



Arizona State Board of Pharmacy
1700 W. Washington, Suite 250
Phoenix, AZ 85007
Telephone (602) 771-2727 Fax (602) 771-2749

**THE ARIZONA STATE BOARD OF PHARMACY
HELD A REGULAR MEETING May 6 AND 7, 2009
AT THE ARIZONA STATE BOARD OF PHARMACY OFFICE
PHOENIX, AZ**

MINUTES FOR REGULAR MEETING

AGENDA ITEM 1 – Call to Order – May 6, 2009

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, Joanne Galindo, Steven Haiber, Dan Milovich, and Tom Van Hassel. The following Board Members were not present: Louanne Honeyestewa and Paul Sypherd. The following staff members were present: Compliance Officers Rich Cieslinski, Ed Hunter, and Larry Dick, Drug Inspector Heather Lathim, Deputy Director Cheryl Frush, Executive Director Hal Wand, and Assistant Attorney General Elizabeth Campbell.

AGENDA ITEM 2 – Reappointment of Board Member – Tom Van Hassel

President McAllister announced that Governor Brewer has reappointed Mr. Van Hassel as a Board Member for an additional five-year term.

AGENDA ITEM 3 – Declaration of Conflicts of Interest

Due to a conflict of interest, Dr. Berry recused herself from participating in the review, discussion, and proposed action concerning Agenda Item 13, Schedule E, Conferences for Complaint #3593, Complaint #3622, and Complaint #3623.

Due to a conflict of interest, President McAllister recused himself from participating in the review, discussion, and proposed action concerning Agenda Item 6, Schedule B, Consent Agreement for Rebecca (Marki) Shaw.

Due to a conflict of interest, President McAllister recused himself from participating in the review, discussion, and proposed action concerning Agenda Item 7, Schedule C, Special Request for Rebecca (Marki) Shaw.

AGENDA ITEM 4 – Approval of Minutes

Following a review of the minutes and an opportunity for questions and **on motion by Mr. Haiber and seconded by Mr. Van Hassel**, the minutes of the Regular Meeting held on March 18, 2009 were unanimously approved by the Board Members.

AGENDA ITEM 5– 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.

Mortar and Pestle

Lauren Driebe, Owner and Pharmacist in Charge, was present to answer questions from Board Members.

President McAllister opened the discussion by asking Ms. Driebe to describe the nature of her business. Ms. Driebe stated that her pharmacy would specialize in compounding.

Mr. McAllister asked Ms. Driebe if she owned a pharmacy in the past. Ms. Driebe stated that she owned a traditional pharmacy in Georgia.

Mr. McAllister asked Ms. Driebe if she was going to be the Pharmacist in Charge. Ms. Driebe replied yes.

Mr. Van Hassel asked Ms. Driebe if she would be doing any sterile compounding. Ms. Driebe replied no.

Mr. Van Hassel asked Ms. Driebe if the pharmacy she owned in Georgia was a compounding pharmacy. Ms. Driebe stated that the pharmacy was a more traditional pharmacy. Ms. Driebe stated that she did some compounding at this pharmacy.

Mr. Van Hassel asked Ms. Driebe if this pharmacy would be exclusively for compounding medications. Ms. Driebe replied yes.

Mr. Van Hassel asked Ms. Driebe what products she would be compounding. Ms. Driebe stated that she would be compounding medications for HRT, pain, hospice, and dermatology patients.

Mr. Van Hassel asked Ms. Driebe if she would be filling any internet prescriptions. Ms. Driebe replied no.

Mr. Van Hassel asked Ms. Driebe if the patient would be able to bring the prescription to the pharmacy and wait for the prescription. Ms. Driebe replied that most prescriptions would be ready in 24 hours.

Mr. Van Hassel asked Ms. Driebe if she planned to provide any medications to physician offices. Ms. Driebe replied no. Ms. Driebe stated that she would be filling prescriptions for patients only. Ms. Driebe stated that she may do some veterinary compounding for office use.

At the conclusion of questions from the Board Members and **on motion by Mr. Haiber and seconded by Dr. Berry**, the Board unanimously approved the resident permits listed below. All approvals are subject to final inspection by a Board Compliance Officer where appropriate.

RESIDENT (In Arizona)

Pharmacy	Location	Owner
Wal-Mart Pharmacy #10-4543	100 Riverside Dr., Parker, AZ 85344	Wal-Mart Stores, Inc.
Walgreens #02209	11420 S. Fortuna Rd., Yuma, AZ 85637	Walgreen Arizona Drug Co.
Mortar and Pestle	2708 N. Fourth St., Suite C-2, Flagstaff, AZ 86004	Lauren Driebe
Wilmot Pharmacy 2	6369 E. Tanque Verde Rd. #165, Tucson, AZ 85715	Diversified Pharmacy Solutions, LLC
Red Mountain Pharmacy	6828 E. Brown Rd. Ste 2A, Mesa, AZ 85207	Dawn Hoang
Bashas' United Drug #174	9890 S. Estrella Pkwy., Goodyear, AZ 85338	Bashas' Inc.
Walgreens #12087	13723 N. Litchfield Rd., Surprise, AZ 85379	Walgreen Arizona Drug Co.

Non-Resident Permits

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

On motion by Dr. Berry and seconded by Dr. Smidt, the Board unanimously approved the non – resident permits listed below.

NON-RESIDENT (Out of State)

Pharmacy	Location	Owner
Pharmacy Incorporated	82 Spruce St, Murray, KY 42071	Aerocare Holdings
WellDyne Rx-FL	500 Eagles Landing Dr., Lakeland, FL 33810	WellDyne Rx, Inc.
Benecard Central Fill of PA, LLC	5040 Ritter Rd., Mechanicsburg, PA 17055	Benecard Central Fill of PA, LLC
Excelle Rx	1601 Cherry St., Suite 1700, Philadelphia, PA 19102	excelleRx, Inc.
Orchard Pharmaceutical Services	7835 Freedom Ave., NW, North Canton, OH 44720	Orchard Pharmaceutical Services, Inc.
Fred's Pharmacy #2306	5016 Summer Ave., Memphis, TN 38122	Fred's Stores of Tennessee, Inc.
Preferred Rx, LLC	1221 Corporate Dr. East, Arlington, TX 76006	Preferred Rx, LLC
American Homecare Federation, Inc.	31 Moody Rd., Enfield, CT 06082	American Homecare Federation, Inc.

Wholesaler Permits

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

On motion by Dr. Berry and seconded by Dr. Smidt, the Board approved the resident wholesale permits listed below. All permits are subject to final inspection by a Board Compliance Officer where appropriate.

Wholesaler	Location	Owner
Medicis Aesthetics, Inc. (Full Service)	7720 N. Dobson Rd., Scottsdale, AZ 85256	Medicis Pharmaceutical Corp.
Ucyclyd Pharma, Inc. (Full Service)	7720 N. Dobson Rd., Scottsdale, AZ 85256	Medicis Pharmaceutical Corp.
Medicis, The Dermatology Company (Full Service)	7720 N. Dobson Rd., Scottsdale, AZ 85256	Medicis Pharmaceutical Corp.
SedonaRx (Full Service)	55 Shelby Drive, A-4, Sedona, AZ 86336	Steve Livanavage

Manufacturer Permits

President McAllister stated that all permits were in order for manufacturer permits.

On motion by Dr. Smidt and seconded by Mr. Haiber, the Board unanimously approved the manufacturer permit listed below. All approvals are subject to final inspection by a Board Compliance Officer where appropriate.

Manufacturer	Location	Owner
Specialty Health Products, Inc.	21636 N. 14 th Ave., Suite A-1, Phoenix, AZ 85027	Specialty Health Products, Inc.

Pharmacists, Interns, Pharmacy Technicians, and Pharmacy Technician Trainees

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

On motion by Dr. Berry and seconded by Dr. Smidt, the Board unanimously approved the Pharmacists licenses listed on the attachments, the Intern licenses listed on the attachments, and the Pharmacy Technician and Pharmacy Technician Trainee licenses listed on the attachments.

