

**THE ARIZONA STATE BOARD OF PHARMACY
HELD A REGULAR MEETING APRIL 23-24, 2003
GLENDALE, ARIZONA**

The following Board Members and staff were present: President Paul Draugalis, Vice President, Dennis McAllister, William E. Jones, Daniel Ketcherside, Linda McCoy and 'member-designate' Charles Dutcher; Compliance Officers Ed Hunter, Cheryl Frush, Mitzi Wilson, Larry Dick and Dean Wright, Inspector Tony Salcido, Deputy Director Hal Wand and Executive Director L. A. Lloyd. Assistant Attorney General Blair Driggs was present during a portion of the morning session (4/23/03).

President Draugalis convened the meeting at 9:00 a.m. and welcomed the audience to the meeting. Deputy Director Wand described the continuing education credit procedure for attending this meeting. President Draugalis welcomed the audience and made special note of the pharmacy student interns in attendance. Executive Director Lloyd indicated that Mr. Drake had telephoned the office to advise he was unable to attend due to airline difficulties and to say how disappointed he was to miss the meeting and the centennial activities. Mr. Lloyd also provided an overview of the 'Board Member Designate' Charles Dutcher's status of final approval...Mr. Dutcher has received unanimous approval from the Senate Health Committee but lacks the approval of the full senate necessary to assume full member status.

AGENDA ITEM I - APPROVAL OF MINUTES

Following a review of the minutes and an opportunity for questions and **on motion by Mr. Ketcherside, and Mr. Jones** the minutes of the Special Meeting of March 12 and 13, 2003 were unanimously approved as corrected.

AGENDA ITEM II - PERMITS/LICENSES

Pharmacy Permits

Deputy Director Wand advised the Board that pharmacy permits shown on Schedule A and Schedule B of the agenda included several non-resident applications, he further indicated that there was one permit applicant listed on the addendum and that all of the applications were in order and all fees have been paid. Individuals representing Scottsdale Bariatric Hospital were present and responded to questions from Board Members. At the conclusion of questions from Board Members and **on motion by Mr. McAllister and Ms. McCoy**, the Board unanimously approved the pharmacy permits itemized below, subject to final inspection by the compliance officer where appropriate.

IN-STATE

<u>Pharmacy</u>	<u>Location</u>	<u>Owner</u>
Albertson's #0931	2378 w. 24 th St., Yuma. AZ 85364	Albertson's Inc.
Bariatric Care Centers of Arizona LLC	17500 N. Perimter Dr., Scottsdale, AZ 85255	Bariatric Care Centers of Arizona LLC
Cardinal Health	1905 W. 3 rd St., Tempe, AZ 85281	(O) Cardinal Health 414 Inc.
Cardinal Health	4605 S. Palo Verde Rd #601, Tucson, AZ 85714	(O) Cardinal Health 414 Inc.
Eckerd Drugs #5339	10010 N. Scottsdale Rd., Scottsdale, AZ 85253	Eckerd Corporation
Eckerd Drugs #5326	Bell Road, Marana, AZ 85743	Eckerd Corporation
Eckerd Drugs #5302	18591 N. 59 th Ave., Glendale, AZ 85308	Eckerd Corporation
Harker Pharmacy	3100 N. West Street, Suite 200A, Flagstaff, AZ 86004	Harker's Professional Pharmacy Inc.
Option Care, Bullhead City	1041 Hancock Rd., Bullhead City, AZ 86442	(O) Convention Center Drug Inc.
Osco Drug #0929	8454 S. Power Rd., Gilbert, AZ 85297	Albertson;s Inc.
Phoenix Specialty Medical Center Inc.	1800 E. Van Buren St., 2 nd Floor, Phoenix, AZ 85006	Camelot Healthcare

NON-RESIDENT (out of state)

