



**Arizona State Board of Pharmacy**  
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**THE ARIZONA STATE BOARD OF PHARMACY  
HELD A REGULAR MEETING JANUARY 13 AND 14, 2010  
AT THE ARIZONA STATE BOARD OF PHARMACY OFFICE  
PHOENIX, AZ**

**MINUTES FOR REGULAR MEETING**

**AGENDA ITEM 1 – Call to Order – January 13, 2010**

President McAllister convened the meeting at 9:00 A.M. and welcomed the audience to the meeting.

The following Board Members were present: President Dennis McAllister, Vice President Ridge Smidt, Zina Berry, Steve Haiber, Dan Milovich, Paul Sypherd, and Tom Van Hassel. The following Board Members were not present: Joanne Galindo and Louanne Honeyestewa. The following staff members were present: Compliance Officers Rich Cieslinski, Ed Hunter, Sandra Sutcliffe, and Dean Wright, Drug Inspector Heather Lathim, Deputy Director Cheryl Frush, Executive Director Hal Wand, and Assistant Attorney General Elizabeth Campbell.

President McAllister announced that this would be Dr. Sypherd's last meeting since his term has ended. Mr. McAllister thanked Dr. Sypherd for his service to the Board. Dr. Sypherd has served as a public member of the Board for the last five years.

**AGENDA ITEM 2 – Declaration of Conflicts of Interest**

Due to having a "substantial interest" in the matter, Dr. Berry recused herself from participating under Arizona's conflict of interest laws in the review, discussion, and proposed actions concerning Agenda Item 11, Schedule E, Complaint #3736 and Complaint #3743.

Due to having a "substantial interest" in the matter, Mr. Haiber recused himself from participating under Arizona's conflict of interest laws in the review, discussion, and proposed actions concerning Agenda Item 4, Schedule A, Non-Resident Permits for NextRx, Inc. in Warren, Ohio and NextRx, Inc. in Fort Worth, Texas.

Due to having a “substantial interest” in the matter, Mr. Haiber recused himself from participating under Arizona’s conflict of interest laws in the review, discussion, and proposed actions concerning Agenda Item 23, Michael Richardson- Case #10-0035-PHR.

Due to having a “substantial interest” in the matter, President McAllister recused himself from participating under Arizona’s conflict of interest laws in the review, discussion, and proposed actions concerning Agenda Item 4, Resident Permit for Humana Right Source Rx.

### **AGENDA ITEM 3 – Approval of Minutes**

Following a review of the minutes and an opportunity for questions and **on motion by Mr. Haiber and seconded by Dr. Sypherd**, the minutes of the Regular Meeting held on November 18 and 19, 2009 were unanimously approved by the Board Members with the requested changes.

Mr. Haiber requested that “do not” be removed from Paragraph 3 on Page 21.

On Pages 35 and 36, the minutes will be corrected to show that Mr. Haiber did not vote concerning Agenda Item 17- Pamela Ahlmer- Case #10-0030-PHR (Complaint #3714).

### **AGENDA ITEM 4– Permits and Licenses**

President McAllister stated that all permits were in order for resident pharmacies and representatives were present to answer questions from Board members.

#### **Custom Rx**

Troy Brodersen, Pharmacist in Charge, and Steve Hardman were present to answer questions from Board Members.

President McAllister stated that at the September and November Board Meetings the Board had tabled the application in order to obtain additional information from the applicant.

President McAllister asked the applicants if they would address the Board concerning the members of the Company.

Mr. Hardman stated that the company is a non-member managed LLC. Mr. Hardman stated that Karen Hardman is listed as the non-member manager. Mr. Hardman stated that Beth Pilof replaced Ms. Hardman as a member of the company when Ms. Hardman became the non-member manager.

Mr. Hardman stated that they are only required to list the members with the largest share and that is Jon Evans.

Mr. Hardman stated that they have updated the member list with the Arizona Corporation Commission.

Dr. Smidt asked if Mr. Hardman or his wife were owners in the company. Mr. Hardman stated that his wife is the manager.

Dr. Smidt asked Mr. Hardman if he has a financial interest in the company. Mr. Hardman stated that his wife and son have a financial interest in the company.

Dr. Smidt asked Mr. Hardman if his wife would be on the payroll. Mr. Hardman stated that his wife would serve as a sales representative for the company.

Dr. Smidt asked Mr. Hardman if he would be on the payroll. Mr. Hardman stated that he would not be on the payroll. Mr. Hardman stated that he might work at the pharmacy as a relief pharmacist and would be paid for his services.

Mr. Milovich asked Mr. Hardman to describe the business that Mr. Shay Tyler owns. Mr. Hardman stated that Mr. Tyler is a member of the company. Mr. Hardman stated that Mr. Tyler owns Vitality Med Spa.

Mr. Milovich asked Mr. Hardman if Vitality Med Spa employs physicians. Mr. Hardman stated that Vitality Med Spa employs several naturopathic physicians.

Mr. Milovich asked Mr. Hardman if the physicians at Vitality Med Spa would direct their patients to his pharmacy. Mr. Hardman stated that the physicians would not direct the patients to his pharmacy.

Mr. Milovich asked how close Vitality Med Spa is to the pharmacy. Mr. Hardman stated that they are about a block apart.

Mr. Van Hassel asked if they would wholesale any products to physicians. Mr. Hardman stated that they would not be wholesaling any products to physicians. Mr. Brodersen stated that they may wholesale non-prescription multiple vitamins to physicians.

Mr. Haiber asked if they would be filling any prescriptions for HCG. Mr. Hardman replied no.

**On motion by Mr. Haiber and seconded by Mr. Van Hassel**, the Board approved the application for Custom Rx Pharmacy pending final inspection by a Board Compliance Officer. Dr. Sypherd abstained from voting. There was one nay from Dr. Smidt.

### **St. Joseph's Hospital Specialty Pharmacy**

David Feldman, Pharmacy Director, was present to answer questions from Board Members.

President McAllister opened the discussion by asking Mr. Feldman to describe the nature of his business. Mr. Feldman stated that the hospital is applying for funding to open a specialty pharmacy. Mr. Feldman stated that the pharmacy would be a mail order pharmacy.

Dr. Smidt asked if the whole space would be licensed as a pharmacy. Mr. Feldman stated that the offices would not be licensed as part of the pharmacy.

Dr. Smidt asked if the staff working in the offices would need to access their offices by walking through the pharmacy. Mr. Feldman stated that they would enter through a side door and would not need to walk through the pharmacy.

Mr. Wand asked how many people would be working in the pharmacy. Mr. Feldman stated that 14 employees would be working in the pharmacy.

Mr. Feldman stated that he would like a waiver for the automated dispensing machine that would be placed in the 222 pharmacy. Mr. Feldman stated that they would like the machine to be placed about 50 feet from the pharmacy instead of 25 feet as required by law.

President McAllister stated that a deviation was not on the agenda for the pharmacy. Mr. Wand stated that the Board would not be able to approve a deviation because the laws are specific. The laws state that an automatic dispensing machine must be within 25 feet of the pharmacy. Mr. Wand stated that a deviation could only be granted for experimentation and technological purposes.

**On motion by Mr. Van Hassel and seconded by Mr. Haiber**, the Board unanimously approved the application for St. Joseph's Hospital Specialty Pharmacy pending final inspection by a Board Compliance Officer.

### **Apache Junction Hospital**

Tracy Tite, Pharmacist in Charge, was present to answer questions from Board Members.

President McAllister opened the discussion by asking Ms. Tite about the hospital. Ms. Tite stated that they are opening a new hospital in Apache Junction.