AGENDA ITEM 6 – Consent Agreements

President McAllister 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. Haiber and seconded by Dr. Smidt, 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.

Terri Lyman	-	09-0027-PHR
Christel Bird	-	09-0028-PHR
Rakesh Daram	-	09-0030-PHR
Marla Armes	-	09-0031-PHR
Darrell Hendershot	-	09-0033-PHR
Mark McKee	-	09-0043-PHR
Jeffrey McKinney	-	09-0049-PHR

Due to a conflict of interest, President McAllister turned the meeting over to Vice President Smidt to approve the following consent. Mr. McAllister recused himself from participation due to a conflict of interest.

On motion by Mr. Haiber and seconded by Mr. Van Hassel, the Board unanimously agreed to accept the following consent agreement as presented in the meeting book and signed by the respondent. The consent agreement is listed below.

Rebecca Shaw Marki	-	09-0052-PHR
--------------------	---	-------------

AGENDA ITEM 7– Special Requests

#1 Mark McKee

Mark McKee appeared on his own behalf to request that the suspension imposed on his pharmacist license per Board Order 09-0043-PHR be terminated and probation be imposed. Lisa Yates with the PAPA program was present. Barry Mitchell, Legal Counsel for Mr. McKee was also present.

President McAllister opened the discussion by asking Mr. McKee to describe the nature of his request. Mr. McKee stated that he is requesting that his suspension be terminated and his license placed on probation.

Mr. McAllister asked Mr. McKee if he is currently working. Mr. McKee stated that he is working at CVS/Caremark as a supervisor in the call center area.

Mr. McAllister asked Mr. McKee if he takes any calls related to patient care. Mr. McKee replied no.

Mr. McKee stated that he is involved in call auditing and is involved in disciplinary issues. Mr. McKee stated that he deals with issues such as tardiness.

Mr. McAllister stated that the job description stated that a BS or PharmD is preferred. Mr. McKee stated that he works with other supervisors without degrees.

Mr. McAllister asked Ms. Yates about Mr. McKee's progress in the PAPA program. Ms. Yates stated that Mr. McKee completed his inpatient program and signed his PAPA contract. Ms. Yates stated that Mr. McKee has been compliant.

Mr. McAllister asked Mr. McKee how long he has worked at CVS/Caremark. Mr. McKee stated that he has worked there for 5 months.

Mr. McAllister asked Mr. McKee where he worked previously. Mr. McKee stated that he worked at Walgreens.

Mr. Wand stated that there is a letter from his PAPA counselor in the book.

Mr. Wand asked Mr. McKee if there are drugs present at the site where he is working. Mr. McKee replied no.

Mr. Haiber asked if the site is a licensed site with the Board. Mr. Wand replied yes.

Mr. Milovich asked Mr. McKee to describe his road to recovery. Mr. McKee stated that he attends PA and NA meetings. Mr. McKee stated that he has completed 16 hours of Continuing Education on drug abuse and diversion.

Mr. McKee stated that he has helped a friend remodel a house that now serves as a halfway house. Mr. McKee stated that there are now five residents at the house.

Mr. Milovich asked Mr. McKee if he is actively involved at the halfway house. Mr. McKee stated that he is not actively now, but was involved with the remodeling.

On motion by Mr. Van Hassel and seconded by Mr. Milovich, the Board unanimously agreed to approve Mr. McKee's request to terminate the suspension of his pharmacist license and impose probation.

#2 Rebecca Marki Shaw

Rebecca Marki Shaw appeared on her own behalf to request that the suspension imposed on her technician license per Board Order 09-0052-PHR be terminated and probation be imposed. Lisa Yates with the PAPA program was present. Julian Pickens, Counselor for the PAPA program, was also present.

Due to a conflict of interest, President McAllister turned the meeting over to Vice President Smidt to conduct the discussion concerning this request. Mr. McAllister recused himself from participation due to a conflict of interest.

Vice President Smidt opened the discussion by asking Ms. Shaw to describe the nature of her request. Ms. Shaw stated that she is asking the Board to terminate her suspension and impose probation.

Dr. Smidt asked Ms. Shaw to describe why her license was suspended. Ms. Shaw stated that she was addicted to prescription medications and was diverting medications. Ms. Shaw stated that she sought help for her addiction and was referred to Dr. Pickens. Ms. Shaw stated that she completed her inpatient treatment at Chandler Valley Hope and is currently enrolled in the PAPA program.

Mr. Wand stated that Ms. Shaw appeared at the Board Meeting in March. At that time, the Board suspended her technician license until the next Board meeting. Mr. Wand stated that she was to appear at this meeting and provide the Board with a report of her

progress. Mr. Wand indicated that suspensions are usually six months in length but the Board has the option to determine the length of suspension.

Mr. Pickens stated that Ms. Shaw completed her inpatient treatment at Chandler Valley Hope. Mr. Pickens stated that Ms. Shaw enrolled in PAPA. Mr. Pickens stated that Ms. Shaw is attending meetings and actively involved in 12-step programs.

Mr. Pickens stated that Ms. Shaw would like to have her license back because she is a single parent and finances are an issue.

Dr. Smidt asked Ms. Yates about Ms. Shaw's participation in the PAPA program. Ms. Yates stated that Ms. Shaw signed her PAPA contract on April 16, 2009.

Mr. Van Hassel asked Ms. Shaw when the first problem occurred. Ms. Shaw stated that she was working at Fry's and lost her job due to diversion in 2008.

Mr. Van Hassel asked Ms. Shaw if she had an issue with diversion at a second job. Ms. Shaw stated that she was working at Humana and diverted tramadol. Ms. Shaw stated that she was seeing Dr. Pickens at the time. Ms. Shaw stated that she realized that she had a disease and reported to Mr. McAllister that she had diverted tramadol and as a result her employment was terminated.

Mr. Van Hassel asked Ms. Shaw if she is currently working. Ms. Shaw replied no that she has recently completed her inpatient treatment.

Mr. Van Hassel asked Ms. Shaw about her recovery. Ms. Shaw stated that she attends three to four meetings a week. Ms. Shaw stated that she is working the 12-step program. Ms. Shaw stated that she recognized that she has a disease and is using what she has learned to help her in her recovery.

Mr. Wand asked Ms. Shaw how her diversion was discovered at Humana. Ms. Shaw stated that she confessed voluntarily.

Dr. Berry asked Ms. Shaw if she has a prospective job. Ms. Shaw stated that she does not want to go back to a pharmacy environment where there are pills. Ms. Shaw stated that she would like to work at a mail order facility or call center.

Mr. Haiber asked Ms. Shaw if she worked in the dispensing area at Humana. Ms. Shaw replied yes.

Dr. Berry asked if practice limitations could be imposed.

Ms. Campbell stated that there were no practice restrictions in the approved consent. Ms. Campbell stated that the Board could consider an amendment to the consent agreement limiting her practice.

Mr. Milovich asked if she had a plan if the Board did not approve her request. Ms. Shaw stated that she would be starting nursing school in July. Ms. Shaw stated that at this time she has not looked at other options.

On motion by Mr. Van Hassel and seconded by Mr. Haiber, the Board unanimously agreed to deny the request by Ms. Shaw to terminate the suspension of her technician license and impose probation.

Vice President Smidt told Ms. Shaw that he also feels that there has not been enough time. Dr. Smidt stated that she is taking the right steps and she is encouraged to come back to the Board with her request at a future Board meeting.

AGENDA ITEM 8 – License Applications Requiring Board Review

#1 David Westenfelder

Mr. Westenfelder was not present and the Board tabled the request.

#2 Levi Manuel

Levi Manuel appeared on his own behalf to request to proceed with Pharmacy Technician Trainee licensure.

President McAllister opened the discussion by asking Mr. Manuel why he was appearing in front of the Board. Mr. Manuel stated that he would like to be licensed as a pharmacy technician trainee. Mr. Manuel stated that he was convicted of a Class 6 Felony last year. Mr. Manuel stated that the incident occurred three years ago.

Mr. Manuel stated that he would like to go to school to become a pharmacy technician and would need to be licensed to attend school.