<u>Pharmacy</u>	<u>Location</u>	<u>Owner</u>
Aetna Rx Home Delivery LLC	10991 NW Airworld Dr., Kansas City, MO 64153	Aetna Health Holdings LLC
Axiom Healthcare Pharmacy Inc.	285 W. Central Pkwy, Ste 1720, Altamonte Spgs, FL 32714	Axiom Healthcare Pharmacy Inc.
Cardinal Health	793 Via Lata, Colton, CA 92324	(O) Cardinal Health 414 Inc.
Cardinal Health	2353 Prospect Dr., Aurora, IL 60504	(O) Cardinal Health 414 Inc.
Cardinal Health	5000 Calle San Rafael, #C-2, Palm Springs, CA 92264	(O) Cardinal Health 414 Inc.
Crescent Healthcare Inc.	1990 W. Crescent Ave., Anaheim, CA 92801	Crescent Healthcare Inc.
Dr's. Foster & Smith Pharmacy	2253 Air Park Rd., Rhinelander, WI 54501	Dr's. Foster & Smith Pharmacy Inc.
I Care Pharmacy Inc.	234 W. Park Ave., Winter Park, FL 32789	I Care Pharmacy Inc.
Right Choice Pharmacy	1701 Commerce Ave., Tonganoxie, KS 66086	MDDC, Inc.

Rx West Pharmacy	472 S. Tucson Way, Suite 100A, Centennial, CO 80112	WellDyne
SunPlus Home Pharmacy Services	5881 Green Valley Cir, Culver City, CA 90230	SunPlus Home Health Services Inc.
Target Pharmacy	3720 Soldano Blvd., Columbus, OH 43228	Target Corporation
VetCentric Inc.	839 Bestgate Rd., Annapolis, MD 21401	VetCentric Inc.
Walgreens Healthcare Plus	7357 Greenbriar Pkwy., Orlando, FL 32819	Walgreens Healthcare Plus Inc.
WellPartner, Inc.	6405 SW Rosewood St, Ste D, Lake Oswego, OR 97035	WellPartner, Inc.

(O) = New Ownership

Wholesale Permits

Deputy Director Wand briefed the Board on the wholesale permits on the agenda and indicated that they were in order and all fees have been paid; **on motion by Mr. Jones and Mr. Ketcherside**, the Board unanimously approved the following applications:

<u>Wholesaler (all Full Service)</u>	<u>Location</u>	<u>Owner</u>
Cardinal Health	4605 S. Palo Verde Rd., #601, Tucson, AZ 85714	(O) Cardinal Health 414 Inc.
Cardinal Health	1905 W. 3 rd St., Tempe, AZ 85281	Cardinal Health 414 Inc.
Carondelet Material Service Center	4651 S Butterfield Dr., Ste 155, Tucson, AZ 85714	Carondelet Health Network
Medical Specialties Distributors Inc.	3815 E. Grove St., #5, Phoenix, AZ 85040	Medical Specialties Distributors Inc.

(O) = New Ownership

Pharmacist Licenses and Pharmacy Intern Licenses

Following a review of the roster of applicants for licenses as pharmacists and pharmacy interns and on assurance by the staff that all applications are in order and all fees paid: **on motion by Mr. Jones and Ms. McCoy**, the Board unanimously approved the following licenses:

Pharmacists: S13541 through S13609 and, Pharmacy Interns I05914 through I05926. For a complete list of individual names see attachments A and B.

AGENDA ITEM III - SPECIAL REQUESTS

#1 **Gary Rothschild** appeared with his supervisor Fauzia Somani, requesting permission to sit for the licensing examinations upon completion of his required 1500 hours of experiential training(internship). President Draugalis provided a brief overview of Mr. Rothschild's history with the Board and invited Ms. Somani to address the Board, Ms. Somain endorsed Mr. Rothschild's work ethic and attitude in his position as a 'graduate intern' and further indicated that he has completed 400 hours of intern training. Inquiries were directed to Mr. Rothschild by Board Members. On conclusion of the discussion and **on motion by Mr. Jones and Ms. McCoy**, the Board unanimously approved Mr. Rothschild's request for permission to sit for the licensure examinations upon completion of his internship training.

#2 **Jeffrey K. Karp, R. Ph.** appeared with PAPA Program Administrator Lisa Yates requesting termination of his license probation and reinstatement as a pharmacist 'current and in good standing'. Mr. Karp spoke on his own behalf...providing an overview of his experiences and progress through the PAPA program, he concluded by stating that as a result of his participation, his life has become more manageable and his understanding of recovery is very focused. Ms. Yates said that after his first year in PAPA, Jeff has been a model participant and that he accepts recovery as a life-long process. Further, the PAPA Steering Committee supports his request.