Mr. McAllister asked Ms. Tite if the IV room meets the Board's regulations. Mr. McAllister stated that the IV room must be 100 square feet in size. Ms. Tite stated that the IV room is only 80 square feet and the construction to correct the problem would be completed within 30 days. Ms. Tite stated that the deficiency was found when the compliance officer came to the pharmacy to do an opening inspection.

Ms. Tite stated that they would deliver the IVs by courier from their sister hospital in Mesa.

Dr. Smidt asked when the hospital would open. Ms. Tite stated that they are having their DHS inspection next week and the hospital would like to open by February 1, 2010.

Dr. Smidt asked how they planned on enlarging the IV room. Ms. Tite indicated that they could take the additional space from the nuclear medicine room.

Ms. Tite stated that the architect stated that they had met DHS requirements for an IV room. Ms. Tite stated that they did not consider pharmacy board regulations.

Mr. Haiber asked Ms. Tite when the Compliance Officer was at the site to do the inspection. Ms. Tite stated the inspection was on December 29, 2009.

Mr. Wand asked Ms. Tite if they could have the room done by February 1, 2010. Ms. Tite stated that she is not sure.

Mr. Wand asked Ms. Tite if she worked at Gilbert hospital where the same problem occurred with the IV room. Ms. Tite replied yes.

**A motion was placed on the floor by Mr. Van Hassel and seconded by Dr. Smidt** to deny the application at this time because it does not meet Board requirements.

**On motion by Mr. Haiber and seconded by Mr. Van Hassel**, the Board unanimously agreed to meet in Executive Session to obtain legal advice.

President McAllister called the meeting back to order.

Mr. Van Hassel and Dr. Smidt withdrew their original motion.

**On motion by Mr. Van Hassel and seconded by Dr. Sypherd**, the Board approved the application for Apache Junction Hospital without the IV room. The IV room must be completed and the hospital may come back at the next Board Meeting and ask that the application be approved with the IV room included in the approval. Until the IV room is completed, the hospital can obtain IVs from their sister hospital. There was one nay vote from Dr. Smidt.

### **Aurora Behavioral Healthcare- Tempe**

Bruce Waldo, CEO for the Glendale facility, and Louann Kelly, Clinical Services Director, were present to answer questions from Board Members.

President McAllister asked the applicants to describe their facility. Mr. Waldo stated that the facility would mimic their operation in Glendale.

Ms. Kelly stated that they would have 75 beds and the patients would be mainly teens and adolescents that have mental health issues. They could also have drug or alcohol problems.

Mr. Van Hassel asked if they would be doing any sterile compounding. Mr. Waldo replied that if a patient required an IV preparation they would be transferred to a hospital that could provide that service.

**On motion by Mr. Van Hassel and seconded by Mr. Milovich**, the Board unanimously approved the application for Aurora Behavioral Healthcare- Tempe pending final inspection by a Board Compliance Officer.

## **Humana Right Source Rx**

Due to a conflict of interest, President McAllister recused himself and turned the meeting over to Vice President Smidt.

Vice President Smidt stated that the permit was in order and asked if Board Members had any questions.

**On motion by Mr. Haiber and seconded by Dr. Berry**, the Board unanimously approved the application for Humana RightSource Rx pending final inspection by a Board Compliance Officer.

The following resident pharmacies were approved pending final inspection. The Apache Junction Hospital was approved with the following stipulation that the pharmacy can open but cannot use the IV room until specifications are met.

### **RESIDENT (In Arizona)**

<b>Pharmacy</b>	<b>Location</b>	<b>Owner</b>
Custom Rx	4320 E. Brown Rd., Suite 102, Mesa, AZ 85205	Custom Pharmacy LLC
St. Joseph's Hospital Specialty Pharmacy	222 W. Thomas Rd., Phoenix, AZ 85013	Catholic Healthcare West
Humana RightSource Rx	8990 W. Glendale, Glendale, AZ 85305	Humana, Inc.
Apache Junction Hospital	2050 W. Southern Ave., Apache Junction, AZ 85220	Apache Junction Hospital LLC
Aurora Behavioral Healthcare-Tempe	6350 S. Maple, Tempe, AZ 85283	Signature Healthcare.

## Non-Resident Permits

President McAllister stated that all permits were in order for non- resident pharmacies.

**On motion by Mr. Van Hassel and seconded by Dr. Berry,** the Board unanimously approved the non – resident permits listed below.

Due to a conflict of interest, Mr. Haiber recused himself.

<b>Pharmacy</b>	<b>Location</b>	<b>Owner</b>
NextRx, Inc.	8990 Duke Blvd., Warren, OH 45040 (O)	NextRx, Inc.
NextRx, Inc.	5450 N. Riverside Dr., Fort Worth, TX 76137 (O)	NextRx, Inc.
BioRx	3821 71 <sup>st</sup> St., Suite C, Urbandale, IA 50322	BioRx,LLC
PETMEDSNMORE	6914 Canby #111, Reseda, CA 91335	Brian Schiffman
Precision Rx Specialty Solutions	2825 W. Perimeter Rd., Indianapolis, IN 46241 (O)	NextRx, LLC
Univita Specialty Infusion Pharmacy	15712 SW 41 <sup>st</sup> St., #16, Davie, FL 33331 (O)	Univita Specialty Infusion Pharmacy
Lone Star Pharmacy	1417 E. Interstate 30, Garland, TX 75043	NC Resources, Inc.
Lone Star Pharmacy	12615 W. Airport Blvd., Sugar Land, TX 77478	NC Resources, Inc.

(O) = Ownership Change

## Wholesaler Permits

President McAllister stated that all permits were in order for resident wholesalers.

**On motion by Mr. Milovich and seconded by Mr. Haiber,** the Board unanimously approved the resident wholesale permits listed below. All permits are subject to final inspection by a Board Compliance Officer where appropriate.

<b>WHOLESALER</b>	<b>LOCATION</b>	<b>OWNER</b>
Butler Schein Animal Health Supply (Full Service)	4635 W. McDowell, Phoenix, AZ 85035 (O)	Butler Animal Health Supply, LLC
AZ Price Point, LLC (Non-Prescription)	4002 N. 33 <sup>rd</sup> Ave., Phoenix, AZ 85017	AZ Price Point, LLC

(O) = Ownership Change

## Pharmacists, Interns, Pharmacy Technicians, and Pharmacy Technician Trainees

President McAllister stated that all license requests and applications were in order.

**On motion by Dr. Smidt and seconded by Dr. Sypherd,** the Board unanimously approved the Pharmacist licenses listed on the attachments.

**On motion by Dr. Smidt and seconded by Dr. Berry**, the Board unanimously approved the Intern licenses listed on the attachments.

**On motion by Dr. Smidt and seconded by Dr. Sypherd**, the Board unanimously approved the Pharmacy Technician and Pharmacy Technician Trainee applications listed on the attachments.

## **AGENDA ITEM 5 – Special Requests**

### **#1 Consuelo Pitpitan**

**Consuelo Pitpitan** appeared on her own behalf to request that the probation imposed on her pharmacy technician license per Board Order 05-0013-PHR be terminated.

President McAllister asked Ms. Pitpitan to discuss the nature of her request. Ms. Pitpitan stated that she would like the Board to terminate her probation.

Mr. McAllister asked Ms. Pitpitan if she has met the terms of her consent agreement. Ms. Pitpitan stated that she has completed the terms of her consent agreement.

Mr. Wand stated that her probationary period would end on January 25, 2010.

**On motion by Mr. Milovich and seconded by Dr. Smidt**, the Board unanimously agreed to approve the request by Ms. Pitpitan to terminate the probation of her pharmacy technician license imposed by Board Order 05-0013-PHR.

### **#2 Harold Olshansky**

**Harold Olshansky** appeared on his own behalf to request that the suspension imposed on his pharmacist license per Board Order 09-0004-PHR be terminated.