Mr. McAllister stated that Mr. Manuel's conviction had nothing to do with substance abuse.

Mr. Manuel stated that he has brought a letter from his probation officer explaining his charges.

Mr. Van Hassel asked Mr. Manuel if he had a job lined up. Mr. Manuel replied no.

Mr. Van Hassel asked Mr. Manuel why he wanted to be a pharmacy technician trainee. Mr. Manuel stated that he found the field interesting and would like to go to school to become a technician.

Mr. Wand stated that some schools require the student to be licensed prior to attending school. Mr. Wand asked Mr. Manuel where he would be attending school. Mr. Manuel stated that he would like to attend Apollo or Everest.

Mr. Milovich asked Mr. Manuel how often he reports to his probation officer. Mr. Manuel replied that he reports every three months.

Mr. Milovich asked Mr. Manuel what activities he is involved in. Mr. Manuel stated that he is involved in activities at his church. Mr. Manuel stated that he works for a friend because it is difficult finding a job when you are on probation.

On motion by Mr. Van Hassel and seconded by Dr. Berry, the Board unanimously agreed to approve Mr. Manuel's request to proceed with Pharmacy Technician Trainee licensure.

#3 David Yang

Mr. Yang was not present and the Board tabled the request.

#4 Philip Franklin

Philip Franklin appeared on his own behalf to request to proceed with reciprocity.

President McAllister opened the discussion by asking Mr. Franklin why he was appearing in front of the Board. Mr. Franklin stated that he would like to apply for reciprocity in Arizona and his license was disciplined by the Michigan Board in 1982. Mr. Franklin stated that he wants to work in Arizona.

Mr. McAllister asked Mr. Franklin to describe the nature of his discipline. Mr. Franklin stated that he was charged with distributing methamphetamine. Mr. Franklin stated that his pharmacist license was revoked then reinstated on a limited basis. Mr. Franklin stated that his license was then returned to full status. Mr. Franklin stated that he holds licenses in Ohio and Michigan. Mr. Franklin stated that he works for a staffing agency and works in Michigan and Ohio for the agency. Mr. Franklin stated that he is also applying for licensure in Indiana because the staffing agency has assignments available in Indiana. Mr. Franklin stated that he hopes to retire in Arizona.

Dr. Smidt asked Mr. Franklin if he filled the prescriptions for economic gain or was he using the medications. Mr. Franklin stated that he filled the prescriptions for profit.

On motion by Mr. Van Hassel and seconded by Mr. Haiber, the Board agreed to allow Mr. Franklin to proceed with licensure. A roll call vote was taken. (Ms. Galindo – nay, Dr. Berry- aye, Mr. Milovich – aye, Mr. Van Hassel – aye, Mr. Haiber – aye, Dr. Smidt – nay, and President McAllister – aye).

#5 Jeffrey Liberman

Jeffrey Liberman appeared on his own behalf to request to proceed with reciprocity. Christine Cassetta was present as Legal Counsel for Mr. Liberman.

President McAllister opened the discussion by asking Mr. Liberman why he was appearing in front of the Board. Mr. Liberman stated that he would like to apply for reciprocity in Arizona.

Mr. McAllister asked Mr. Liberman to describe the disciplinary actions taken against his licenses. Mr. Liberman stated that he was disciplined by the California Board due to diversion of controlled substances. Mr. Liberman stated that his license was revoked but the revocation was stayed. Mr. Liberman stated that his license was later reinstated after he met certain conditions. Mr. Liberman stated that he left California and moved to Virginia. Mr. Liberman stated that he was disciplined by the Virginia Board because he dispensed Endocet when the prescription was written for Percocet. The prescription was

to be dispensed as written. Mr. Liberman stated that the Pharmacy Manager had called the Board and reported him. Mr. Liberman stated that he did not call the doctor to get authorization for the substitution, but did tell that patient that Endocet was the same as the Percocet and was made by the same company.

Dr. Berry asked Mr. Liberman if he has a job in Arizona. Mr. Liberman stated that he works for CVS and talked to a CVS Pharmacy Supervisor about a year ago. Mr. Liberman stated that he currently works for CVS full-time and works for Wal-Mart part-time.

On motion by Mr. Milovich and seconded by Dr. Smidt, the Board unanimously agreed to allow Mr. Liberman to proceed with reciprocity.

#6 Brandee Provo

Brandee Provo submitted a written request to withdraw her request to reinstate her Pharmacy Technician license.

President McAllister opened the discussion by stating that Ms. Provo has requested that the Board allow her to withdraw her request to reinstate her Pharmacy Technician license.

Dr. Berry asked Ms. Campbell if Ms. Provo could at a later date request that her license be reinstated again.

Ms. Campbell stated that Ms. Provo could reapply again and the Board could deny her request citing the reasons why they wanted to deny her request.

On motion by Dr. Smidt and seconded by Mr. Milovich, the Board unanimously agreed to allow Ms. Provo to withdraw her request to reinstate her Pharmacy Technician License.

AGENDA ITEM 9 – Medco- Deviation Request for R4-23-1104(A) (4)

The following individuals were present to discuss Medco's project to expand their work at home project to include technicians: Nevin Okay (Senior Director of Pharmacy Practice), Bryan Olenik (Pharmacist in Charge- Arizona site), and Jeff Sinko (Corporate Legal Counsel).

President McAllister asked the representatives to discuss their deviation request. Mr. Okay opened the discussion by stating that in 2006 the Board approved Medco pharmacists to work remotely from their homes. Mr. Okay stated that Medco would like to expand that program to include pharmacy technicians.

Mr. Okay briefly described the prescription fulfillment process. Mr. Okay stated that the technicians would enter patient and doctor information and required prescription elements.

Mr. Okay stated that all data is encrypted and no data resides on the remote computer. Mr. Okay stated that the system security is a three level system. Mr. Okay stated that each individual is assigned a unique user ID. The individual then selects a password. The final security feature is a biometric fingerprint system. Mr. Okay stated that all three levels must be authenticated. Mr. Okay stated that if the system detects no activity, then the technician would be locked out of the system until they complete the sign on process.

Mr. Okay stated that they have quality assurance monitoring software that allows the supervisor to monitor the employees. Mr. Okay stated that they have complete auditing capabilities on all transactions.

Mr. McAllister asked how long the technician must be inactive before they are locked out of the system. Mr. Olenik replied they are locked out after 5 minutes.

Mr. McAllister asked who would supervise the technicians working at home. Mr. Olenik stated that he would be supervising and monitoring the technicians that work at home.

Mr. Haiber asked if the technicians would be able to look up the patient's profile. Mr. Okay stated that the prescription would come to the technician as an image and they would be responsible for translating the prescription. Mr. Okay stated that they would have the previous fill information available.

Mr. McAllister asked if the technician chooses the patient. Mr. Okay stated that the patient is selected in header entry. Mr. Okay stated that in this step the individual ties the image and the patient together.

Mr. Haiber asked how long the records are retained for auditing purposes. Mr. Okay stated that some records, such as keystroke records, are kept for 60 days and other records are kept indefinitely.

Mr. Haiber asked how long the transaction records are kept. Mr. Sinko stated that the records are kept for 10 years.

Dr. Smidt asked if the individuals that do the header matching are licensed technicians. Mr. Sinko stated that in some states they are licensed and in other states they are not licensed.

Mr. Haiber asked if they monitor individuals using a camera. Mr. Okay stated that they do have the camera available, but sometimes they have bandwidth issues.

On motion by Dr. Berry and seconded by Mr. Haiber, the Board unanimously agreed to grant the request by Medco to deviate from R4-23-1104 (A) (4) which would allow pharmacy technicians to work at home entering prescription data based on experimental and technological advances.

AGENDA ITEM #10 – Daniel O'Connor – Case #09-0034-PHR

Mr. O'Connor and his attorney, Susan Trujillo, were present to request that the Board reconsider the Board's decision concerning the disciplinary action imposed as a result of a consumer complaint.

