MINUTES OF THE
IDAHO STATE BOARD OF PHARMACY
JANUARY 26, 2012

SPRINGHILL SUITES – MARRIOTT - PARK CENTER - BOISE, IDAHO

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

Chairman Richard de Blaquiere, Pharm D, called the meeting to order on January 26, 2012 at 8:04 a.m. In attendance were Board members Berk Fraser, R.Ph.; Nicole Chopski, Pharm D; Holly Henggeler, Pharm D; and Mark Johnston, R.Ph., Executive Director; Jenifer Marcus, DAG; Andy Snook, DAG; Jan Atkinson, Senior Compliance Officer; Fred Collings, Senior Investigator; Lisa Culley, Compliance Officer; Mike Brown, Compliance Officer; Gina Knittel, Compliance Officer; and Wendy Hatten.

The minutes of the October 26 & 27, 2011 board meeting were reviewed. Dr. Henggeler motioned to approve minutes with minor corrections. Dr. Chopski seconded. The motion carried unanimously.

Bob Comstock, R.Ph, of Ashton Community Pharmacy presented concerns regarding current registration requirements for pharmacy technicians and a survey of Idaho pharmacies that supported his request. Mr. Comstock questioned the benefit of requiring pharmacy technicians to become nationally certified, explained the hardships encountered in his rural pharmacy, and requested a rule change that would allow the first three technicians within the ratio to not require certification. The Board explained that the requirement was implemented as part of negotiated rule making from approximately three (3) years ago. The Board suggested Mr. Comstock address his concerns to the Idaho State Pharmacy Association (ISPA), the Idaho Society of Health-Systems Pharmacists (ISHP) and Idaho State University (ISU), as they were all involved in the changes that resulted in the current rule through a collective association referred to as the Idaho Pharmacy Leadership Council (IPLC). A united front regarding any proposed change would be most beneficial.

Mr. Johnston introduced Reece Christensen, President/CEO of PharmEase, and Jeremy Chrysler of Heartland Pharmacy. Sav-on Pharmacy filed a complaint with the Board regarding Heartland Pharmacy, which is registered with the Board as a limited service pharmacy and is providing services to Cherry Gulch, which is registered in Idaho as a children's residential care facility. Dr. Henggeler clarified that the complaint was filed by her, and therefore she recused herself from voting. Mr. Christensen and Mr. Chrysler explained the statutory difference between a residential school and a Children's residential care facility, namely that a residential care facility admits "children for treatment of special needs such as substance abuse, mental illness, emotional disturbance, developmental disability, mental retardation, or children who have been identified by the judicial system as requiring treatment…", while residential schools are not permitted to enroll children with these issues. Thus, Mr. Christensen and Mr.

Chrysler believe that Cherry Gulch residents fit within the Board's policy of who can be serviced by a limited service pharmacy, as Cherry Gulch fits within the statutory definition of an institution facility and their residents are therefore institutionalized. The Board's policy on what type of orders a limited service pharmacy can dispense is "drug orders for institutionalized patients and prescription drug orders for those likely to be institutionalized without receiving the added benefits typically provided by a limited service pharmacy" and the statutory definition of an institutional facility is "a facility for which its primary purpose is to provide a physical environment for patients to obtain health care services and which patients spend a majority of their time…". Dr. Henggeler argued that such "special services" could be obtained without the assistance of a limited service pharmacy and that Cherry Gulch's primary purpose was not "to provide a physical environment for patients to obtain health care services". Dr. Chopski motioned to allow limited service pharmacies to service institution facilities that are licensed as children's residential care facilities. Mr. Fraser seconded the motion. Vote: all in favor.

Referring to the prior two (2) meetings of the Board where the demarcation line of allowable service for limited service pharmacy was discussed, Dr. Chopski requested that involved parties, namely complainants', be notified that their attendance would be greatly beneficial, so that all sides of the issue can be represented.

Mr. Johnston presented a request from Dr. Brian Boesiger, MD, St Alphonsus Emergency Department Medical Director, to use the Board seal emblem on an 'Opioids' poster that was created for use in Idaho emergency rooms. In addition, Mr. Johnston requested that the Board staff be given delegated authority to allow the Board seal emblem be used on other such documents as requested. The Board is in agreement provided the Board Staff reviews and approves the final document.