President McAllister asked Mr. Olshansky to discuss the nature of his request. Mr. Olshansky stated that the Board placed his license on suspension for nine months and he is asking the Board to terminate his suspension. Mr. Olshansky stated that he took the Law exam and passed the test. Mr. Olshansky stated that he is asking the Board to remove the stipulation that he cannot be a Pharmacist in Charge. Mr. Olshansky stated that the pharmacy where he used to work is willing to hire him back if he is able to be the Pharmacist in Charge. Mr. Olshansky also stated that he would like the Board to extend the time that he has to pay his fine.

Dr. Smidt stated that he has no issue with extending the time he has to pay the fine. Dr. Smidt stated that he does not see any reason to terminate the suspension early or allow Mr. Olshansky to be the Pharmacist in Charge.

Mr. Haiber stated that he feels that the Pharmacist in Charge restriction should not be removed and the restriction should continue through the probationary period. Mr. Haiber stated that he has no issue extending the time period for paying the fine.

Mr. Olshansky stated that not working has created an economic hardship for him. Mr. Olshansky stated that it has been very difficult for him to pay his mortgage and car payments. Mr. Olshansky stated that he is admitting his mistake and told the Board that he would not make the same mistake again. Mr. Olshansky stated that he wants to return to work.

Mr. McAllister stated that Mr. Olshansky's errors in judgment occurred while he was the Pharmacist in Charge and that is why the Board decided that he should not be a Pharmacist in Charge during his probationary period.

Mr. Wand stated that Mr. Olshansky has made three different requests. Mr. Wand stated that Mr. Olshansky is asking the Board to terminate his suspension. Mr. Wand stated that Mr. Olshansky is asking the Board to remove the restriction that prohibits him from being a Pharmacist in Charge during his probationary period. Mr. Wand stated that Mr. Olshansky is requesting that the Board extend his time for payment of his fine.

**A motion was placed on the floor by Mr. Van Hassel and seconded by Mr. Milovich** to deny the three requests made by Mr. Olshansky. A roll call vote was taken. (Mr. Milovich – nay, Dr. Berry – nay, Mr. Van Hassel – aye, Dr. Smidt – aye, Dr. Sypherd – nay, Mr. Haiber – nay, and President McAllister – nay). The motion failed.

**On motion by Dr. Smidt and seconded by Dr. Berry**, the Board agreed to offer Mr. Olshansky an amended consent agreement to modify the payment of his fine. The amended consent would allow Mr. Olshansky to begin paying his fine three months after his suspension is lifted and require Mr. Olshansky to pay \$1,000 per month for 10 months. All other requirements of the Consent Agreement would remain the same. A roll call vote was taken. (Mr. Milovich – aye, Dr. Berry – aye, Mr. Van Hassel – nay, Dr. Smidt – aye, Dr. Sypherd – aye, Mr. Haiber – aye, and President McAllister – aye).

## **AGENDA ITEM 6– License Applications Requiring Board Review**

### **#1 Richard Dennis**

**Richard Dennis** appeared on his own behalf to request to proceed with reciprocity.

President McAllister opened the discussion by asking Mr. Dennis why he was appearing in front of the Board. Mr. Dennis stated that he wants to reciprocate his Virginia license but has a felony conviction for prescription fraud. Mr. Dennis stated that he was disciplined by the Virginia Board.

Mr. McAllister asked Mr. Dennis to discuss his disciplinary action. Mr. Dennis stated that he called in a controlled substance prescription for himself because he was addicted to drugs. Mr. Dennis stated that he went to a treatment center for rehabilitation. Mr. Dennis stated that his license was suspended for two years and then he was placed on probation. Mr. Dennis stated that his probation has been completed and he now attends the aftercare program.

Mr. McAllister asked Mr. Dennis how long he has been sober. Mr. Dennis stated that he has been sober for 15 years.

Mr. Van Hassel asked Mr. Dennis if he plans to move to Arizona. Mr. Dennis stated that he plans to retire in the next couple of years and may move to Arizona.

**On motion by Mr. Van Hassel and seconded by Dr. Sypherd**, the Board unanimously agreed to approve the request by Mr. Dennis to proceed with reciprocity.

## **#2 Inie Clement**

**Inie Clement** appeared on her own behalf to request to proceed with reciprocity.

President McAllister opened the discussion by asking Ms. Clement why she was appearing in front of the Board. Ms. Clement stated that she wants to continue with reciprocity. Ms. Clement stated that she was disciplined by the Iowa Board for making an alleged mistake on a TPN. Ms. Clement stated that her license in Iowa is now in good standing.

Ms. Clement stated that she has been living in Arizona and is working for the Indian Health Service.

Dr. Smidt asked Ms. Clement if she made one error or multiple errors. Dr. Smidt stated that the consent agreement stated that Ms. Clement's employer reported that they had documented 97 errors in 45 days. Ms. Clement stated that she was only aware of one mistake and that involved the TPN.

Mr. McAllister asked Ms. Clement if the Board investigated the allegations when she contested the allegations. Ms. Clement stated that she was not presented any results of the investigation.

Dr. Smidt asked Ms. Clement if the Board gave her any details concerning the nature of her alleged errors. Ms. Clement replied she was given no details.

Mr. Van Hassel asked Ms. Clement about her current position at Indian Health Services. Ms. Clement stated that she works at Fort Defiance.

Mr. Van Hassel asked her if she works in the outpatient or inpatient pharmacy. Ms. Clement stated that she works in the outpatient pharmacy as a staff pharmacist.

Mr. Van Hassel asked Ms. Clement why she wanted an Arizona license. Ms. Clement stated that she wants to retire in Arizona and would like to be able to work outside the Indian Health Services.

**On motion by Dr. Smidt and seconded by Dr. Sypherd**, the Board agreed to approve the request by Ms. Clement to proceed with reciprocity. There was one nay vote by Mr. Van Hassel.

## **#3 Lee Frisbie**

**Lee Frisbie** appeared on his own behalf to request to proceed with reciprocity.

President McAllister opened the discussion by asking Mr. Frisbie why he was appearing in front of the Board. Mr. Frisbie stated that he would like to continue with reciprocity but he was disciplined by the Colorado Board.

Mr. Frisbie stated that he has owned Monument Pharmacy in Colorado since 1995. He stated that his pharmacy is licensed in Arizona and he needs to obtain an Arizona license because his pharmacist that was licensed in Arizona has left.

Mr. Frisbie stated that he was cited by the Colorado Board because his pharmacy does veterinary compounding. Mr. Frisbie stated that the Board claimed that he was filling prescriptions that were not valid. Mr. Frisbie stated that the Board claimed the prescriptions were not valid because he did not have names for the animals. He said in some cases he would list the prescriptions for the ranch since he did not have the names for the cattle that they were treating. Mr. Frisbie stated that he accepted the consent and was willing to work with the Board.

Mr. Frisbie stated that he has since purchased new compounding software and does only prescriptions for companion animals because he is able to obtain the name of the animal. Mr. Frisbie stated that he is now compliant because he can label the prescription with the animal's name.

Mr. Wand asked Mr. Frisbie if he had performed self-inspections. Mr. Frisbie stated that he had completed the self-inspections and thought he was being compliant with the regulations.

Mr. Wand asked if he thought that having an actual inspection by a Compliance Officer would have helped him in being compliant. Mr. Frisbie replied yes that he would rather have an actual inspection because errors would have been pointed out to him and he would have had a chance to correct the errors.

**On motion by Dr. Smidt and seconded by Mr. Van Hassel,** the Board unanimously agreed to approve the request by Mr. Frisbie to proceed with reciprocity.

#### **#4 Teri Acedo**

Ms. Acedo canceled her request to appear in front of the Board.