President McAllister asked the respondents if they would like to address the Board. Mr. O'Connor stated that he would like the Board to reconsider the disciplinary action imposed by the Consent Order he received. Mr. O'Connor stated that he dispensed Amlodopine 5mg tablets instead of Amlodipine/Benazepril 5/10 mg. Mr. O'Connor stated that the patient did not take any of the wrong medication. Mr. O'Connor stated that the correct medication was dispensed to the patient. Mr. O'Connor stated that he would like the Board to dismiss the complaint or issue a non-disciplinary advisory letter.

Mr. McAllister asked on what basis the Board should reconsider this request. Mr. O'Connor stated that he feels that the case merits reconsideration. Ms. Trujillo stated that the patient did not take any of the incorrect medication. Ms. Trujillo stated that in previous cases of a similar nature the pharmacist was issued a non-disciplinary advisory letter. Ms. Trujillo stated that Mr. O'Connor has completed two units of Continuing education on prescription errors.

Dr. Smidt asked Mr. O'Connor if he counseled the patient. Mr. O'Connor stated that he does not believe that he counseled the patient.

Dr. Smidt asked Mr. O'Connor if he would say the name of the drug when he counseled the patient. Mr. O'Connor stated that he would say the name of the drug when he counseled the patient but it may have been hard to catch the error since it was a combination drug.

Mr. McAllister asked if someone from the complaint committee could address the decision. Dr. Berry stated that the committee is trying to be consistent if the patient does not ingest the medication the pharmacist is fined \$500.00.

Mr. O'Connor stated that the financial portion of the consent is not an issue. Mr. O'Connor stated that he has been a pharmacist for a long time and the disciplinary action against his license is the issue.

Mr. O'Connor stated that he has completed Continuing Education units and feels the action is extreme. Mr. O'Connor stated that he is asking the Board to reconsider their decision.

Mr. Van Hassel stated that he feels that the Board has considered the case and does not see any reason to reconsider the case.

President McAllister stated that the Board has reviewed the complaint and offered a Consent Agreement as a measure to resolve the complaint. Mr. McAllister stated that Mr. O'Connor can either sign the Consent Agreement or request to take the case to hearing.

AGENDA ITEM #11 – Peter Chang – Request to extend his Intern license and take the MPJE exam for the fourth time

Peter Chang appeared on his own behalf to request that the Board extend his Intern license and allow him to take the MPJE exam for the fourth time.

President McAllister opened the discussion by asking Mr. Chang to explain the nature of his request. Mr. Chang stated that he would like the Board to extend his Intern license so that he may work in a pharmacy while he studies for the MPJE exam. Mr. Chang stated that he would also like permission to take the MPJE exam for the fourth time.

Mr. McAllister asked Mr. Chang if he passed the NAPLEX exam. Mr. Chang stated that he passed the NAPLEX exam. Mr. Chang stated that he initially did not pass the MPJE exam. Mr. Chang stated that he was involved in a car accident and one of the passengers was killed in the accident. Mr. Chang stated that he took the exam two times after the accident but flunked the exam two additional times.

Mr. McAllister asked Mr. Chang when he last worked in a pharmacy. Mr. Chang stated that he last worked in a pharmacy in 2007.

Mr. McAllister asked Mr. Chang if he was asking for his intern license to be extended due to personal issues. Mr. Chang stated that after the accident he was focused on the case because of the victim's death. Mr. Chang stated that he entered rehabilitation for mental issues because of the victim's death. Mr. Chang stated that he was depressed and started drinking alcohol.

Mr. Van Hassel asked Mr. Chang if he had studied prior to taking the exam. Mr. Chang stated that he studied but his focus was not on pharmacy but on the pending case.

Mr. Van Hassel asked Mr. Chang if he is prepared to take the exam now. Mr. Chang stated that he has studied for the exam. Mr. Chang stated that he is taking the Kaplan course and has bought some books to help him review the law.

Mr. Chang stated that he would like the Intern license to work while he studies for the exam.

Mr. Haiber asked Mr. Chang if he still uses alcohol. Mr. Chang stated that he has not been drinking since 2008 when he entered a rehab program.

Mr. Haiber asked Mr. Chang if he completed his internship program. Mr. Chang replied yes.

Dr. Smidt asked Mr. Chang if he considers himself an alcoholic. Mr. Chang replied no. Mr. Chang stated that he drank a lot and it did affect his daily life. Mr. Chang stated that he did not drink on the job. Mr. Chang stated that he often dozed off at work. Mr. Chang stated that he entered a Christian rehabilitation program and that helped him resolve the problems with his alcohol use.

Mr. Haiber asked Mr. Chang about his statement that he dozed off at work. Mr. Chang stated that he was not sleeping well due to his concern about the case.

Ms. Campbell stated that the Board could not extend his Intern license.

Mr. Wand stated that the Mr. Chang could apply for a Graduate Intern license.

On motion by Mr. Van Hassel and seconded by Dr. Berry, the Board unanimously agreed to allow Mr. Chang to sit for the MPJE exam for a fourth time.

AGENDA ITEM 12 - Reports

Executive Director Report

Budget Issues

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

Mr. Wand stated that documents show that we are currently 8% under budget.

Mr. Wand stated that at the end of June the Board would have a balance of \$180,000 to \$230,000. Mr. Wand stated that the rent could be delayed and not paid at the beginning of the new fiscal year.

Mr. Wand stated the he has received a draft plan from the Joint Legislative Budget Committee (JLBC) listing a loan of \$200,000 to be paid to the Board. Mr. Wand stated that he is not certain what the loan requirements would entail.

Mr. Wand stated that an application has been submitted to obtain a grant for the Prescription Monitoring Program.

Mr. Wand stated that the Budget would be impacted for every database change that needs to be made. Mr. Wand stated that when the state changed vendors for the database the new vendor is charging for every database change.

Mr. Wand stated that the Board has sent letters to Non-Prescription retailers that did not renew their permit. Mr. Wand stated that some permittees have claimed that they did not receive a renewal notice and have subsequently renewed their permit.

Mr. Wand stated that he would not be able to attend the July meeting in Tucson because he would be attending a meeting of the NABP Executive Committee.

Deputy Director Report

Ms. Frush reviewed the Compliance Officers Activity Report and Drug Inspector Activity Reports with the Board Members.

During the months of February and March, the Compliance Staff issued letters for the following violations:

Controlled Substance Violations

1. Controlled Substance Overage – 4
2. Controlled Substance Shortage –1
3. Controlled Substance Inventory incomplete upon change of Pharmacist in Charge - 1
4. Failure to conduct Annual Controlled Substance Inventory - 3
5. Failure to conduct a Controlled Substance inventory upon change of Pharmacist in Charge – 1
6. Controlled Substance Inventory not available – 2

7. Inaccurate Controlled Substance Inventory count (counted bottles) – 1
8. Invoices not readily retrievable – 1
9. DEA 222 forms not completed - 1

Documentation Violations

1. Failure to Document Medical Conditions – 6
2. Failure to Document Allergies - 3
3. Failure to sign daily log - 1
4. Failure to document counseling – 3
4. Failure to have required technician statements signed – 2
5. Failure to document automated dispensing machine maintenance - 1
6. Failure to have required immunization documentation - 1

Dispensing Violations

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

Pharmacy Violations

1. Allowing technician to work with an expired license - 5
2. Failure to have technicians sign training documentation -1
3. Current license not available in the pharmacy – 1
4. Allowing a technician to unlock the pharmacy - 1

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

1. Documentation of Counseling
2. Checking of licenses to be sure that they are current

Areas outside the inspection reports that may be of interest:

1. CE units are required for both technicians and pharmacists.
2. Physicians cannot write controlled substance prescriptions for their own use or for immediate family members. (Medical Board Statutes – Unprofessional conduct)

Pharmacist Assisting Pharmacists of Arizona (PAPA)

Lisa Yates was present to represent the PAPA program. Ms. Yates stated that there are a total of forty-six (46) participants in the PAPA program. Since the last report on March 18, 2009, there have been four (4) new PAPA contracts signed.

Ms. Yates stated that there are currently no concerns about any participants.

Ms. Yates stated that PAPA would be granting a scholarship for one participant to attend the Utah School.