Prior to voting, the Board raised a question relating to a conflict of dates of completion of the Board Ordered probation and the completion of the PAPA program. Mr. Wand stated it is not unusual for participants to have some history in PAPA before being adjudicated by the Board, that results in a slight variance of completion dates. There being no further questions, **on motion by Mr. McAllister and Ms. McCoy**, the Board unanimously agreed to terminate the probation on Mr. Karp's license effective April 23, 2003.

#3 **James M. Nikrant** appeared on behalf of a non-prescription drug speciality packaging and distribution firm known as "Lil Drug Store", requesting Board permission to not be required to provide unique packaging and

labeling specifically for distribution in Arizona. Mr. Nikrant indicated that the company has been distributing 'unit-of-use' packages in original manufacturer's trademarked packages through various retail outlets for approximately 40 years. Because the term 'drug store' or similar terms have been restricted to businesses providing *both prescription and non-prescription* products to consumers, the Arizona Board of Pharmacy advised that the company could not use the name: "Lil Drug Store" on their packages. Mr. Nikrant further indicated that at one time at least eight states prevented the company from using the name but currently only Arizona prevents its use...which presents additional packaging and marketing cost to the company.

Board members directed questions to Mr. Nikrant and indicated that Assistant Attorney General Blair Driggs was present to advise on this request. Following a brief discussion between Board Members and Mr. Driggs, it was determined that the restrictions provided in the statute apply to businesses not to products; the Board concluded that the words, "Lil Drug Store" on non-prescription retail packaging was not a violation of the statute and its use is permissible in Arizona.

- #4 **Lynn H. Sartor** appeared on his own behalf requesting permission to pursue licensure by reciprocating his active and in-good-standing, Utah pharmacist license. President Draugalis began the discussion by stating that Mr. Sartor's licensure application reflects only 'specialty' pharmacy experience in the past 10 years. President Draugalis mentioned that the Board has begun the process of expanding the definition of "practice of pharmacy" however at the same time protection of the public health is the paramount responsibility of the Board and once a license is issued it allows the holder to practice in any pharmacy setting. [Certain 'specialty' pharmacy practices do not expose practitioners to nuances of contemporary community or institutional practice and may create an uncomfortable practice environment for a 're-entering' pharmacist. In an effort to assure competent pharmacy practice, the Board, on a case by case basis evaluates to the best of their ability the status of practitioners seeking reentry to traditional pharmacy practice.]

Following an in-depth exchange between the Board and Mr. Sartor and **on motion by Mr. Jones and Mr. Ketcherside**, the Board voted to require a minimum of eight(8) weeks @ 40 hours per week of supervised (graduate intern) hours prior to licensure. Responding to a question from Mr. Sartor, staff stated that it was not necessary to pass the pharmacy jurisprudence examination prior to acquiring experiential hours.

President Draugalis declared a brief recess and reconvened the meeting at 10:12 a.m.

- #5 **Ester Ming-Chi Lee** appeared on her own behalf seeking permission to pursue an Arizona Pharmacist license by reciprocating her Illinois license. Ms. Lee provided a brief overview of her education as well as her practice history. The Board noted a number of unusual issues relating to her employment and licensure prior to moving to Arizona.

Ms. Lee provided information that clarified a number of questions from the Board, however some concerns were not satisfied. Following an in depth exchange between Ms. Lee and the Board and **on motion by Mr. McAllister and Mr. Jones**, the Board agreed without opposition to require 400 hours of graduate intern experience prior to allowing Ms. Lee to proceed in the licensure process.

- #6 **Stuart Gethner** appeared with his attorney seeking permission to reinstate his revoked pharmacist license. President Draugalis asked Mr. Gethner to provide the Board with a overview of the circumstances leading to the revocation of his license. Following Mr. Gethner's reply, President Draugalis asked him what has changed since that time. Mr. Gethner stated that 'he has changed', and added that family and friends have played a large part in his transition. Several board members directed questions to Mr. Gethner, in each case a brief, concise reply was offered. At the conclusion of their discussion and **on motion by Mr. McAllister and Mr. Ketcherside** the Board voted unanimously to reinstate Mr. Gethner's license upon completion of 400 hours of graduate internship *and* successfully passing both the NAPLEX and MPJE licensure examinations.
- #7 **Kevin McConnell**... Having requested permission to appear at the last three Board meetings, Mr. McConnell has failed to appear each time. During the course of this meeting, President Draugalis inquired several times if Mr. McConnell was present. Each time there was no response.

