

**MINUTES OF THE  
IDAHO STATE BOARD OF PHARMACY  
March 18, 2021**

**Board Meeting & Conference Call**

**Board of Pharmacy Office  
1199 Shoreline Ln  
Boise, Idaho**

This meeting of the Board was held to conduct regular Board business. The telephone conference line information was published on the agenda and posted to the Board's website. The conference line was open for the duration of the meeting.

Chairman Kris Jonas, PharmD, called the meeting to order at 8:30 a.m. Those in attendance telephonically included Theresa Arnold, Management Assistant; Jaime Thompson and Wendy Shiell, Compliance Officers, and members of the public.

Those in the Board office included Dr. Jonas; Justin Messenger, PharmD; Kevin Ellis, PharmD; Rich de Blaquiére, PharmD; Ed Sperry, Public Member; Andy Snook, DAG; Steve Herring, DAG; Nicki Chopski, PharmD, Executive Director; Berk Fraser, RPh, Deputy Executive Director; Amy Hickerson, Compliance Officer; Edina Masic, ISU Student Pharmacist; and Ellen Mitchell, Program Information Coordinator; and members of the public.

Dr. Jonas proceeded with the Administrative Hearing regarding Jeremy Otteson, PharmD. Dr. Otteson attended the hearing telephonically and was not represented by counsel. Mr. Herring represented the Board. Mr. Fraser was identified as the only witness aside from Dr. Otteson. Dr. Jonas swore in Dr. Otteson and Mr. Fraser prior to opening arguments.

Following the hearing, Dr. de Blaquiére motioned to accept the Staff recommendation requiring Dr. Otteson to complete 30 hours of CPE in addition to the annual CPE requirement, pay an administrative fine of \$1,500, and hearing costs of \$200. Dr. Ellis seconded. Following a brief discussion, the motion carried unanimously by roll call vote.

The Board took up the request from John Steiner, PharmD, to release him from the restrictions imposed on his license detailed in the Board Order executed on February 25, 2020. Dr. Steiner attended the meeting in person, without legal counsel. Following extensive discussion, Mr. Sperry motioned to release Mr. Steiner early from the program. Dr. Messenger seconded the motion. Following additional discussion, Mr. Sperry withdrew his original motion. Mr. Sperry then motioned to suspend the requirements of the PRN program until Dr. Steiner returns to the practice of pharmacy. Upon return, he will be required to re-enroll in PRN for one year. Dr. Steiner is responsible for notifying the Board when he returns to the practice of pharmacy; failure to do so will result in a \$2,000 fine. Dr. Ellis seconded the motion. Following discussion, the motion carried by roll call vote, with Dr. Messenger opposed.

Dr. Ellis motioned to approve the minutes of January 19, 2021 and February 16, 2021, as written. Dr. de Blaquiére seconded. Hearing no discussion, the motion carried unanimously.

The Board took up the Consent Agenda. Dr. de Blaquiére was pleased with the results of Staff's use of Corrective Action Plans, he then offered a motion to accept items A-E of the Consent Agenda. Mr. Sperry seconded, and with no further discussion the motion carried unanimously.

The Board took up the matter of the Travel Calendar. Dr. Messenger motioned to appoint Dr. Jonas as the Delegate to the NABP Annual Meeting and Dr. de Blaquiére as the Alternate Delegate. Mr. Sperry seconded, and after a brief discussion the motion

carried unanimously. Dr. Ellis motioned to approve the Travel Calendar. Dr. de Blaquiere seconded, and without further discussion the motion carried unanimously.

The Board took up the matter of the Stipulation and Consent Orders. Dr. de Blaquiere motioned to approve Missoula Pharmacy Inc, and Michael Lee Oglesbay, DO. Dr. Ellis seconded, the motion. The Board discussed the matter at length. Dr. Messenger questioned if the penalty in the Oglesbay case should be higher. Mr. Sperry supported Dr. Messenger's viewpoint. Dr. Jonas called for the vote on the motion. Drs. de Blaquiere and Ellis voted in favor of the motion. Dr. Messenger and Mr. Sperry voted opposed. Dr Jonas broke the tie by voting in favor and the motion carried.

Following a brief discussion regarding Pure Vita Co, LLC, Dr. de Blaquiere motioned to approve the stipulation as written. Dr. Ellis seconded, and the motion carried unanimously.