Ms. Susie Pouliot, CEO of the Idaho Medical Association (IMA) presented proposed legislation amendments to Idaho Code 54-1733 which would allow for Expedited Partner Therapy (EPT) and several other situations where a valid prescriber/patient relationship would not be required. Dr. Chopski inquired to the guidelines regarding care of the unseen partner. Ms. Pouliot responded that the Centers for Disease Control (CDC) guidelines offer guidance to the prescriber on how to appropriately provide therapy to the unseen partner of the patient. Mr. Fraser motioned to support changes as written. Dr. Henggeler seconded. Vote: all in favor.

Dr. de Blaquiere called the meeting to order after a short break.

Pam Eaton, Executive Director of ISPA, presented three (3) concepts that are being considered for future legislation: Pharmacy Benefit Management Transparency, Pharmacy Benefit Management Audit (restrictions), and certain Out-Of-State Mail Service Pharmacy changes. Realizing that these topics are not necessarily within the Board's jurisdiction, Dr. Chopski encouraged ISPA to engage in the endeavor.

Mr. Johnston led the agenda topic entitled legislation review.

- At the RS reading for the Prescription Monitoring Program (PMP) and Controlled Substance Database proposed statute changes, the Board's bill was amended by Representative Dr. John Rusche, because physician legislators would like the Board to provide unsolicited PMP reports to pharmacies and practitioners. An Idaho prescription drug abuse task force has been convened.
- The Board's bill involving the scheduling of controlled substances was RSed, including the striking of HCG, pursuant to prior board direction, and the addition of Soma, pursuant to recent DEA scheduling. Additionally, the Idaho State Police will request an amendment to strengthen last year's "spice" language.
- Senator Joyce Broadsword is sponsoring proposed legislation that would require the Board to institute the NPLEX system, as discussed at a prior meeting, in an attempt to eliminate pseudoephedrine smurfing. The Board accepted the responsibilities stated within the bill.
- The Department of Corrections is running a bill that would clarify they have the ability to purchase Rx items from pharmacies to be utilized for executions.
- Lynette Berggren presented a draft of the proposed rules that included final changes, as directed by the Board, and a preliminary index draft, which might be too lengthy for the time being. Dr. Chopski commented that an inclusive index is preferred over an incomplete one. The rules have passed the House of Representatives' Health and Welfare Committee and will be heard later in the day in front of the Senate Health and Welfare Committee.
- Mr. Johnston and Ms Berggren presented a preliminary draft that would morph the current out-of-state mail service pharmacy act into non-resident drug outlet statutes, located within the Idaho Pharmacy Act, that would:

    - Allow for rule making authority
    - Expand to include central fill and other cognitive services performed across state lines
    - Allow for discipline of a non-resident drug outlet for the actions of its employees, as we do not license or register these employees in most cases
    - Allow for discipline for violations that fall short of causing harm
    - Clean up existing law, including moving much detail to rule

    Much work remains on this project, including the identification of rules these outlets should be required to follow. Dr. Chopski commented that drug product substitution restrictions should remain.

Dr. de Blaquiere called the meeting to order after a short break.

Mr. Johnston presented the travel calendar. Mr. Johnston will be presenting many continuing education classes across the State this spring, as usual. Mr. Johnston will be attending the APHA meeting from March 9th through March 12th in New Orleans, LA. Mr. Johnston will also be attending the Annual NABP meeting from May 19th through May 22nd in Philadelphia, PA. Mr. Fraser and Dr. Chopski plan to attend the Northwest

Pharmacy Convention after the May 31st Board Meeting; both of which will be held in Coeur d'Alene, ID.

Mr. Snook presented case number BOP 08-054: proposed reinstatement order in the matter of Matthew Black, DO. Mr. Black voluntarily surrendered his controlled substance registration with the Board on August 2, 2011 following the Boards discovery that Mr. Black's medical license had been suspended by the Idaho Board of Medicine (IBOM) on February 15, 2011. The Board subsequently revoked Mr. Black's controlled substance registration. On October 19, 2011, Mr. Black's medical license with the IBOM was reinstated with restrictions that pertain to controlled substance medications. Mr. Black submitted a controlled substance reinstatement application to the Board office on November 3, 2011. Mr. Black's controlled substance registration may be reinstated subject to his compliance with the Boards reinstatement order and the IBOM stipulation and consent order. Dr. Chopski motioned to accept the reinstatement order as written. Mr. Fraser seconded. The motion passed unanimously.