Ms. Yates stated that PAPA would be sponsoring the 1.5 hour CE program “Chronic Pain Management/Substance Abuse” during the Annual AzPA Meeting in Tucson at the Westin La Paloma on Saturday, July 11, 2009.

AGENDA ITEM 13– Conferences

Complaint #3593

President McAllister opened the discussion by asking Mr. Cieslinski to give a brief overview of the complaint. Mr. Cieslinski stated that the complainant stated that his mother had a heart attack and was hospitalized. The complainant stated that his mother was given prescriptions upon discharge that was presented to the pharmacy. The complainant stated that his mother was not given the Plavix and 8 days later had another stroke and died. The complainant stated that another patient's prescription was in the bag with his mothers. The complainant filed the complaint after he contacted the pharmacy after his mother died to find out why his mother did not receive the Plavix. The complainant was told that it was not the pharmacy's responsibility to ensure that the patient picks up all their medications.

Mr. Cieslinski stated that the pharmacy scanned and entered 6 prescriptions for the patient on 7/11/2008. The pharmacy stated that the patient presented two new prescriptions for Plavix and Levaquin. The pharmacy stated that the doctor phoned in two new prescriptions for Furosemide 40 mg and Hydrochlorothiazide (HCTZ) 12.5 mg. Three additional refills were processed for HCTZ (25mg), Digoxin 0.125mg, and Gemfibrozil 600mg. The Furosemide 40mg, Levaquin 500mg, and Plavix 75 mg were never sold to the complainant's brother who picked up the prescriptions. The pharmacy returned the prescriptions to stock. The Plavix was closed in the system and the Furosemide 40 mg and Levaquin were stored in the system.

President McAllister stated that the complainants were present and would like to address the Board.

Complainants, JK and RK, come forth and thanked the Board for allowing them to express their concerns. JK indicated that his mother had a heart attack and he took prescriptions to the pharmacy after she was discharged from the hospital. JK stated that the clerk told him one of the prescriptions was not for his mother and was for another patient. JK stated that his mother's doctor stated that they would call in a new prescription. JK stated that he went to the pharmacy that morning and picked up several prescriptions and asked the cashier if there were any more prescriptions and he was told no. JK stated that he returned to the pharmacy later that afternoon and was given several more prescriptions and asked again if there were any more prescriptions. Again, he was told no after the cashier searched the bins.

RK stated 8 days later his mother had another stroke and the doctor reviewed all the medications that they had brought with them to the hospital and questioned why his mother was not taking Plavix. RK stated that his mother then passed away. RK stated that he then called the pharmacy and was told that the Plavix, Levaquin, and Furosemide were returned to stock. RK stated that he asked why they were not called to inform them that there were other medications to pick up. RK stated that the individual that answered the phone told him that it was not the pharmacy's responsibility to ensure that a patient picks up all their prescriptions. RK stated that he feels that the pharmacy does bear some responsibility to ensure that all prescriptions are picked up especially since his brother had asked on both occasions if there were any more prescriptions. RK stated that money was not an issue in determining whether to purchase the prescriptions.

Mr. McAllister thanked the complainants for expressing their concerns to the Board.

Mr. McAllister asked that the respondents to the complaint to please come forth to address the Board.

The following individuals were present to answer questions from Board Members concerning this complaint: Ernest Bristol (Pharmacist in Charge), Holly Prieto (Pharmacy Supervisor), Mike Simko (Corporate Legal Counsel), and Susan Trujillo (Local Counsel).

President McAllister opened the discussion by asking Mr. Bristol to address the complaint.

Mr. Bristol opened the discussion by stating that he constructed a timeline of the events that occurred on July 11, 2008. Mr. Bristol stated that on July 11, 2008, the patient's caregiver brought in 2 new prescriptions on two separate forms. The prescriptions were for Plavix 75 mg and Levaquin 500mg. Mr. Bristol stated that the prescriptions were scanned at 7:20 A.M. and 7:21 A.M. Mr. Bristol stated that later two prescriptions were phoned to the pharmacy by the doctor for HCTZ 12.5 mg and Furosemide 40 mg. The prescriptions were scanned at 8:25 A.M. The Levaquin and Plavix were entered at 8:29 A.M. and 8:30 A.M. The HCTZ 12.5 mg prescription was ready at 9:08 A.M. The refill for Gemfibrozil was entered at 7:16 A.M. and was ready at 7:40 A.M. According to register records, the patient's caregiver picked up the HCTZ 12.5 mg and Gemfibrozil at 9:15 A.M. At some point that day, prescriptions for Digoxin 0.125 mg and HCTZ 25mg that were stored in February were activated and were entered at 11:30 A.M. The Digoxin was ready at 1:16 P.M. and the HCTZ 25 mg was ready at 11:47 A.M. The two prescriptions were then sold to the caregiver at 1:49 P.M. The Furosemide, Plavix, and Levaquin all were stored. Mr. Bristol indicated that all three prescriptions that were stored were entered by 9:15 A.M. when the caregiver picked up the two prescriptions.

Mr. Bristol stated that the counseling log indicated that there was no counseling on the new HCTZ prescription.

Mr. Bristol indicated that there are procedures in place for the counseling process and recordkeeping of the counseling logs.

Mr. McAllister asked Mr. Bristol about his timeline of events. Mr. McAllister asked if the Plavix was scanned in and entered prior to the patient picking up the first set of prescriptions at 9:15. Mr. Bristol replied yes that the prescriptions were scanned by 7:21 A.M. and were entered by 8:30 A.M.

Mr. McAllister asked Mr. Bristol what happened that the patient did not receive the Plavix and Levaquin. Mr. Bristol stated that he assumes that the prescriptions would have shown in the work queue as ready. Mr. Bristol stated that after 48 hours if the prescription is not picked up then an automated call is made to the patient indicating there is a prescription for pick-up. Mr. Bristol further stated that a second automated call is made in 144 hours if the prescription is not picked up.

Mr. McAllister told Mr. Bristol that he just heard the complainants state that they were not called. Mr. Bristol stated that if the phone number is in the system the calls should have been made.

Mr. McAllister asked Mr. Bristol if he can tell if the calls were made. Ms. Prievo stated that a message would be left for the patient if there was an answering machine. Ms. Prievo stated that she does not know if the calls were made.

Mr. McAllister asked Mr. Bristol if his staff was aware that the patient was recovering from major heart surgery. Mr. Bristol stated that if his staff saw a prescription for Plavix from a hospital they would assume that the patient had major heart surgery or had a heart condition.

Mr. McAllister asked if a DUR message would appear when the two strengths of HCTZ were both filled on the same day. Mr. Bristol stated yes and the DUR pharmacist would have to review the DUR and sign off on the DUR.

Mr. McAllister asked if the pharmacist questioned the patient if they should be taking both strengths of HCTZ. Mr. Bristol stated that he is not sure.

Mr. McAllister asked Mr. Bristol what is the procedure when a patient asks if there are any additional prescriptions for pick-up. Mr. Bristol stated that the technician should go to the work queue and see how many prescriptions are in the pharmacy for the patient. Mr. Bristol stated that the technician would be able to tell if the prescriptions were ready or being processed.

Mr. McAllister asked if this process occurred. Mr. Bristol stated that he could not tell if the process occurred.

Mr. Milovich asked Mr. Bristol about his written response to the complaint because the drugs do not match. Mr. Milovich stated that the written statement indicated that HCTZ and Furosemide were picked up and now Mr. Bristol stated that it was Gemfibrozil and HCTZ. Mr. Bristol stated that it was his mistake on the written statement and Gemfibrozil and HCTZ were the drugs picked up.

Mr. Milovich asked what the procedure was for prescriptions in the will call bin if there are multiple packages for a patient.

Ms. Prievo that all the bags are placed in the will call bin separately. Ms. Prievo stated that when the technician scans and rings up a prescription the cash register would prompt them to go the work queue and look to see that there are additional prescriptions ready or in the process of being filled.

Mr. Milovich asked how the prescriptions are filed in the bins. Ms. Prievo stated that the prescriptions are filed alphabetically.