Dr. Chopski expressed her appreciation of having a dedicated deputy attorney general over the last few months. She specifically wanted to recognize Mr. Herring and his work on the Board's continuing education audit cases. Dr. Jonas expressed the Board's satisfaction with the way the hearing went earlier and his work overall.

Dr. Chopski notified the Board there may be a need to expand the June meeting to two days. Following discussion, the Board added June 11<sup>th</sup> as the second day of the meeting, if necessary.

Following the lunch break the Board took up Board Discussions. Dr. Chopski notified the Board there has been a motion of appeal in the Chambers matter filed with the Supreme Court of Idaho. There has been no response from the court.

Mr. Fraser reviewed the updated report of the CE audit with the board. The topic will be on the next meeting agenda for discussion for the 2020 CE period.

Dr. Chopski updated the Board on the open investigator position, indicating the position will be posted soon.

Due to a technical difficulty the Mandatory Use Tool demo was delayed.

Dr. Jonas called for public comment. Dr. Jennifer Adams, ISU updated the Board that APhA is encouraging state boards to pursue multi-state licensure and continuity of care.

Tim Frost provided the Board with an update on the following bills:

- HB40 - update to the Pharmacy Practice Act; has passed the legislature and has been signed by the governor.
- SB1017 – has been signed by the governor.
- HB38 – relating to the prescribing of controlled substances for telehealth; signed by the governor.
- HB39 – relocates the PDMP to the Division level of DOPL; has been signed by the governor.
- Bills SB1024, SB1026, SB1056 - related to DOPL are moving through the legislature.

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

Dr. Frost provided an update to the following non-agency bills:

- HB108 – Medical marijuana bill has not received a committee hearing.

- HB179 – Relates to interstate telehealth and would make permanent changes that were made during COVID. – Still in process
- SB726 - Virtual Care – aims to change the name of telehealth to virtual care and create an advisory board. – Still in process
- SB1127 - Patient Prescriber Relationship – would make permanent changes made during the COVID-19 crisis. – Still in process
- SB1128 - Naturopath Act would expand the licensure pathways. – Still in process
- SB1084 – Sunset review committee - would review each board to determine necessity of each license covered by the practice acts. – Still in process
- HB126 – Industrial Hemp would change the definition of marijuana allowing THC .03%. – Still in process
- HB208 – related to Pharmacist prescribing – striking the provision that previously required pharmacist independent prescribing in accordance with FDA approved indication. Passed the legislature and has been signed by the governor.
- The Board discussed strategic planning items for FY 2022 and will include action surrounding CPE, stockpiling of medications, expungement, and multi-state recognition of licenses.

Following Board discussion, Dr. Jonas called for public comment. None was offered.

With the technical difficulty resolved, Ellen Mitchell gave a short demonstration of the Mandatory Use Compliance Tool. The Board was appreciative of the information and is looking forward to future reports on prescriber compliance with Idaho Code 37-2722.

Dr. Frost presented possible Omnibus rule making language should the legislature adjourn without reauthorizing the administrative rules. Dr. Frost's goal as he prepared the Board's rules for this session was to remove redundancy, simplify and clarify. The legislature has indicated they do not want to be more restrictive than federal law, and do not want agencies to directly reference federal law. Each section discussed was in preparation for the zero-based regulation process the board will engage in as scheduled in accordance with Executive Order 2020-01.

Dr. Frost presented the language section by section as listed below pausing for Dr. Jonas to call for public comment between sections from both those in the room and those in attendance telephonically.

Dr. Frost started with:

- Rule 011.02. g-h, Language updates the definition to add specific services that are detailed further in rule.
- Rule 102.02-03 Changes related to reorganization of DOPL division

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

Dr. Frost continued offering no changes to rules 103-210. There was no public comment on these rules. Dr. Frost moved on to:

- Rule 213 Clean-up language to clarify
- Rule 220.01.b Strikes the educational requirement for technician registration. Of note, the board has permitted every appeal presented to them and given the home schooling during the pandemic the number of appeals is expected to rise. The board members had a lengthy discussion during which the point was raised

that employers and certifying bodies have educational requirements in place already. Dr. Frost also offered that the board might consider an alternative option to keep the educational requirement but go with a single category of technician registration. This topic will be revisited as part of the zero-based regulatory review.