Mr. Snook presented case number BOP 10-527 amended stipulation and consent order in the matter of Terrel Collins, R.Ph. The original order dated June 20, 2011 stipulated that Mr. Collins complete the University of Florida's 'Pharmacy Errors' course. That course is no longer offered by the University of Florida. As a result the stipulation and order has been amended requiring Mr. Collins to complete six (6) credits of continuing education pertaining to prescription medication errors in lieu of the University of Florida 'Pharmacy Errors' course. Dr. Chopski motioned to accept the stipulation and order as written. Mr. Fraser seconded. Dr. Chopski inquired if Mr. Collins had attempted to take the course in a timely manner. Mr. Johnston confirmed that he had. Vote: all in favor.

Mr. Snook presented case number BOP 12-005 stipulation and consent order in the matter of Peggy Trebilcock, DDS, involving violations of Idaho Code 3727-20, 37-2718(a)(4) and Board rules 454 and 496, for failing to properly maintain prescription drug orders, inventories and records of controlled substances and for prescribing and/or administering controlled substances to herself. The stipulation and order will expire one (1) year after the effective date so long as Ms. Trebilcock complies with the terms of the stipulation and order. For a minimum of one (1) year, Ms. Trebilcock shall not order prescriptions for controlled substances by phone and all orders for controlled substances must be in written, hard copy form. Ms. Trebilcock shall not order, handle, administer, or dispense any controlled substances for office use. Ms. Trebilcock shall not store or maintain any controlled substances, including samples of controlled substances in her office, home, automobile, or any other similar area. Ms. Trebilcock shall abstain from the personal use of or possession of controlled substances except those prescribed, administered, or dispensed to her by another so authorized by law who has full knowledge of her history. Ms. Trebilcock must comply with the terms and conditions of the administrative memorandum of agreement, entered by the United States Drug Enforcement Agency dated September 6, 2011. Ms. Trebilcock must also comply with all the terms and conditions of the consent agreement for informal disposition and order by the Idaho State Board of Dentistry, dated December 12, 2011.

Mr. Fraser motioned to accept the stipulation and consent order as written. Dr. Henggeler seconded. The motion passed unanimously.

Mr. Johnston presented a request from the Idaho Veterinary Medical Association and the Board of Veterinary Medicine asking the Board to consider changing policy regarding weekly reporting of dispensed controlled substances to Board 's PMP. After studying vet data received, Mr. Johnston requested that vets only be required to submit certain data if more than ten (10) controlled substances are dispensed in a week. The Board unanimously agreed to allow the change in policy.

Dr. de Blaquiere called for Public Comment. There was no public comment.

Glenn Luke presented the Board's financial report for the Board office:

- Comparisons of budget to expenses indicate that 53% of the fiscal year is completed and approximately 53% of the budget has been used.
- The Fiscal Year 2013 budget was recommended by the Governor minus one vehicle. The budget is currently being considered by the Joint Finance Appropriations Committee.

Dr. de Blaquiere called the meeting to order after a lunch break.

The Board inquired if the compliance officers had any questions. There were no questions.

Mr. Snook represented the Board in a contested case hearing regarding case number BOP 12-018: emergency suspension order dated January 11, 2012 in the matter of Mr. Andrew Welch, Pharm D. On January 5, 2012 there was a search and seizure of multiple items pertaining to prescription medications that were found in Mr. Welch's apartment. The emergency suspension involved violations of Idaho Code 37-2734(a)(3), 37-2732(c), 54-1726(a), and Board rules 184.07, 184.08, 184.09, and 454. The contested issue was whether or not Mr. Welch's pharmacist license and controlled substance registration were properly suspended based on an immediate danger to public health safety and/or welfare. Mr. Welch participated in the hearing in person. Mr. James A 'Drew' Pendlebury, legal counsel for Mr. Welch participated via telephone. Mr. Welch had five (5) personal witnesses, Heidi Flood and Chelsea Hamel were present, and read letters from themselves and for the three (3) other witnesses. Mr. Curtis A Miller, Captain for the Blaine County Sheriff's office, participated as a witness for the Board, via telephone. Mr. Fred Collings participated in person as a witness for the Board.

Dr. de Blaquiere called the meeting to order after a short break.

After carefully reviewing evidentiary materials and considering testimony from witnesses Dr. Henggeler motioned to uphold the emergency suspension. Dr. Chopski seconded. After discussion, Dr. de Blaquiere called for a vote. Vote: all in favor.

Dr. de Blaquiere called for Public Comment. There was no public comment.

Mr. Fraser motioned to adjourn. Dr. Henggeler seconded. The motion passed unanimously. Meeting adjourned at 3:45 p.m.