Mr. Milovich asked if they would combine packages. Ms. Prievo replied no that they do not want technicians re-bagging prescriptions

Mr. Milovich asked if the technician would have been prompted to look for additional prescriptions in this case. Ms. Prievo stated that the prompt would have told the technician to check the work queue. Ms. Prievo stated that she does not know why the patient did not get his prescriptions.

Mr. Milovich asked Mr. Bristol if the technician should have done anything else other than going to the bins both times and telling the patient that they were no other prescriptions. Mr. Bristol stated that the technician should have gone to the work queue. Mr. Bristol stated that they are told to go to the work queue because it is easier than searching in the bins.

Mr. Milovich asked why Plavix shows closed and the Furosemide and Levaquin show stored. Mr. Bristol stated that when the prescription is stored it shows a delete status and then stored. Mr. Bristol stated that a closed status means that the prescription was either transferred or assigned a new number.

Mr. Milovich asked when the prescription is scanned to prompt the message to look in the work queue. Ms. Prievo stated at the point of sale.

Mr. McAllister asked the family members to validate the phone number that was on file at the pharmacy. The family members stated that the number was correct.

Mr. McAllister asked if the automated phone system worked at what intervals would the patient have been called if they did not pick up their prescription. Ms. Prievo stated that calls would have been made at 48 hours and 144 hours.

Mr. McAllister asked Ms. Prievo what the procedure is for cleaning out the bins and returning the medications to stock. Ms. Prievo stated that at 10 days a report is printed with a list of prescriptions that have not been picked up. Ms. Prievo stated that the prescription would be pulled from the bins and a pharmacist or technician would click delete and the prescription would be stored. Ms. Prievo stated that a pharmacist would return the medications to the prescription shelves.

Mr. Haiber asked if a message is placed in the system if the prescription is not picked up. Ms. Prievo stated that the only message in the system is that the "Patient did not want" and that message is selected.

Mr. Van Hassel asked Ms. Prievo if she can tell what date the prescriptions were deleted. Ms. Prievo stated that they were deleted on 7/23/2008.

Ms. Galindo asked what time the Plavix was filled. Mr. Bristol stated that he could only tell what time the prescription was scanned and entered because the prescription was deleted.

Ms. Galindo asked if the Plavix and Levaquin would have been ready when the patient picked up the other prescriptions at 9:15 A.M. Mr. Bristol stated that he would have to assume they were ready.

Ms. Galindo asked if there has ever been a glitch in the system that would prompt the technician to go to the work queue or could the technician bypass the prompt.

Ms. Prievo stated that the register beeps and prompts the technician to check the work queue. Ms. Prievo stated that the technician has an extra button to push to proceed with the transaction.

Ms. Galindo asked if the pharmacy knows that a courtesy call was made to the patient. Ms. Prievo stated that the pharmacy would not know because it is done through the corporate server. Ms. Prievo stated that Corporate IT assured her that the calls are made.

Mr. McAllister asked Mr. Bristol if the labels were ever printed. Mr. Bristol stated that he could not tell. Mr. Bristol stated that the prescriptions should have shown in the work queue at 9:15 A.M. because they were entered at 8:30 A.M.

Mr. Haiber stated that he feels that corporate IT could find the time that the prescription was ready.

Mr. Milovich asked if the same person was at the register when the patient's caregiver picked up the prescriptions. Mr. Bristol replied yes.

Mr. Milovich asked if this was a new employee. Mr. Bristol stated that the employee started last spring and is a technician trainee.

Mr. Milovich asked about the training this technician received. Mr. Bristol stated that she is trained to look at the work queue to determine the number of prescriptions. Ms. Prievo stated that the technician is required to complete an online training program on "Outwindow processes".

Mr. Milovich asked if Mr. Bristol knew which individual told the complainant that it is not their responsibility to see that they have all their prescriptions. Mr. Bristol replied he does not know and would have told the individual that was not an appropriate response. Mr. Milovich asked Mr. Bristol what he would have told the patient. Mr. Bristol stated that he did not know because he had never thought about it.

Mr. Haiber asked about the wrong prescription in the bag. Ms. Prievo stated that they did not have any reports of a wrong prescription leaving the store and that there seems to be some confusion because the complainant stated that he was given a wrong prescription by the doctor.

Mr. Haiber asked what the procedure was if a technician found an incorrect prescription at the register. Mr. Bristol stated that the technician would tell the pharmacist and the pharmacist would correct the error and probably fill out a STAR report (Incident Report).

Mr. Haiber asked Ms. Prievo if a STAR report would be required. Ms. Prievo stated that a STAR report is usually filled if the prescription leaves the store. Ms. Prievo stated that if the prescription does not leave the pharmacy it is usually discussed in Peer Review and processes are reviewed in the store.

Mr. McAllister asked what violations occurred. Mr. Cieslinski stated that there are counseling violations.

Dr. Smidt stated that he would like more information concerning the processes in the pharmacy.

Mr. Haiber indicated that he would like more information concerning the phone calls.

Ms. Galindo stated that there are a lot of answered questions that the respondents were not prepared to answer today.

Mr. Van Hassel indicated that he feels that the Pharmacist in Charge is in violation of failure to control the pharmacy.

Ms. Campbell stated that the Board could continue the investigation and ask the investigator to gather additional information.

On motion by Ms. Galindo and seconded by Mr. Van Hassel, the Board unanimously agreed to table this conference until the July meeting for further investigation.

Complaint #3622 and #3623

The following individuals were present to answer questions from Board Members concerning this complaint: Wayne Cohen (Pharmacist), Holly Prieto (Pharmacy Supervisor), Mike Simko (Corporate Legal Counsel) and Susan Trujillo (Local Legal Counsel). Also in the audience were James Haislet (Pharmacist) and Roberta Sessions (Pharmacy Technician).

President McAllister asked Mr. Cieslinski to give a brief overview of the complaint. Mr. Cieslinski stated that the complaint was assigned two numbers because the complainant filed two separate complaints but the complainants were investigated together. Mr. Cieslinski stated that the patient presented three prescriptions to the pharmacy. Mr. Cieslinski stated that the complainant presented two prescriptions for himself for Klor-Con and Metformin. He also presented one prescription for his wife for Maxalt. All the prescriptions were entered under his wife's name. The technician entered them incorrectly and the verifying pharmacist doing the data entry check did not catch the error. The complainant also stated that the quantities were wrong. The pharmacist who was not involved in the original filling tried to adjust the quantities but was unable to change the quantities. The pharmacist who tried changing the quantities stated that the computer assigned his name to every part of the prescription. The pharmacist stated that he should have caught the error when he tried changing the quantity. The three prescriptions were initially entered, verified, and product verified incorrectly by three other individuals.

President McAllister asked Mr. Cohen to address the complaint. Mr. Cohen stated that the complainant came to the drive-thru window and as he understood the patient there was an issue with the quantity. Mr. Cohen stated that he tried to change the quantity to a 90-day supply but was unable to change the quantity. Mr. Cohen stated that he had to leave so he handed the prescription off to the next pharmacist and did not notice the incorrect name.

Mr. Cohen stated that he thought the computer had incorrectly assigned his initials to the prescription and upon further review he determined that he should have reviewed the

information and he was responsible for all the information. Mr. Cohen stated that since that time he has become the Pharmacist in Charge at that store and has instituted practices to insure that counseling is provided. Mr. Cohen stated that he did not provide a full consultation and he does not take counseling lightly.

Mr. Cohen stated that he was not aware of the situation until January when the complainant stated that the error was not corrected. Mr. Cohen stated that he created a STAR report because the error had left the store. Mr. Cohen stated that since he has become pharmacist in charge all pharmacists are required to complete a STAR report when an error occurs and leaves the store. Mr. Cohen stated that if the pharmacist had created a STAR report and corrected the error when the patient returned the next day after receiving the incorrectly labeled prescription the error would have been corrected and the patient may not have filed a complaint.

Mr. McAllister asked Mr. Cohen if he did all the data input. Mr. Cohen replied no. Mr. Cohen stated that the prescription was in the ready state and he tried to change the quantity and did not review the prescription.