Following discussion by the board, Dr. Jonas called for public comment. Dr. Adams expressed her opposition to striking the educational requirements.

Dr. Frost continued; he offered no changes to rules 224-301. There was no public comment on these rules. Dr. Frost continued:

- Rule 302.01 Simplifying the surveillance rule and removing duplicative language and standard of care covered in Rule 300.03. During the discussion, Dr. de Blaquiére noted that “regularly monitored” would be going away with this change and therefore it is not completely duplicative language.
- Rule 302.02 Dr. de Blaquiére suggested that the “and” be changed to an “or” to match what is acceptable in community and mail order practice.
- Rule 302.03 While the language is not struck, Dr. Frost discussed with the Board the continuation of Controlled Substance Inventories in remote dispensing sites. Dr. Frost pointed out to the Board that during the upcoming zero-based regulation this rule will be scrutinized against the surrounding states. If Idaho is found to be more restrictive, the language will be challenged.

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

Dr. Frost offered no changes to rules 303-349. There was no public comment on these rules. Then Dr. Frost presented:

- Rule 350 Language removes duplication and simplifies the rule by consolidating into .07 and clarifies language in .08 to be consistent with statute.
- Rule 351 Consolidates a list into a sentence.

There was no public comment, despite Dr. Jonas calling for it.

Dr. Frost continued offering no changes to rules 400-402. There was no public comment on these rules. Next, he moved on to:

- Rule 403-404 Removes unnecessary language which is understood to be Standard of Care and adds “strength” to 403.b to allow for striking of 404.03 which is duplicative with 403.b and 404.05 combined.

No public comment was raised.

Dr. Frost continued offering no changes to rule 405. There was no public comment on this rule. Dr. Frost then presented the final edit for the rule chapter:

- Rule 406 Adding an inadvertently left out portion of federal language.

No public comment was brought forward for this rule or the remainder of the chapter.

Following the presentation of each topic with sufficient time provided for Board discussion and public comment, the Board returned to each section to take action:

- Rule 011.02. g-h, Dr. de Blaquiére motioned to approve as presented. Mr. Sperry seconded, and the motion carried unanimously.
- Rule 102.02-03. – Dr. de Blaquiére motioned to approve as presented. Dr. Ellis seconded, and the motion carried unanimously.

- Rule 213 - Dr. de Blaquiere motioned to approve as presented. Dr. Ellis seconded, and the motion carried unanimously.
- Rule 220.01.b - Dr. de Blaquiere motioned to un-strike and keep the language as is. Dr. Ellis seconded, and the motion carried unanimously.
- Rule 302.01-.02 – Dr. Ellis motioned to accept .01 and .02 as presented. Dr. Messenger seconded. During discussion, Dr. de Blaquiere reminded the board of the change would affect monitoring. Dr. Jonas called for the vote and the motion carried unanimously.
- Rule 350. The Board granted unanimous consent to move forward with this rule as presented.
- Rule 351. The Board granted unanimous consent to move forward with this rule as presented.
- Rules 403-404. The Board granted unanimous consent to move forward with these rules as presented.
- Rule 406.05b. The Board granted unanimous consent to move forward with this rule as presented.

Drs. Frost and Chopski will be holding Town Hall meetings throughout the state this spring and summer engaging with various stakeholders surrounding the rule changes and obtaining feedback. They will present their findings at a future meeting.

Dr. Jonas called for public comment one final time and none was offered.

Dr. Ellis motioned to enter executive session pursuant to Idaho Code 74-206(b) to consider the evaluation of a public employee. Dr. de Blaquiere seconded, and the motion carried unanimously by roll call vote. Executive session began at 4:10 p.m.

Dr. Messenger motion to conclude executive session. Dr. Ellis seconded, and the motion carried unanimously by roll call vote. Executive session concluded at 4:40 p.m.

Dr. de Blaquiere motioned to adjourn. Mr. Sperry seconded, and the motion carried. Meeting adjourned at 4:45 p.m.

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Kris Jonas, Chairman

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Rich de Blaquiere, Vice Chairman

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Kevin Ellis, Member

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Justin Messenger, Member

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Ed Sperry, Public Member

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Nicki Chopski, Executive Director