AGENDA ITEM IV - REPORTS

Executive Director's Report

Executive Director Lloyd directed Board Members to his written report included in the meeting book material and elaborated on items such as legislation status, Executive Director Search activities, calling attention to a March 31, 2003 Financial Report presented at the meeting and commenting on current rumors and concerns of possible 'consolidation' of presently independent regulatory agencies into an umbrella agency and the sweeping of 'carry forward funds' on deposit with the state treasurer. Mr. Lloyd inquired if the Board would authorize reimbursement for members and staff to attend the APA/AzSHP annual meeting 2003 at the early registration/member rate and to rent a display booth at the meeting to inform pharmacists for recent law and rule changes. **On motion by Mr. McAllister and Mr. Jones**, the Board voted unanimously to approve these items.

Deputy Director Wand called the Board's attention to the Compliance Officer Activity Report in the meeting book. Mr. Wand provided an overview of individual compliance officer and inspector recent activities. Mr. Wand mentioned the first Drug Therapy Management Collaborative Practice Application has been received, he indicated that a few areas of the application need revision but the request on file will be processed with minor additions.

Pharmacists Assisting Pharmacists of Arizona, Lisa Yates-Administrator appeared to present the PAPA report. Current statistics include: 39 active participants, 3 new participants, and one participant that completed the five year program. Ms. Yates offered to comment on any information contained in the written report distributed at this meeting and invited questions from the Board. In conclusion, President Draugalis thanked Ms. Yates for her dedication and service to the profession, the public and to the Board.

Arizona Pharmacy Association report was presented by Executive Director Kathy Boyle. Ms. Boyle provided a brief overview of major healthcare legislation either passed or being considered in the legislature and expressed concern for the possibility of regulatory consolidation and for sweeping the reserve funds from regulatory agencies. Ms. Boyle encouraged everyone present to attend the APA/AzSHP 2003 meeting being held in Tucson and indicated that board of pharmacy member Linda McCoy was to be named Pharmacist of the Year at the meeting.

Compounding Task Force report was presented by Board Member Bill Jones, a member of the task force. Mr. Jones thanked the member and staff participants for their dedication and excellent participation. Mr. Jones indicated that a 'draft' proposed rule revision should be presented at the June Board Meeting. Mr. Jones highlighted areas and topics that have been identified as needing revision. Board Members directed questions to Mr. Jones on the topic.

Practice of Pharmacy Task Force- Board Member Dennis McAllister indicated that there was nothing new since last month's meeting and indicated that a meeting will be held prior to the June Board meeting.

AGENDA ITEM V - REFUSAL TO FILL A PRESCRIPTION FOR RELIGIOUS/MORAL REASONS

Executive Director Lloyd presented a brief overview of the origin of this agenda item. He indicated that a legislator had inquired if the Board currently had a 'conscience clause' in its statute or rules. The legislator was interested in amending pharmacy board legislation being considered in the current legislative session to insert such a provision. Mr. Lloyd asked the Board's lobbyist to request that there be no amendments to the bill that may disrupt its progress and in turn Mr. Lloyd would present the topic to the Board at its next meeting.

Discussion was active and extensive among Board Members, following a thorough discussion, consensus was that such matters were sensitive and divisive subjects and are more practically addressed as 'policy' by individual pharmacy owners than by a state regulatory agency. Further, given the delicateness of government intervention in moral and religious issues the board agreed it was best to not become a party to such issues. The Arizona Pharmacy Association Executive Director offered to bring the issue to the association's board of directors for discussion.

President Draugalis declared a lunch break and reconvened the meeting at 1:30 p.m. Prior to returning to the agenda, President Draugalis recognized Board Member Dennis McAllister. Mr. McAllister advised the Board and the public that subsequent to interviewing for the position of Executive Director he has decided to withdraw his

candidacy and no longer pursue the position. Mr. McAllister extended his appreciation and gratitude to the Board and the interview team for their unbiased and professional conduct. President Draugalis acknowledged that such decisions were difficult and personal but felt that the Board and others would understand and accept Mr. McAllister's decision.