Mr. McAllister asked Mr. Cohen if he opens the bag and takes out the bottles when he counsels. Mr. Cohen stated that he counsels from the leaflets.

Mr. McAllister asked if the patient's name is on the leaflet. Mr. Cohen replied yes and that was another opportunity where he could have caught the error.

Dr. Smidt indicated that Mr. Cohen admits that a mistake was made and practices have changed.

Dr. Smidt stated that the Board should not hold the counseling pharmacist responsible for errors that occurred upstream.

Mr. McAllister stated that there were many opportunities to catch the name error. Mr. McAllister stated that name mistakes are a common mistake and the right patient did take the right medication.

On motion by Mr. Van Hassel and seconded by Dr. Smidt, the Board unanimously agreed to issue an advisory letter to all respondents.

AGENDA ITEM 14 – Pharmacy Technician Trainee Requests for Approval to Reapply for Licensure

President McAllister asked Mr. Wand to address this agenda item.

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

On motion by Dr. Smidt and seconded by Dr. Berry, 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. Sonia Cota
2. Jamie Green
3. Ian Begay
4. Ana Proenzano
5. Gabriel McKee
6. Fermentia Stanley
7. Mobeen Moslem
8. Yanelly Pasoz
9. Brooke Cavender
10. Aron Weisskopf
11. Natalie Schwartzmeyer
12. Yolanda Yazzie-Norris
13. Tamike Onley
14. Kelly Matherly
15. Rachel McGee
16. Teresa Garcia
17. Norma Aguiniga
18. Matthew Jozefiak
19. Remuel Ryan
20. Lorenzo Llamas-Pena
21. Heather Gibson
22. Robert Johnson
23. Crystle Eason
24. Brian Dudley
25. Nelda Riley
26. Kathleen Diaz de Leon
27. Neda Tashvighi
28. Zohra Faqeer
29. Crystal Massengale
30. Derreck Liechty
31. Mark Hale

AGENDA ITEM 16 – Richard Rosky – Update on the pseudoephedrine problems in Arizona

Mr. Rosky was unable to attend the meeting.

Steve Bailey and Don Sherrard were present to address the Board concerning the pseudoephedrine issues in Arizona. Mr. Bailey and Mr. Sherrard are law enforcement officers involved with the Maricopa County Methamphetamine Task Force.

Mr. Bailey stated that they were present to discuss the issues that the Methamphetamine Task Force has recently encountered. Mr. Bailey stated that the Task Force has been successful in dismantling and reducing the number of methamphetamine labs in Arizona.

Mr. Bailey indicated that there has been a significant increase in smurfing in Arizona. Mr. Bailey stated that smurfing is when a large number of individuals go into several stores and purchase the maximum amount of pseudoephedrine tablets that they can purchase at each store. These individuals are then paid for purchasing the pseudoephedrine and the tablets are given to individuals running super labs. Mr. Bailey stated that a super lab can make 10 to 100 pounds of methamphetamine depending on the number of tablets these individuals are allowed to purchase at the various pharmacies.

Mr. Bailey stated that the Combat Meth Act requires pharmacies to document the sales of pseudoephedrine tablets. Mr. Bailey stated that they are requesting the Board's help in requiring the pharmacies to report their pseudoephedrine sales directly to their database. Mr. Bailey stated that the pharmacies keep paper logs and it would be more efficient if they could log the information into their database via a web portal. Mr. Bailey stated that the database would electronically capture any individuals buying over the threshold.

Mr. Scherrard stated that the Task Force has started an online website that would allow the pharmacists to report an individual anonymously.

Mr. McAllister stated that the Board would look at the issues and see how they could assist the officers.

Mr. Wand offered to place an article in the newsletter.

AGENDA ITEM 17 – Ryan Haight Online Pharmacy Consumer Protection Act of 2008

President McAllister asked Mr. Wand to address this issue. Mr. Wand stated that the rule was included for informational purposes.

Mr. Wand stated that this is a copy of the final rule from the Department of Justice. The rule defines the illegal distribution and dispensing of Controlled Substances by means of the internet.

AGENDA ITEM 18 – Consumer Complaint Review Committee Membership

President McAllister stated that at the last meeting it was decided that the complaint review committee membership would be placed on a future agenda for discussion.

Mr. Wand stated that the Complaint Review Committee is made up of three members. The members consist of a Pharmacist, a Public Member, and a Pharmacy Technician Member.

Mr. McAllister asked if there were any pharmacists that would like to serve on the complaint review committee. Mr. Milovich, Mr. Haiber, and Dr. Berry indicated that they would like to serve on the complaint review committee.

Mr. McAllister stated that Ms. Berry has served on the committee for the last two years.

Mr. Wand stated that the Board could have four members serve on the committee because it would not constitute a quorum of the Board.

Mr. Van Hassel nominated Mr. Milovich. Dr. Berry nominated Mr. Haiber. All Board Members were in favor of Mr. Milovich and Mr. Haiber serving as the Pharmacist Members of the Complaint Review Committee. Dr. Berry would serve as a conflict advisor when Mr. Milovich or Mr. Haiber had to recuse themselves from reviewing a complaint.

Dr. Berry nominated Ms. Galindo to serve on the Complaint Review Committee as the Public Member. All Board Members were in favor of Ms. Galindo serving on the Complaint Review Committee.

Dr. Smidt nominated Ms. Honeystewa to continue serving on the Complaint Review Committee as the Pharmacy Technician Member. All Board Members were in favor of Ms. Honeystewa serving on the Complaint Review Committee.

AGENDA ITEM 21– Call to the Public

President McAllister 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.

No one come forth.

The Board Meeting recessed until May 7th at 8:00 A.M.

AGENDA ITEM 1 – Call to Order – May 7, 2009

President McAllister convened the meeting at 8:00 A.M. and welcomed the audience to the meeting.

The following Board Members were present: President Dennis McAllister, Vice President Ridge Smidt, Zina Berry, Joanne Galindo, Steven Haiber, Dan Milovich, and Tom Van Hassel. The following Board Members were not present: Louanne Honeystewa and Paul Sypherd. The following staff members were present: Compliance Officers Rich Cieslinski, Larry Dick, 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. Mr. Milovich was not present for the afternoon session.

AGENDA ITEM 15 – ExCPT Exam Approval Request

Christina Cassetta, Legal Counsel, for ICPT was present to discuss the ExCPT test on behalf of her client.

President McAllister asked Ms. Cassetta if she would like to address the Board concerning her client's request.

Ms. Cassetta stated that ICPT is requesting that the Board do what 20 other states have done and accept their exam for pharmacy technician certification.

Ms. Cassetta stated that the ICPT exam has been accredited by NCAA which is the same accreditation the other exam holds. Ms. Cassetta stated that in their last proposal they suggested that the Board Staff and a Board Member review the questions of both exams. The questions would be blinded and the reviewing committee would look at the validity of the questions. Mr. Cassetta stated that other Boards have approved the exam based on the accreditation. Ms. Cassetta stated that the accreditation proves that the psychometric validity of the exam.

Ms. Cassetta stated that there has been some interest in having NABP review the exam. Ms. Cassetta stated that her client has issues with this proposal since NABP has an ownership interest in the other exam and the NABP director sits on the Board of the other exam. Ms. Cassetta stated that her client has issues with supplying certain information to a competitor. Ms. Cassetta stated that her client would have no issues with a committee of the Board reviewing the exam.

Mr. Milovich asked what NCAA reviews for accreditation. Ms. Cassetta stated that they review how the scores are calculated and reported, the security of the exam, the administration of the exam, and policies and procedures.

Mr. Milovich asked if NCAA is certifying the process and not the content of the exam. Ms. Cassetta stated that they are certifying the process.

Dr. Smidt asked Ms. Cassetta why there is opposition to NABP reviewing the contents of the exam. Ms. Cassetta indicated that NABP is a direct competitor and they are requesting financial information that her client is not willing to provide. Ms. Cassetta stated that her client would like a panel independent of NABP to review the exam.