#### **AGENDA ITEM 7 – John Rapisarda**

President McAllister opened the discussion by asking Mr. Rapisarda why he was appearing in front of the Board.

Mr. Rapisarda stated that he is requesting to take the NAPLEX exam for a fourth time. Mr. Rapisarda stated that he would also like the Board to renew his Intern License because his Intern license has expired.

Mr. Rapisarda stated that he has taken the NAPLEX exam three times and has not passed the exam. Mr. Rapisarda stated that he took the exam the first time without studying to

see where he was at that time. Mr. Rapisarda stated that he wasted that attempt. Mr. Rapisarda stated that he took a review course prior to his third attempt and his score improved. Mr. Rapisarda stated that he would repeat the review course again prior to taking the exam for the fourth time.

Mr. McAllister asked Mr. Rapisarda if he ever practiced as a pharmacist. Mr. Rapisarda stated that he graduated from Pharmacy School in New York over 25 years ago. Mr. Rapisarda stated that he owned two pharmacies with his brother in New York for a short time and managed the pharmacies. Mr. Rapisarda stated that his brother was licensed as a pharmacist in New York. Mr. Rapisarda stated that he was never licensed as a pharmacist because he got married and moved to Arizona. Mr. Rapisarda stated that he owned two businesses in Arizona that he eventually sold. Mr. Rapisarda stated that he would like to open a pharmacy with his daughter.

Mr. McAllister asked Mr. Rapisarda about the review course he attended. Mr. Rapisarda stated that he attended a 60 hour review course titled “Taking and Passing NAPLEX”.

Mr. Rapisarda stated that the course is offered in California and he would retake the course again in preparation for taking the exam a fourth time.

Mr. McAllister asked Mr. Rapisarda why he wants an extension on his Intern license. Mr. Rapisarda stated that his Intern License has expired.

Mr. Wand stated that Mr. Rapisarda held his Intern License for 5 years. Mr. Wand stated that the rules allow the Board office to extend the license for one year for a total of 6 years. Mr. Wand stated that Mr. Rapisarda was granted the one year extension. Mr. Wand stated that only the Board can grant an extension past the 6 years.

Mr. Rapisarda stated that he would only need a 6 month extension of his Intern license. Mr. Rapisarda stated that he only practiced for about 6 months under his Intern license.

Dr. Smidt stated that passing the exam is only part of the process. Dr. Smidt stated that Mr. Rapisarda might want to go back to school and complete some classroom work. Dr. Smidt stated that a lot has changed in the last 25 years.

Mr. Rapisarda stated that he took the exam the first time to see where he was. Mr. Rapisarda stated that when he took the exam the second time he had some old study material and was studying the wrong material.

Mr. McAllister asked Mr. Rapisarda if he had worked as an Intern. Mr. Rapisarda stated that he worked at Target and completed 1,500 hours of internship.

**On motion by Mr. Van Hassel and seconded by Dr. Smidt**, the Board unanimously agreed to deny Mr. Rapisarda’s request to take the NAPLEX exam for the fourth time. The Board also denied Mr. Rapisarda’s request for an extension of his Intern license.

### **AGENDA ITEM 8 – Express Scripts Work at Home for Pharmacy Technicians.**

Due a conflict of interest, Mr. Haiber recused himself.

Steve Haiber, Senior Director of Pharmacy Practice, and Ajay Desai, Pharmacist in Charge, were present to give a brief presentation and answer questions from Board Members.

President McAllister opened the discussion by stating that Express Scripts is asking for a deviation to allow pharmacy technicians to work at home. Mr. McAllister asked Mr. Haiber and Mr. Desai to discuss their company's proposal.

Mr. Haiber opened the discussion by stating that in 2005 the Board approved Express Script's plan to allow Pharmacists to work at home. Mr. Haiber stated that the company would like to expand the program to allow technicians to work at home.

Mr. Haiber stated that the expected work at home program benefits include the following: Improved accuracy; Increased employee satisfaction; Improved schedule flexibility; and Increased business stability.

Mr. Haiber stated that the technicians would be translating information from the Rx image and entering the information into the pharmacy computer system.

Mr. Haiber stated that the technicians must rank in the top third of their peers in quality performance and the technician must maintain minimum accuracy standards to remain in the work at home program.

Mr. Haiber stated that the technicians would sign a contract which outlines the technicians responsibilities and if the technician fails to comply with the contract they could be removed from the work at home program.

Mr. Haiber stated that the technicians would be evaluated monthly by their supervisor.

Mr. Haiber stated that the home work environment would mirror the pharmacist's environment. The technician must work in a room with a closing door.

Mr. Haiber stated that the same security and encryption features employed for the Pharmacists work at home program would be employed for the Pharmacy Technicians work at home program.

Mr. Haiber concluded by stating that they are seeking a deviation to allow the pharmacy technicians to work at home.

Mr. Milovich asked if the monthly evaluations are documented. Mr. Haiber replied that the monthly evaluations are documented and would be placed in the employee's file.

Mr. Van Hassel asked what percentage of the technician work force would be involved in the work at home program. Mr. Haiber stated that the top 10% would be offered the chance to work at home. Mr. Haiber stated that the percentage could go as high as the top third of the technician work force.

Mr. McAllister stated that his company has found out that when the top technicians work at home there is no one present often to help the lower end technicians improve.

**On motion by Mr. Van Hassel and seconded by Dr. Berry,** the Board unanimously agreed to approve the deviation from R4-23-1104 (A) based on experimental and technological advances.

Mr. Wand stated that when the rules moratorium is lifted the Board would start working on rules so that the Board does not have to approve deviations for the work at home programs.

## **AGENDA ITEM 9 – Reports**

### **Executive Director Report**

#### **Budget Issues**

Mr. Wand opened the discussion by reviewing the financial reports with the Board Members.

Mr. Wand stated that Mr. Wright has received a grant from the Arizona Criminal Justice Commission the Prescription Monitoring Program.

#### **Staffing Issues**

Mr. Wand stated that the Board currently has two open Compliance Officer positions that he currently cannot hire due to the hiring freeze.

Mr. Wand stated that he has received authorization to hire the temporary employee.

Mr. Wand stated that all covered positions have been eliminated.

### **Deputy Director Report**

Ms. Frush reviewed the Compliance Officers Activity Report and Drug Inspector Activity Reports with the Board Members. Ms. Frush indicated that due to personnel issues the number of inspections is less than at this time last year.

During the months of November and December, the Compliance Staff issued letters for the following violations:

#### **Controlled Substance Violations**

1. Controlled Substance Overage – 15
2. Controlled Substance Shortage –3
3. Unable to locate Annual Controlled Substance Inventory - 2

#### **Documentation Violations**

1. Failure to Document Medical Conditions – 2
2. Failure to sign daily log - 1
3. Failure to document counseling – 5

4. Failure to have required technician statements signed – 2
5. Failure to document mechanical counting devices maintenance – 4
6. Failure to receive a prescription for a product removed from the emergency box - 1

#### **Dispensing Violations**

1. Outdated Rx and OTC items in the pharmacy – 3

#### **Pharmacy Violations**

1. Allowing technician to work with an expired license - 1
2. Failure to display permit – 1
3. Failure to have licenses available at the site - 3

#### **The following areas were noted on the inspection reports for improvement:**

1. Documentation of Counseling

#### **Areas outside the inspection reports that may be of interest:**

1. Original Prescriptions can only be filled for patients from Canada and Mexico for non-controlled medications.

#### **Pharmacist Assisting Pharmacists of Arizona (PAPA)**

Lisa Yates was present to represent the PAPA program. Ms. Yates stated that there are a total of fifty (50) participants in the PAPA program. Since the last report on November 18, 2009, there has been one (1) new participant enter into the program and one (1) participant relocating to another state with a new contract in that state.