AGENDA ITEM VI - PROPOSED RULES

Compliance Officer/Rules Writer, Dean Wright began his report by distributing a 'preliminary draft' copy of revised Pharmacy Technician Rules that reflect provisions of recently passed legislation. Mr. Wright hastened to add that these rules were not an agenda item and therefore can not be discussed at this meeting...they simply are FYI.

Mr. Wright called the Board's attention to the "Timeframe Rules" R4-23-401. An open public comment session was held prior to the board meeting and there was no written or oral comment submitted in this matter. There were no questions from the Board, **on motion by Ms. McCoy and Mr. McAllister** the Board unanimously agreed to approve the Notice of Final Rule Making and Economic Impact Statement as presented.

In the matter of proposed rule changes to: R4-23-402, R4-23-408 and R4-23-609; Mr. Wright reported that pursuant to the discussion and suggestions from the Board at the last meeting, revisions to these proposed rules have been made accordingly. The Board thanked Mr. Wright for his efforts in revising the rules. Discussion centered on including a reference to HIPAA and clarification of 'separate and distinct' relevant to describing a patient counseling area. Recognizing that additional revision is necessary, no action was taken on these proposed rules at this time.

AGENDA ITEM VII - CONSUMER COMPLAINT REVIEW

The Consumer Complaint Review Committee met prior to the Board meeting to review 13 consumer complaints in preparation for making recommendations to the Board for final resolution. Members McCoy and Drake served as the review committee. Ms. McCoy provided a summary of each complaint and provided the committee's recommendation to the Board. Board Members were encouraged to ask questions. Following the presentations and discussion the Board voted on each complaint individually. The following summary represents the final decision of the Board in each complaint; these decisions were memorialized **on motion by Mr. Ketcherside and Mr. Jones** and unanimously approved by the Board.

- Complaint # 2621 - No Further Action
- Complaint # 2629 - Letter of Warning
- Complaint # 2630 - Letter of Warning to Pharmacist #1
- Complaint # 2632 - Appear before the Board
- Complaint # 2633 - Appear before the Board
- Complaint # 2634 - Appear before the Board
- Complaint # 2636 - Appear before the Board
- Complaint # 2637 - Letter of Warning (Include note on expiration date)
- Complaint # 2638 - This complaint was withdrawn
- Complaint # 2640 - No Further Action
- Complaint # 2641 - Letter of Warning, regarding comments made concerning MD and commendation for recognizing a excessive dose on the prescription
- Complaint # 2642 - No Further Action
- Complaint # 2646 - No Further Action

AGENDA ITEM VIII - CONFERENCES

COMPLAINT # 2617

President Draugalis called George Weyers, RPh; Tuan Thanh Tran, RPh; and supervisor Ken Cross to address the Board relevant to their role and recollection in this consumer complaint. Compliance Officer Mitzi Wilson

presented a summary of her investigation. President Draugalis asked Mr. Weyers to present events leading to this complaint as he remembers them. Mr. Weyers initial comment was that he has no recollection of being rude to the patient and that consequent to this incident he is carefully reviewing both the front and the back of all pre-entered prescriptions before filling them. Questions to Mr. Tran included...does the computer provide an alert for dosages dispensed for children that are excessive and does the pharmacist review all computer alerts?

In concluding this conference, President Draugalis mentioned that two RPh's were involved in dispensing this prescription and neither caught the potential overdose. Both were encouraged to use extra caution in dispensing prescriptions for children.

COMPLAINT # 2624

Pharmacist Kermit Thompson, Pharmacy Technician Quintin Martinez and supervisor Ken Cross were present relevant to a consumer complaint. Compliance Officer Mitzi Wilson was requested to describe the findings of her investigation. Mr. Thompson provided his recollection of the incident by stating that he failed to confirm the accuracy of the directions and stated that there was no excuse for this happening. Technician Martinez stated that he no longer is employed by this pharmacy, however he has always prided himself on being accurate and he feels badly that he was involved in this unfortunate occurrence .

