- Without the Health & Welfare contract, receipts were \$1,985,380, a decrease of \$24,122, or -1%.

**Licensing Revenue Breakdown - 5 year comparison:**

Fee Type	14	15	+/-	%	16	+/-	%	17	+/-	%	18	+/-	%
Late	23500	15000	(\$8,500)	-36%	24500	\$9,500	63%	18600	(\$5,900)	-24%	8500	(\$10,100)	-54%
Reinst	7200	8600	\$1,400	19%	12300	\$3,700	43%	8900	(\$3,400)	-28%	4500	(\$4,400)	-49%
Prior	500	4100	\$3,600	720%	9600	\$5,500	134%	2400	(\$7,200)	-75%	1400	(\$1,000)	-42%
Fines	17900	20700	\$2,800	16%	42300	\$21,600	104%	74100	\$31,800	75%	103050	\$28,950	39%
<b>Totals</b>	<b>49114</b>	<b>48415</b>	<b>(\$699)</b>	<b>-1%</b>	<b>88716</b>	<b>\$40,301</b>	<b>83%</b>	<b>104017</b>	<b>\$15,301</b>	<b>17%</b>	<b>117468</b>	<b>\$13,451</b>	<b>13%</b>
Lic Renew	270900	270700	(\$200)	0%	283500	\$12,800	5%	307300	\$23,800	8%	434700	\$127,400	41%
Reg Renew	908200	989900	\$81,700	9%	1064600	\$74,700	8%	1155500	\$90,900	9%	1015500	(\$140,000)	-12%
<b>Totals</b>	<b>1179100</b>	<b>1260600</b>	<b>\$81,500</b>	<b>7%</b>	<b>1348100</b>	<b>\$87,500</b>	<b>7%</b>	<b>1462800</b>	<b>\$114,700</b>	<b>9%</b>	<b>1450200</b>	<b>(\$12,600)</b>	<b>-1%</b>
New Reg	332700	286000	(\$46,700)	-14%	270800	(\$15,200)	-5%	299500	\$28,700	11%	286000	(\$13,500)	-5%
New Lic	59200	55100	(\$4,100)	-7%	68970	\$13,870	25%	64400	(\$4,570)	-7%	60400	(\$4,000)	-6%
BGC	70000	57500	(\$12,500)	-18%	51300	(\$6,200)	-11%	54500	\$3,200	6%	50600	(\$3,900)	-7%
<b>Totals</b>	<b>461900</b>	<b>398600</b>	<b>(\$63,300)</b>	<b>-14%</b>	<b>391070</b>	<b>(\$7,530)</b>	<b>-2%</b>	<b>418400</b>	<b>\$27,330</b>	<b>7%</b>	<b>397000</b>	<b>(\$21,400)</b>	<b>-5%</b>
<b>Licensing Fees</b>	<b>1641000</b>	<b>1659200</b>	<b>\$18,200</b>	<b>1%</b>	<b>1739170</b>	<b>\$79,970</b>	<b>5%</b>	<b>1881200</b>	<b>\$142,030</b>	<b>8%</b>	<b>1847200</b>	<b>(\$34,000)</b>	<b>-2%</b>

- The first section shows revenue that can't easily be predicted, as a result the agency doesn't rely on these figures when creating the budget. The decrease in late fees, reinstatement fees, and prior year fees is a good trend. As expected, the increased number of disciplinary cases led to increased fine collection.
- The next two sections are renewal fees and the new license fees broken down by registration vs. license. The goal with this transition and fee change was to remain budget neutral. Although the phase in for the birth month renewals hasn't started yet, the fee transition itself was close to being budget neutral. We attribute the 1% to the increased attrition in renewals this year (about 2% over last year).

- The decrease in registration fees and the increase in licensing fees are directly related to rule changes. Pharmacist Controlled Substance registrations & Distributor registrations were in the registration fee category as well as the other license types that were terminated. The increase to fees was made on the pharmacist license and the Wholesaler license so they are showing as increase in licensing fees. Overall this is a \$12,600 decrease in renewal fees or -1%.
- New license/registration revenue is down across the board, as there were fewer new applications submitted. Staff will continue to monitor these numbers.

#### FY18 Monthly Cash Flow

The report shows increased revenue in April, May, and June with annual renewals. In June, revenue exceeded expenditures by \$172,855.