Ms. Yates stated that there is one concern. Mr. Wand stated that a complaint has been opened against the individual and the complaint review committee has recommended that he be offered a consent agreement. The complaint will be reviewed during the complaint review later today.

#### **AGENDA ITEM 10 – Conferences**

#### **Complaint #3698**

The following individuals were present to answer questions from Board Members concerning a consumer complaint: Kimberly Ray (Pharmacist in Charge), Jo Wright-Rushforth (Staff Pharmacist), and John Cerni (Pharmacy Supervisor). Roger Morris was present as Legal Counsel for the respondents.

Compliance Officer Sandra Sutcliffe gave a brief overview of the complaint. Ms. Sutcliffe stated that the complainant stated that he received Metoclopramide 10 mg instead of Metoclopramide 5mg. The complainant stated that he had experienced side effects due to the increased dose. The complainant stated that the pharmacy never contacted him about the error. The complainant stated that the pharmacy faxed the doctor and lied to him to cover up their error.

Ms. Sutcliffe stated that the Pharmacist in Charge at the time indicated that when the error was discovered she contacted the patient and he said that the medication was

working and she offered to call the doctor to maintain him at that strength. The doctor was faxed and the prescription was refilled for that strength.

Ms. Sutcliffe stated that she was unable to access the prescription information for the Metoclopramide dispensing on June 2, 2008 in the database. Ms. Sutcliffe stated that the prescription had been edited after the original dispensing and the data was not available for review on the patient's profile.

Ms. Sutcliffe stated that she was unable to determine who counseled the patient since the counseling log had not been completed.

President McAllister asked Ms. Ray to address the issue. Ms. Ray stated that Ms. Wright-Rushforth had filled the prescription incorrectly on the original fill. Ms. Ray stated that she caught the error when the prescription was refilled. Ms. Ray stated that she tried to call the patient several times. Ms. Ray stated that she did reach the patient and stated that the patient told her that he was doing fine and did not need to take the Donnatal. Ms. Ray stated that she documented his response. Ms. Ray stated that she contacted the doctor and asked for a prescription for the 10 mg. strength and explained that an error occurred. Ms. Ray stated that she filled the prescription and they did not hear from the patient for a year.

Mr. McAllister asked if Ms. Ray talked to the physician about the error. Ms. Ray stated that she spoke to the nurse and the nurse stated that she needed to fax the information to the office. Ms. Ray stated that she faxed the information to the doctor and the doctor faxed a new prescription to the pharmacy with six refills.

Mr. McAllister asked Ms. Rushforth about the error. Ms. Rushforth stated that she has no recollection of the error. Ms. Rushforth stated that she checks every prescription thoroughly and she is not sure how it happened.

Mr. Morris stated that Ms. Ray also faxed to the doctor an acknowledgement of the error.

Mr. Morris stated that Ms. Rushforth has reviewed her steps of verifying a prescription and has completed continuing education units on preventing errors.

Mr. McAllister asked when the complaint was lodged. Ms. Sutcliffe stated that the complaint was lodged in 2009 but the error occurred in 2008.

Mr. Milovich asked about the data that was lost. Mr. Cerni stated that they now have a new computer system that documents all initials of the pharmacist and technician involved in filling the prescription. Mr. Cerni stated that he had asked the corporate office if the information could be retrieved and he was told that it was not possible.

Mr. Milovich asked about the counseling log not being completed. Ms. Ray stated that at the time she had not realized that they had a problem with the counseling log. Ms. Ray stated that the company has new protocols for counseling.

Mr. Haiber asked Mr. Cerni if he reviews the counseling log when he goes to the stores. Mr. Cerni stated that he observes the pharmacist performing the counseling and

documenting the counseling when he visits his stores. Mr. Cerni stated at the time of the incident he was not the supervisor for the store.

Mr. Wand stated that the patient stated that he was not contacted. Ms. Ray stated that she contacted him multiple times. Ms. Ray stated that she remembered talking to the patient and documenting what she was told by the patient. Ms. Ray stated that the phone records could be pulled indicating that she phoned the patient.

Mr. Morris stated that if the phone records were pulled it would only show that calls were made and not the conversations that took place.

Dr. Smidt asked how the error occurred. Mr. Cerni stated that he believes that the pharmacy technician entered the prescription incorrectly and the pharmacist did not catch the error when the prescription was verified.

**On motion by Dr. Smidt and seconded by Mr. Van Hassel**, the Board agreed to issue an advisory letter to Ms. Rushforth concerning counseling and final verification. The Board agreed to dismiss the case against Ms. Ray. There was one nay vote by Mr. Milovich.

### **Complaint #3698**

The following individuals were present to answer questions from Board Members concerning a consumer complaint: Todd Reese (Staff Pharmacist), June Piposar (Pharmacy Supervisor) and Kelly Hampton (Pharmacy Care Manager).

Compliance Officer Sandra Sutcliffe gave a brief overview of the complaint. Ms. Sutcliffe stated that the complainant, a hospice nurse, indicated that the pharmacy dispensed an opened multi-dose vial of Pneumovax for her patient with what she assumed was a single dose left inside the vial. The complainant did not administer the vaccine as she did not have any knowledge of how long the vial had been opened or how it was stored.

Ms. Sutcliffe stated that the pharmacist indicated that Pneumovax comes in 5 dose vials and he had personally given the other four doses, so he knew only one dose remained. The pharmacist dispensed the punctured vial in the original box with the lot # and expiration date on the box. The pharmacist wrote the date opened on the box. It is not known if the quantity remaining in the original opened multi-dose vial was 0.5 ml (one dose).

President McAllister opened the discussion by asking Mr. Reese to address the complaint. Mr. Reese stated that the doctor phoned in the prescription and he was under the impression that the patient was coming to the pharmacy to receive her immunization. Mr. Reese stated that the patient's daughter came to the pharmacy to pick up the medication for the nurse to administer. Mr. Reese stated that he counseled the patient's daughter and left the opened vial in the original box because he did not know who was going to administer the vaccine. Mr. Reese stated that he also supplied the puncture date and the expiration date. Mr. Reese stated that the nurse called back later and complained

because she did not have a syringe to give the immunization. Mr. Reese stated that he drew up a dose in the syringe and gave it to the nurse. Mr. Reese stated that he dispensed it in the original vial because CDC guidelines recommend dispensing the product in the original vial.

Mr. McAllister asked if it is company policy to dispense punctured multi-dose vials. Ms. Piposar replied that they were following CDC guidelines to dispense the product in the vial if it is not going to be used immediately.

Ms. Hampton stated that she teaches the immunization course. Ms. Hampton stated that they refer to CDC guidelines if there are any issues. Ms. Hampton stated that CDC guidelines state that the pharmacist should not pre-draw a vaccine unless they are ready to administer the vaccine. Ms. Hampton stated that by dispensing the product in the vial the nurse could verify the drug and expiration date. Ms. Hampton stated that the patient did not receive either dose of the Pneumovax because she had already received a Pneumovax injection and no one had verified that she had previously received the vaccine.

Mr. McAllister asked Mr. Reese what he would have done if there had been two doses in the vial and the prescription called for only dose. Mr. Reese stated that he would have drawn the dose up into a syringe.

Dr. Smidt asked Mr. Reese after this incident if he would dispense a multi-dose vial again. Mr. Reese stated that he would ask the patient to come to the pharmacy so that he could administer the vaccine.

Dr. Smidt asked Ms. Hampton if it is still Safeway's policy to dispense a multi-dose vial. Ms. Hampton stated that they are reviewing their policies. Ms. Hampton stated that they do not normally dispense vaccines.