Following the testimony of the conferees and the compliance officer report and **on motion by Mr. McAllister and Mr. Jones**, the Board voted unanimously to discontinue the conference and to reschedule this matter as a formal hearing/consent agreement that includes a fine and other appropriate measures.

COMPLAINT # 2628

President Draugalis called pharmacist Michelle Hong and supervisor Matt Cook to address the Board pursuant to a consumer complaint. Compliance Officer Sheryl Frush was present to report the findings of her investigation. President Draugalis asked Ms. Hong to discuss the events leading to this discussion. Ms. Hong reported the events as she remembered them....stating that several confounding and unusual circumstances were part of the episode. Among them a prescription written for a drug strength that is not marketed, a patient that insisted that the Rx be transferred to another pharmacy and the inability to contact a physician at the time.

On conclusion of Ms. Hong's dialog, President Draugalis asked her what has changed in her practice to prevent this from happening again. Ms. Hong stated that she would not transfer a prescription with defects and would instead wait for the physician to clarify the issue. At the conclusion of the discussion, President Draugalis requested the staff to have Roger Brubaker appear at the June meeting to discuss his role in this incident.

President Draugalis announced the meeting would be recessed until 8 a.m. Thursday April 24 and further that the open public session on the 24th would be brief , followed by an executive session to discuss personnel matters.

President Draugalis reconvened the meeting at 8:00 a.m. with the following members and staff present. Vice President, Dennis McAllister, William E. Jones, Daniel Ketcherside, Linda McCoy and 'member-designate' Charles Dutcher; Compliance Officers Ed Hunter, Cheryl Frush, Mitzi Wilson, Larry Dick and Dean Wright, Inspector Tony Salcido, Deputy Director Hal Wand and Executive Director L. A. Lloyd.

AGENDA ITEM IX - LEGISLATION 2003 SESSION-UPDATE

President Draugalis called on Executive Director Lloyd to summarize the status of the Board's legislative requests. Lloyd simply stated the both of the Board's legislative requests have been approved by the legislature and have been signed by the governor. SB1300-controlled substance changes will become effective 90 days after the legislature adjourns and SB1301-revisions to the pharmacy practice act became effective April 17th , the day the governor signed the bill. A frequently asked question is when will pharmacy technicians begin licensing... administrative rules still need to be passed and that process takes a minimum of six months. Staff hopes to have everything in order to license pharmacy technicians prior to the November 1, 2003 uniform biennial license/permit renewal date.

AGENDA ITEM X - ARIZONA BOARD OF PHARMACY 100 YEAR ANNIVERSARY

Once again President Draugalis invited Mr. Lloyd to address this agenda item. Mr. Lloyd directed the attention of the audience and the board members to the display and roster of past/present board members and encourages everyone to view the displays and to savor the opportunity to reflect on the 'roots' and the 'pioneers' of pharmacy and public health protection in Arizona. No official board action was taken on this topic.

AGENDA ITEM XI - NATIONAL ASSOCIATION OF BOARDS OF PHARMACY

Two pertinent and timely issues were the topic of information and discussion in this agenda item: the annual NABP meeting and the proposed revisions/additions to the NABP Constitution and By Laws. Comments from Board Member Dennis McAllister and Director Lloyd helped to familiarize board members with the complexity and scope of these controversial topics. No official board action was taken on this topic.

AGENDA ITEM XII - EXECUTIVE SESSION

On motion by Mr. Ketcherside and Ms. McCoy, the board unanimously agreed to recess the open meeting and reconvene in Executive Session for the purpose of discussing personnel matters...the report and discussion by the executive director candidate screening panel.

Upon conclusion of the executive session at 10:10 a.m. President Draugalis reconvened the Board in open public session. **On motion by Mr. Ketcherside and Mr. Jones** the Board by majority vote authorized President Draugalis to offer the position of Executive Director, to Deputy Director Hal Wand.

AGENDA ITEM XIII - CALL TO THE PUBLIC

President Draugalis 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 such issues because the issues did not appear on the meeting agenda. There were NO comments from the audience at this meeting.

There being no further business to come before the board, **on motion by Ms. McCoy and Mr. Ketcherside**, the board unanimously agreed to adjourn at 10:20 a.m.