#### Renewal Report

License Type	Active	% Renewed	Pending Review		Pending Renewal	% not renewed	Notified not Renewing	Total
<b>2018 Totals</b>	<b>7841</b>	<b>90.37%</b>	<b>84</b>	<b>0.97%</b>	<b>603</b>	<b>6.95%</b>	<b>149</b>	<b>8677</b>
<b>2017 Totals</b>	<b>7626</b>	<b>92.32%</b>	<b>58</b>	<b>0.70%</b>	<b>406</b>	<b>4.92%</b>	<b>170</b>	<b>8260</b>

License Type	Active	% Renewed	Pending Review		Pending Renewal	% not renewed	NNR	Total
Certified Pharmacy Technician	1597	87.32%	16	0.87%	191	10.44%	25	1829
Durable Medical Equipment	386	88.13%	3	0.68%	38	8.68%	11	438
Hospital Pharmacy	58	98.31%	0	0.00%	0	0.00%	1	59
Limited Service Pharmacy	43	100.00%	0	0.00%	0	0.00%	0	43
Mail Service Pharmacy	579	87.99%	14	2.13%	42	6.38%	23	658
Manufacturer	454	91.53%	6	1.21%	23	4.64%	13	496
Narcotic Treatment Center	4	100.00%	0	0.00%	0	0.00%	0	4
Non-Res Central Drug Outlet	42	95.45%	1	2.27%	1	2.27%	0	44
Non-Res Pharmacist	502	78.93%	1	0.16%	118	18.55%	15	636
Outsourcing Facility	41	100.00%	0	0.00%	0	0.00%	0	41
Pharmacist	2655	94.79%	34	1.21%	90	3.21%	22	2801
Pharmacy Technician (Grand-fathered)	255	90.43%	0	0.00%	17	6.03%	10	282
Prescriber Drug Outlet	266	85.53%	0	0.00%	37	11.90%	8	311
Retail Pharmacy	284	99.30%	0	0.00%	0	0.00%	2	286
Wholesale	473	91.49%	6	1.16%	28	5.42%	10	517
OTC/LMD Wholesaler	202	87.07%	3	1.29%	18	7.76%	9	232
<b>2018 Totals</b>	<b>7841</b>	<b>90.37%</b>	<b>84</b>	<b>0.97%</b>	<b>603</b>	<b>6.95%</b>	<b>149</b>	<b>8677</b>

Following a brief discussion, Dr. Jonas motioned to approve the Financial Report. Dr. Henggeler seconded and the motion carried unanimously.

Dr. Chopski called for public comment, none was offered.

Dr. Chopski invited the Board's compliance officers to provide an update. Mrs. Thompson shared the meetings surrounding updating the inspection forms were productive in reviewing the new rules. She believes the final product will be helpful with the new rules and processes. They indicated the pharmacists and technicians seem to be aware of the recent law changes and that the palm cards were very helpful. Ms. Shiell indicated the new forms are user friendly and intuitive. Mr. Fraser added they also have a separate inspection section for pharmacist prescribing. He also indicated the forms would be available online by August 3, 2018. Dr. Chopski thanked the Compliance Officers and Mr. Fraser for their hard work on the forms and informing the pharmacy community of the changes.

Following the lunch break, Dr. Chopski called the meeting back to order at 1:00 p.m. She indicated this is the first of two scheduled negotiated rule making sessions and the sixth public meeting since February in which draft regulations had been discussed to some extent. The Board may make changes to the proposed rules and agency bills during this meeting. If changes are made, the updated documents will be posted prior to the second negotiated rule making session scheduled for August 30, 2018. Following the August 30 meeting, the proposed rule drafts will be published in the October 3, 2018 Administrative Bulletin, triggering the official 21-day public comment period. Dr. Chopski reiterated the Board prefers written comments as it allows time for additional research and making informed decisions.

Dr. Adams presented proposed changes to the Board's rules which have been reviewed in depth at previous meetings. Following the review of each individual chapter, Dr. Chopski

called for public comment. The Board also reviewed written comments submitted in advance of the meeting.

**A. Rule Docket No. 27-0101-1801 – Chapter 1, General Provisions**

- No verbal comments were provided at the meeting, and Dr. Adams indicated that no written comments were received in advance of the meeting.
- No changes were made to the docket.

**B. Rule Docket No. 27-0102-1802 – Chapter 2, Rules Governing Licensure and Registration**

- No verbal comments were provided at the meeting.
- In comments on behalf of CVS Health, Mark Johnston, RPh, CVS, Senior Director, Pharmacy Regulatory Affairs, expressed support of the elimination of the MPJE requirement.
- No changes were made to the docket.

**C. Rule Docket No. 27-0103-1802 – Chapter 3, Rules Governing Pharmacy Practice**

The Board received the following comments:

- In comments on behalf of CVS Health, Mark Johnston, RPh, CVS, Senior Director, Pharmacy Regulatory Affairs, expressed support of the elimination of the PIC requirement. Mr. Johnston also requested rule 305.02 be changed from 'skilled nursing facility' to any 'institutional facility' with a quality assessment and assurance committee. He provided a report of an NABP Task Force on Long Term Care which was released in 2017 as the basis for the suggested change.
  - i. The Board made the change to rule 305.02 as suggested.
- Pam Eaton, Executive Director, Idaho Retailers Association, and Idaho State Pharmacy Association – Expressed concern regarding rule 302.06 and the burden placed on pharmacists as a result.
  - i. The Board declined to make any changes.
- Dr. Adams raised a comment he had heard regarding Rule 300.07 Digital Image Prescriptions.
  - i. The Board directed Dr. Adams and Mr. Snook to clarify the intent was to ensure each prescription must be covered in whole, or in part, by a third party.
- Regarding Rule 400.03.b. Dr. Henggeler expressed concern over the change regarding the inventory requirement on PIC change.
  - i. The Board declined to make any changes.
- Regarding Rule 313 Prescription Delivery, Dr. Adams noted a gap that this may preclude delivery to other facilities, such as federal PACE programs.
  - i. The Board directed Dr. Adams to broaden the rule to allow delivery in compliance with federal law.
- Christina Cernansky, Executive Director, National Alliance on Mental Illness, Wood River Valley – requested clarifying rule 305.05.a by adding by handwriting 'therapeutic substitution allowed' on the prescription.
  - i. The Board indicated that a shrinking percentage of prescriptions are actually handwritten and that handwritten prescriptions decline annually. Dr. Adams will clarify with Ms. Cernansky following the meeting to ensure the Board fully understands her organization's concerns.

**D. Rule Docket No. 27-0104-1802 – Chapter 4, Rules Governing Pharmacist Prescriptive Authority**

- Mrs. Eaton expressed support for the expanded prescribing role of pharmacists and has heard positive feedback from legislators. She indicated she has heard a significant appetite to broaden pharmacist prescribing.
    - i. Dr. Chopski stated that the Board has continued its conservative approach to this chapter, and reaffirmed her commitment to an evidence-based approach.
  - Susie Pouliot, Executive Director, Idaho Medical Association (IMA) submitted written public comment on behalf of the association requesting the Board limit prescribing for allergic rhinitis to intranasal medications only, limit prescribing for mild acne to topical products, limit prescribing for acute cough to benzonatate only, and narrow 'acute cough' to 'mild cough.'
    - i. The Board approved all four suggestions by IMA and directed Dr. Adams to make the changes IMA requested.
  - Laura Churns, PharmD, Director, Pharmacy Legislative & Regulatory Affairs, Albertsons, expressed support of the rules, and asked the Board to broaden the rule from just 'mild' acne to also include 'moderate' acne and other minor ailments, citing various studies and noting the potential to reduce overuse of antimicrobials by allowing pharmacist management.
    - i. The Board declined to make the suggested changes, noting while the evidence is compelling, the Board wants to continue its conservative approach to this chapter.
  - Suzanne Olbricht, MD, President, American Academy of Dermatology Association submitted written public comment opposing pharmacist prescribing for mild acne, indicating her organizations' belief that a board-certified dermatologist is needed to make a proper diagnosis of mild acne.
    - i. The Board invited the submission of evidence-based research for the August 30<sup>th</sup> negotiated rulemaking meeting. The Board specifically asked for any information on public safety issues that have emerged in current jurisdictions allowing this practice, along with information on diagnostic accuracy through alternative care models, and information on incremental risk.
  - Mr. Johnston presented on supplements to an infusion order, Rule 026, and identified gaps that were not addressed in the current rule.
    - i. The Board amended Rule 026.
- E. Rule Docket No. 27-0105-1801 – Chapter 5, Rules Governing Drug Compounding**
- No verbal comments were provided at the meeting, and Dr. Adams indicated that no written comments were received in advance of the meeting.
  - No changes were made to the docket.
- F. Rule Docket No. 27-0106-1801 – Chapter 6, Rules Governing DME, Manufacturing, and Distribution**
- No verbal comments were provided at the meeting, and Dr. Adams indicated that no written comments were received in advance of the meeting.
  - No changes were made to the docket.

Dr. Chopski reiterated the Board's preference for written comment to allow for review and research. They are also appreciative of stakeholders attending the meetings to support their comments.

Dr. Adams presented the proposed agency bills for the 2019 legislation, drafts of which have been on the Board's website for review. He indicated that changes to the Controlled Substances Act intended to conform to scheduling decisions that DEA made to date in 2018. Butalbital is also being amended to mirror longstanding federal law. Dr. Adams received no written public comment and no verbal comments were provided at the meeting.

Dr. Adams presented the proposed changes to the Pharmacy Practice Act. He received no written comment nor any verbal comments. This bill contains proposed changes to the

Legend Drug Donation Act to allow animal shelters to accept donations. Nevada currently allows veterinary drug donations and there have been no known animal safety issues. Following a brief discussion, the Board provided unanimous consent to move forward with the proposed language for both agency bills

Dr. Chopski called for any remaining public comments on any agenda item, and no comments were offered.

The Board took up the request from Commander Jacob Van Vleck to allow for the expungement of previous disciplinary action. Following the discussion, the Board asked Board staff to research the pros and cons of such a policy and report back to the Board.

Dr. Jones motioned to adjourn, Dr. Henggeler seconded, and the motion carried unanimously. Meeting adjourned at 2:57 p.m.

APPROVED