Dr. Smidt stated that he does not blame the nurse for not wanting to administer the vaccine from the open vial. Dr. Smidt stated that the nurse would not know how the vial was stored and if any contamination occurred.

Mr. Wand asked how they test for contamination. Ms. Hampton stated that they visually check the vial.

Mr. McAllister stated that he feels that there is no reason to dispense an open multi-dose vial.

Dr. Berry stated that Pneumovax is available in single dose syringes and if they did not have the single dose syringe they should have refused to dispense the product.

Ms. Hampton stated that they would review their policies and guidelines.

Dr. Sypherd stated that his background is in Microbiology and a visual check is a poor means to verify contamination. Dr. Sypherd stated that turbidity indicates that the product has been contaminated for a long period of time.

**On motion by Mr. Van Hassel and seconded by Dr. Smidt**, the Board agreed to dismiss the case. There was one nay vote by Dr. Berry.

**AGENDA ITEM 11 - Consideration of Complaints on Schedule “E” and Consideration of Consumer Complaint Committee Recommendations**

The Consumer Complaint Review Committee met prior to the Board Meeting to review 8 complaints. Ms. Galindo, Mr. Haiber, and Mr. Milovich served as the review committee. Board Members were encouraged to discuss issues and were encouraged to ask questions.

**On motion by Mr. Van Hassel and seconded by Dr. Smidt**, the Board unanimously accepted the recommendations of the Consumer Complaint Review Committee for the following complaints. Dr. Berry was recused due to a conflict of interest.

- Complaint #3726 - Advisory Letter to Both Pharmacists in Charge concerning verification of Data Entry. Forward the complaint to the Florida Board concerning the error made by the verification pharmacist in Florida.  
Dismiss the complaint against the Pharmacy Technician
- Complaint #3743 - Dismiss

**On motion by Mr. Van Hassel and seconded by Dr. Berry**, the Board unanimously accepted the recommendations of the Consumer Complaint Review Committee for the following complaints.

- Complaint #3732 - Advisory Letter to the Pharmacist concerning R4-23-402 (A) concerning frequency of filling prescriptions
- Complaint #3740 - Consent Agreement for the Pharmacist in Charge for a fine of \$1,000 to be paid in 90 days. If not signed, the case would proceed to hearing.
- Complaint #3741 - Consent Agreement offered to the Pharmacist for a fine of \$5,000 and 6 hours of board approved CE on error prevention and counseling in addition to regular CE requirements. Fine and CE to be completed within 6 months. If not signed, the case proceeds to hearing.

- Complaint #3741 (Continued) - Consent Agreement offered to the Pharmacist for a fine of \$2,000 and 3 hours of board approved CE on error prevention in addition to regular CE requirements. Fine and CE to be completed within 90 days. If not signed, the case proceeds to hearing. Advisory Letter to all pharmacists concerning counseling documentation  
Advisory Letter to all pharmacists in charge concerning mechanical devices  
Open complaint against the permit holder concerning counseling documentation, recordkeeping, shortages, and request Supervisory personnel to address the issues at a conference at the March meeting.
- Complaint #3742 - Conference – Representative for Permit Holder – Management and IT personnel to discuss resolution of problem and anticipated time frame to complete resolution
- Complaint #3744 - Dismiss
- Complaint #3745 - Proposed Consent Agreement for PAPA

## **AGENDA ITEM 12– Pharmacy Technician Trainee Requests for Approval to Reapply for Licensure**

President McAllister stated that Mr. Wand has reviewed the requests and has approved the individuals for one additional two year period.

**On motion by Mr. Haiber and seconded by Mr. Van Hassel**, the Board unanimously approved the requests of the Pharmacy Technician Trainees listed below to proceed with the reapplication process. The pharmacy technician trainee may reapply for an additional two years as a pharmacy technician trainee one time.

### **Pharmacy Technician Trainee Requests to reapply for licensure**

1. Wendy Kovacovich
2. Tracy Legarreta-Vlasak
3. Samuel Quinonez
4. Shawna Monroe
5. Betty Spitzke
6. Shawn Leming
7. Natasha Denetdeal
8. Wellington Cox
9. Roland Deah
10. Veronica Smith
11. Bryce Cayton
12. Marcia Baymon
13. Samuel Oghenejabor
14. Jessica Castro
15. Amber Denogen
16. Ashley Sincavage
17. Ryan Hartwig
18. Dragan Ojdanic
19. Karlette Anderson
20. Matthew Miller
21. Sylvia Reynoso
22. Brandon Careaga
23. Taylor McGregor
24. Joelle Orendain
25. Lucy Rojas
26. Jordan Dantzler
27. Jacquelynn Medis
28. Elvia Villicana
29. Ricole Hausch
30. Leslie Hunerlach
31. Jessica Younan
32. Stephanie Cole
33. Nancy Escalante
34. Denise Mendoza
35. Ashley Batman
36. Alicia Patterson
37. Ashley Anixter
38. Theresa Schullo
39. Tina Wilson
40. Manisha Patel
41. Maddy Dewrance
42. Mari Oxentenko
43. Daniel Stephens
44. T'Yanna Zylsta
45. Cody Scott
46. Robert Clark
47. Jose Gaytan
48. Shane Knickerbocker
49. Lea Madrid
50. Jamie Taylor
51. AliceMarie Jimmie
52. Loura Abdou

## **AGENDA ITEM 13 – Diamondback Drugs – Case #10-0030-PHR**

Roger Morris, Legal Counsel for Diamondback Drugs, was present to discuss the consent agreement offered to Diamondback Drugs.

President McAllister opened the discussion by asking Mr. Morris why he was appearing in front of the Board on behalf of Diamondback Drug.

Mr. Morris stated that the Board decided to offer Diamondback Drug a consent agreement for a \$500 fine as a result of a consumer complaint. A patient information sheet was not sent to the complainant with the medication.

Mr. Morris stated that he has edited the Consent and has presented the Board with a Proposed Consent Agreement.

Mr. Morris stated that there is no dispute of the fine and he has included wording indicating that this would not constitute disciplinary action.

President McAllister stated that his understanding is that the only option that the Board has that is non-disciplinary is the issuing of an advisory letter.

Mr. McAllister stated that if this is one incident without an information sheet an advisory letter may be appropriate.

Mr. Van Hassel asked one of the complaint committee members if they could refresh him on the situation.

Mr. Morris stated that it is his understanding that this is one of the examples where the information sheet on compounded products was not sent.

Mr. Morris stated that the owner acknowledged that this is not the only product that was sent without information sheets and he did not understand that this was required and since has changed his practice.

Ms. Campbell gave Mr. Van Hassel a copy of the original complaint.

Dr. Smidt stated that the Board could not modify the Consent Agreement to reflect that it is non-disciplinary.

Mr. Morris stated that he believes the Board could make the change. Mr. Morris stated that the statement in the document that states it is non-disciplinary would have an effect in other states.

Mr. Van Hassel stated that he believes that there was a misunderstanding that has been fixed by the permit holder. Mr. Van Hassel stated that the goal has been met.

Mr. McAllister stated that if the Board offers a Consent Agreement then it would be considered disciplinary action.

Mr. McAllister stated that the only non-disciplinary action would be an advisory letter. Mr. McAllister stated that the goal has been met.

Dr. Smidt asked if the complaint was filed by a consumer.

Mr. Van Hassel stated that the complaint was filed by a consumer concerning the fact that she did not receive any information stating that the prescription needed refrigerated. Mr. Van Hassel stated that the information leaflet would have given her that information.

**On motion by Mr. Van Hassel and seconded by Dr. Smidt**, the Board unanimously agreed to rescind the consent agreement and issue an advisory letter to Diamondback Drugs concerning the requirement to send patient information sheets with mailed prescriptions (R4-23-402(I)).

### **AGENDA ITEM 15- NABP Annual Meeting – Selection of Delegate and Alternate Delegate**

President McAllister stated that the Board must select delegates to serve at the NABP meeting in Anaheim, California. The meeting will be held from May 22, 2010 through May 25, 2010.

**On motion by Dr. Smidt and seconded by Dr. Berry**, the Board unanimously selected Mr. Milovich to be the voting Delegate and Mr. Haiber would serve as the alternate delegate.

### **AGENDA ITEM 16 – Approval of Exams**

President McAllister opened the discussion by stating that the Board approves the licensing exams every year.

**On motion by Mr. Van Hassel and seconded by Dr. Smidt**, the Board unanimously approved the NAPLEX exam, the MPJE exam, the FPGEEC exams, and the PTCB exam as the Board approved exams for licensure.

Mr. Wand stated that he has received notice that the fees are being raised for the NAPLEX exam, the MPJE exam, and the FPGEEC exams.

### **AGENDA ITEM 17 – Approval of ACPE approved Colleges and Schools of Pharmacy**

President McAllister opened the discussion by stating that the Board approves the Colleges and Schools of Pharmacy annually.

Mr. Wand stated that all the colleges and Schools of Pharmacy are ACPE-approved schools.

**On motion by Mr. Haiber and seconded by Dr. Berry** the Board unanimously approved the colleges and schools of pharmacy listed in the attachment.

### **AGENDA ITEM 19 – Hossein (Tony) Afshari – Case #10-0031-PHR**

President McAllister opened the discussion by asking Mr. Afshari why he was appearing in front of the Board.

Mr. Afshari stated that he was offered a Consent Agreement because he misused Safeway gift cards. Mr. Afshari stated that he is sorry for what he has done and is asking the Board to reduce his suspension by 30 days. Mr. Afshari stated that his suspension was

for 60 days and he would like the suspension to be reduced to 30 days because he was unemployed for 30 days.

Mr. McAllister asked if the Board could reduce the suspension. Ms. Campbell stated that the Board could redo the consent and make the suspension last for 30 days and the suspension would begin on the effective date of the Consent agreement.

Dr. Smidt stated that there is a letter from his counsel indicating that he would like to serve his suspension at a later date. Mr. Afshari stated that he is not asking to serve the suspension at a later date because that would be too much to ask of the Board.

Dr. Sypherd stated that because Mr. Afshari was unemployed for 30 days it does not constitute a suspension of his license because he was able to be employed during that time.

**On motion by Mr. Haiber and seconded by Dr. Sypherd**, the Board unanimously agreed to deny Mr. Afshari's request to reduce his suspension to 30 days and to accept the original consent agreement as offered and signed by the respondent. A roll call vote was taken. (Mr. Milovich – aye, Dr. Berry – aye, Mr. Van Hassel – aye, Dr. Smidt – aye, Dr. Sypherd – aye, Mr. Haiber – aye, and President McAllister – aye).

**On motion by Mr. Van Hassel and seconded by Mr. Milovich**, the Board unanimously agreed to vacate the hearing for Mr. Afshari scheduled to be held on January 14, 2010.

#### **AGENDA ITEM 20 – Michael Castillo – Case #10-0031-PHR**

President McAllister opened the discussion by asking Mr. Castillo why he was appearing in front of the Board.

Ken Baker, Legal Counsel, for Mr. Castillo stated that Mr. Castillo had requested to appear in front of the Board to request that his suspension period be reduced. Mr. Baker stated that he has signed the consent agreement that was offered to him.

**On motion by Mr. Van Hassel and seconded by Dr. Berry**, the Board unanimously agreed to accept the original consent agreement as offered and signed by the respondent. A roll call vote was taken. (Mr. Milovich – aye, Dr. Berry – aye, Mr. Van Hassel – aye, Dr. Smidt – aye, Dr. Sypherd – aye, Mr. Haiber – aye, and President McAllister – aye).

**On motion by Mr. Van Hassel and seconded by Dr. Berry**, the Board unanimously agreed to vacate the hearing for Mr. Castillo scheduled to be held on January 14, 2010.

#### **AGENDA ITEM 22 – Nomination and Election of Officers**

President McAllister opened the nominations for President.

**On motion by Mr. Haiber and seconded by Mr. Van Hassel**, the Board nominated Dr. Smidt for the position of President.

There were no other nominations and Dr. Smidt was elected as President.

President McAllister opened the nominations for Vice President.

**On motion by Mr. Haiber and seconded by Mr. Van Hassel**, the Board nominated Dr. Berry for the position of Vice President.

**On motion by Mr. Milovich and seconded by Dr. Sypherd**, the Board nominated Mr. Haiber for the position of Vice President.

The Board Members voted on the nomination of Dr. Berry for Vice President. A roll call vote was taken. Mr. Milovich – nay, Dr. Berry – aye, Mr. Van Hassel – aye, Dr. Smidt – nay, Dr. Sypherd – aye, Mr. Haiber – nay, and President McAllister – aye). The motion carries and Dr. Berry was elected Vice President.

President McAllister turned the Meeting over to Dr. Smidt the newly elected President.

#### **AGENDA ITEM 14 – Consent Agreements**

President Smidt asked Board Members if there were any questions or discussions concerning the consent agreements. Executive Director Hal Wand indicated that the consent agreements have been reviewed and approved by the Attorney General’s Office and have been signed.

**On motion by Mr. McAllister and seconded by Mr. Van Hassel**, the Board unanimously agreed to accept the following consent agreements as presented in the meeting book and signed by the respondents. The consent agreements are listed below.

Wanda Robbins	-	10-0033-PHR
Steven Martin	-	10-0036-PHR
Apotheca, Inc.	-	10-0040-PHR
Paul Lewis	-	10-0041-PHR
Thomas Goebig	-	10-0046-PHR

The Board also authorized Mr. Wand to approve the signed consent agreement being offered to Thomas Dayton as a result of the Consumer Complaint Review.

A roll call vote was taken. ( Dr. Berry – aye, Mr. Milovich – aye, Mr. Van Hassel – aye, Dr. Sypherd – aye, Mr. Haiber – aye, Mr. McAllister – aye, and President Smidt).

#### **AGENDA ITEM 18 – Reconsideration of Consent Agreements.**

President Smidt asked Mr. Van Hassel to open the discussion because he requested that this topic be placed on the agenda.

Mr. Van Hassel stated that he has concerns about individuals that have signed a consent and then ask to appear in front of the Board at a later date to have their Consent Agreements changed. Mr. Van Hassel stated that there should be a reason for the request to change the consent.

Mr. Wand stated that he cannot be the gatekeeper to determine who can appear in front of the Board to request that the Board hear their request.

Mr. Van Hassel stated that he feels that the Board could give Mr. Wand a list of criteria that must be met before someone could appear in front of the Board to have their request heard.

Mr. Wand suggested that anyone who does not want to sign their consent agreement could appear on Thursday and their case would be heard before the Hearings.

Mr. Van Hassel stated that he does not have an issue with the consents that are not signed. He stated his issues are with the individuals that have signed the consents and are asking to have changes made to the consent that they signed. Mr. Van Hassel stated an example is someone asking to have their probation terminated early.

Mr. McAllister suggested that the Board Members could ask the respondents specific questions such as is there new evidence or were there procedures that were not followed. If the answer is no to the questions, then the individual would be told that the case would not be reviewed.

Mr. Van Hassel stated that he has no issue in moving all the Consent requests to Thursday mornings.

Dr. Smidt stated that the Board is issuing more consents. Dr. Smidt stated that the Board is reconsidering consents because the individuals have not appeared for a conference. Dr. Smidt stated that the individuals could be asked to appear for a conference prior to issuing disciplinary action.

Dr. Berry stated that the Board used to hold conferences Wednesday afternoon. Dr. Berry stated that the complaint committee went to offering Consent Agreements if certain criteria were met. Dr. Berry stated that maybe the Board needs to reach a happy medium.

Mr. Haiber stated that he feels that anyone who is offered a consent agreement could present their side on Thursday morning to present their side of complaint.

Mr. Milovich stated that part of the Complaint review process is to determine if anything else could be learned from a conference. Mr. Milovich stated that it is cut and dry when an error occurs.

Dr. Berry suggested that a conference could be held with a set agenda.

Mr. Wand stated that the reason Consents are offered is to avoid going to hearing.

Mr. Wand stated that individuals have the right to due process.

Dr. Smidt stated if someone wants to appear in front of the Board they need to be placed on the agenda.

Dr. Smidt stated that there needs to be compelling evidence for the request and that all these requests should be placed on the agenda for the second day.

**AGENDA ITEM 23 – Michael Richardson- Case #10-0035-PHR**

Due to a conflict of interest, Mr. Haiber recused himself.

President Smidt asked if Mr. Richardson was appearing.

Ms. Campbell stated that this item was placed on the agenda at her request. Ms. Campbell stated that the Board might want to meet in Executive Session to obtain legal advice concerning the case.

**On motion by Mr. Van Hassel and seconded by Mr. Milovich**, the Board unanimously agreed to meet in Executive Session.

President Smidt called the regular meeting back to order.

Mr. McAllister stated there is a disagreement between the employee and employer. Mr. McAllister stated that he is not sure if there was a release of Personal Health Information and he would recommend dismissing the case.

Dr. Sypherd stated that he feels that the documents were sent to his personal computer for a reason. Dr. Sypherd stated that he is not sure what Mr. Richardson was going to do with the data. Dr. Sypherd stated that he feels that there was a reason for stamping the documents with the Union Stamp and the Board would not know what his intentions were unless they ask him.

Mr. Van Hassel stated that he downloaded specific records with a specific intent and he feels that we should ask Mr. Richardson why he downloaded the records.

Dr. Sypherd stated that the Board does not know who in the Union organization owned the date stamp and if are they involved in the case.

**On motion by Dr. Berry and seconded by Mr. McAllister**, the Board unanimously agreed to ask Mr. Richardson to appear for a conference at the next Board meeting.

Dr. Berry asked if they could ask the Union Representative to appear.

Ms. Campbell stated that the Board could invite the union representative and a representative from Express Scripts to appear for the conference. Ms. Campbell stated that the Board could instruct the staff to invite representatives to the conference.

The Board members instructed the staff to invite the Union Representative and a representative from Express Scripts to attend the Conference.

## **AGENDA ITEM 25 – Call to the Public**

President Smidt announced that interested parties have the opportunity at this time to address issues of concern to the Board; however the Board may not discuss or resolve any issues because the issues were not posted on the meeting agenda.

Roger Morris and Ken Baker came forth to state that they would be happy to serve on a committee to streamline the due process. Mr. Morris stated that he feels that the conferences are the single best teaching moment that the Board has. Mr. Morris stated that the complaint reviews are not published and individuals do not know why a consent agreement was offered.

Mr. Morris stated that he feels that the Board should allow an individual to appear at a meeting prior to the Hearing.

Mr. Baker stated that he feels that the respondent's attorney should be able to negotiate the terms of the Consent Agreement with the staff.

Ken Fletcher, a third year student at Midwestern, came forth to remind everyone that on February 17, 2010 the students would be at the Capitol for Legislative Day. Mr. Fletcher also indicated that he feels that Interns who have received training should be able to pursue the ability to give immunizations.

Mindy Smith, Executive Director of the Arizona Pharmacy Alliance, came forth to give a report on the activities of the Alliance.

Ms. Smith stated that they are pursuing concerns with the Healthcare Reform bill on Capitol Hill.

Ms. Smith stated that the Alliance is opposing the expanded prescriptive authority of the optometrists to prescribe macrolides and anti-virals.

Ms. Smith stated that they are addressing the issues of prescription waste disposal and teenage drug abuse.

Ms. Smith stated that several of the academies will be holding conferences and information can be found on their website.

Dr. Smidt recessed the meeting until the next morning.

## **AGENDA ITEM 1 – Call to Order – January 14, 2010**

President Smidt convened the meeting at 9:30 A.M. and welcomed the audience to the meeting.

The following Board Members were present: President Ridge Smidt, Vice President Zina Berry, Steve Haiber, Dennis McAllsiter, Dan Milovich, Paul Sypherd, and Tom Van Hassel. The following Board Members were not present: Joanne Galindo and Louanne Honeyestewa. The following staff members were present: Compliance Officers

Rich Cieslinski, Ed Hunter, and Dean Wright, Cheryl Frush, Executive Director Hal Wand, and Assistant Attorney General Elizabeth Campbell.

## **AGENDA ITEM 21 – Hearings/Motions to Deem**

### **#1 Daniel Amendt**

President Smidt opened the discussion by stating that this is the time and place for Consideration of the State's Motion to Deem Allegations of the Complaint and Notice of Hearing Admitted in the Case of Daniel Amendt, License #I008662, Case 10-0028-PHR.

President Smidtt asked if Mr. Amendt was present. Mr. Amendt was not present.

President Smidt asked if the Board would like to make a Motion granting or denying the State's motion to Deem Allegations Admitted.

**On motion by Dr. Berry and seconded by Mr. Haiber**, the Board unanimously agreed to grant the State's motion to Deem Allegations admitted.

President Smidt asked if the Assistant Attorney General has any comments or recommendations as to the appropriate discipline to be imposed.

Ms. Campbell stated that in view of the allegations admitted the Board can impose any discipline that they feel appropriate.

President Smidt stated that the Board would now deliberate on the appropriate discipline to be imposed.

**On motion by Dr. Berry and seconded by Mr. Haiber**, the Board unanimously agreed to revoke Pharmacy Intern License I008662 issued to Daniel Amendt. A roll call vote was taken. (Dr. Berry – aye, Mr. Milovich – aye, Mr. Van Hassel – aye, Dr. Sypherd – aye, Mr. Haiber – aye, Mr. McAllister – aye, President Smidt – aye).

## **AGENDA ITEM 24 – Timothy Archibald – Case#10-0029-PHR**

President Smidt stated that the Board has received the signed Consent Agreement from Mr. Archibald. Dr. Smidt asked if the Board Members had any questions.

**On motion by Dr. Berry and seconded by Mr. Haiber**, the Board unanimously agreed to accept the original consent agreement as offered and signed by the respondent and vacate the hearing. A roll call vote was taken. (Mr. Milovich – aye, Dr. Berry – aye, Mr. Van Hassel – aye, Mr. McAllister – aye, Dr. Sypherd – aye, Mr. Haiber – aye, and President Smidt – aye).

### **AGENDA ITEM 25 – Call to the Public**

President Smidt announced that interested parties have the opportunity at this time to address issues of concern to the Board; however the Board may not discuss or resolve any issues because the issues were not posted on the meeting agenda.

Dr. Sypherd thanked the Board for allowing him to serve as a Public Member the last five years. Dr. Sypherd gave a brief overview of his term with the Board.

### **AGENDA ITEM 26 – Discussion of Future Items to be placed on a future meeting agenda**

Mr. Van Hassel stated that he would like an update on the Prescription Monitoring Program.

### **AGENDA ITEM 27 – Adjournment**

There being no further business to come before the Board, **on motion by Mr. McAllister and seconded by Dr. Berry**, the Board unanimously agreed to adjourn the meeting at 9:40 A.M.