Dr. Smidt stated that the Board's issue is quality. Dr. Smidt stated that the Board needs to offer a quality exam.

Dr. Smidt asked if Ms. Cassetta would agree to a panel recommended by NABP. Ms. Cassetta stated that the panel could consist of 3 individuals that are not a part of NABP and 3 individuals recommended by ITCP to review the test.

Dr. Smidt indicated that after receiving the recommendation of the panel the Board could then weigh the recommendation and make their own independent decision.

Mr. McAllister stated that the Board has used NABP to evaluate the soundness of the exams the Board uses for licensure. Mr. McAllister stated that the Board does not have the expertise to evaluate the exam. Mr. McAllister stated that other Boards that have approved the exam did not use a scientific process to evaluate the exam. Mr. McAllister stated that in Arizona the technician is considered a critical part of the prescription process.

Mr. McAllister asked Ms. Cassetta if she is aware of the ongoing conversations between Ms. Rabbit and NABP. Ms. Cassetta replied yes.

Mr. Van Hassel stated that many states that have approved the exam do not license technicians or require certification.

Mr. Haiber stated that this process would give the Board a roadmap for future requests.

On motion by Dr. Smidt and seconded Mr. Van Hassel, the Board unanimously agreed to ask Mr. Wand to convey to NABP the Board's desire to have an independent panel formed acceptable to NABP and ICPT to review the exam.

AGENDA ITEM 19 – Low Cost Remand – Case No. # 06F-003-PHB

President McAllister opened the discussion by stating that the Board has in front of them the memorandum on remand concerning the Low Cost case and must make a decision concerning the proposed amended Board Order.

Adam Palmer, Legal Counsel for Low Cost, was present on behalf of his client.
Beth Campbell, Assistant Attorney General for the State, was present.

President McAllister asked Ms. Campbell to address this issue. Ms. Campbell stated that the case is now back in front of the Board pursuant to the Superior Court original remand.

Ms. Campbell stated that the Proposed Order (Exhibit E) sets forth the States understanding of the Superior Court ruling as affirmed by the Court of Appeals.

Mr. McAllister asked if amending the order included eliminating the term “misbranding” and adjusting the fine.

Ms. Campbell stated that is correct. Ms. Campbell stated that the Superior Court ruled that the prescriptions were unauthorized and were not properly dispensed by Low Cost according to A.R.S. § 32-1968 (A) (1)-(4) and this occurred after November 19, 2004. Ms. Campbell stated that she recalculated the number of prescriptions dispensed after November 19, 2004 and that is how the proposed fine was calculated.

Mr. Palmer addressed the Board. Mr. Palmer stated that Low Cost surrendered their license about one year ago. Mr. Palmer stated that Low Cost feels that they have been punished enough. Mr. Palmer stated that the model of internet prescribing is the model of the future and the law has not caught up with the technology. Mr. Palmer stated that the Board has the discretion to assess or not assess a civil penalty. Mr. Palmer stated that since Low Cost has ceased doing business they are requesting that the Board not assess a civil penalty. Mr. Palmer stated that if the Board is inclined to assess a civil penalty he is asking that they be charged \$1,000 for one violation. Mr. Palmer stated that court costs are not included in the order and does not want to be assessed any court costs.

Ms. Campbell stated that the court costs were difficult to calculate because of the time frame of the case.

Mr. Munns stated that if the order does not include court costs then the Board cannot request reimbursement of court costs. Mr. Munns stated that each side would be responsible for their own costs.

Ms. Campbell stated the Board could accept the proposed Amended Board Order which includes all the changes.

On motion by Dr. Smidt and seconded by Mr. Van Hassel, the Board unanimously agreed to accept the proposed amended Board Order in the Case of Low Cost Pharmacy Case No. #06F-003-PHB.

AGENDA ITEM 20- Hearings and Motions to Deem

President McAllister opened the discussion by stating that there are several issues to consider prior to beginning the Hearings or Motions to Deem.

Dorsah Gariba

President McAllister stated that there is a motion to deem the allegations for Dorsah Gariba and there is also a hearing scheduled for Mr. Gariba. Mr. McAllister stated that Mr. Gariba did respond to the complaint but his answer was three days late.

Mr. Munns advised the Board that they could accept or deny the motion to deem the allegations admitted and they also could vote to continue the hearing.

On motion by Dr. Smidt and seconded by Dr. Berry, the Board unanimously agreed to deny the state's motion to deem allegations admitted and continue the hearing at the September meeting.

Destiny Robinson

President McAllister stated that in the case of Destiny Robinson the Board office has received a signed consent agreement. The case is also on the list of motions to deem.

On motion by Mr. Haiber and seconded by Dr. Smidt, the Board unanimously agreed to deny the state's motion to deem allegations admitted and accept the signed consent agreement.

Motions to Deem

#1 Candy Mollindo

President McAllister 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 Candy Mollindo, License #T0033248, Case 09-0017-PHR.

President McAllister asked if Ms. Mollindo was present. Ms. Mollindo was not present.

President McAllister 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. Smidt and seconded by Dr. Berry, the Board unanimously agreed to grant the State's Motion to Deem Allegations Admitted

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

On motion by Dr. Smidt and seconded by Mr. Haiber, the Board unanimously agreed to revoke Pharmacy Technician License T033248 issued to Candy Mollindo.

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

#2 Nicole Perkins

President McAllister 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 Nicole Perkins, License #T006770, Case 09-0045-PHR.

President McAllister asked if Ms. Perkins was present. Ms. Perkins was not present.

President McAllister 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. Smidt and seconded by Dr. Berry, the Board unanimously agreed to grant the State’s Motion to Deem Allegations Admitted

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

On motion by Dr. Smidt and seconded by Mr. Haiber, the Board unanimously agreed to revoke Pharmacy Technician License T006770 issued to Nicole Perkins. A roll call vote was taken. (Ms. Galindo –aye, Dr. Berry – aye, Mr. Van Hassel –aye, Mr. Milovich – aye, Mr. Haiber – aye, Dr. Smidt – aye, and President McAllister – aye.)

#3 Kimberly Funk

President McAllister 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 Kimberly Funk, License #T016987, Case 09-0036-PHR.

President McAllister asked if Ms. Funk was present. Ms. Funk was not present.

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

On motion by Mr. Haiber and seconded by Dr. Berry, the Board unanimously agreed to grant the State’s Motion to Deem Allegations Admitted

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

On motion by Dr. Smidt and seconded by Mr. Haiber, the Board unanimously agreed to revoke Pharmacy Technician License T016987 issued to Kimberly Funk. A roll call vote was taken. (Ms. Galindo –aye, Dr. Berry – aye, Mr. Van Hassel –aye, Mr. Milovich – aye, Mr. Haiber – aye, Dr. Smidt – aye, and President McAllister – aye.)

#4 Jeffrey Golden

President McAllister 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 Jeffrey Golden, License #T010493, Case 09-0025-PHR.

President McAllister asked if Mr. Golden was present. Mr. Golden was not present.

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

On motion by Mr. Haiber and seconded by Dr. Berry, the Board unanimously agreed to grant the State’s Motion to Deem Allegations Admitted

President McAllister 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 McAllister 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 Technician Trainee License T010493 issued to Jeffrey Golden. A roll call vote was taken. (Ms. Galindo –aye, Dr. Berry – aye, Mr. Van Hassel –aye, Mr. Milovich – aye, Mr. Haiber – aye, Dr. Smidt – aye, and President McAllister – aye.)

Dr. Smidt asked if a complaint was opened against the permit holder because of the large number of controlled substances that was taken. Mr. Wand replied no.

#5 Christina Martinez

President McAllister 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 Christina Martinez, License #T006261, Case 09-0026-PHR.

President McAllister asked if Ms. Martinez was present. Ms. Martinez was not present.

President McAllister 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 Dr. Smidt, the Board unanimously agreed to grant the State's Motion to Deem Allegations Admitted

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

On motion by Mr. Haiber and seconded by Dr. Smidt, the Board unanimously agreed to revoke Pharmacy Technician License T006261 issued to Christina Martinez. A roll call vote was taken. (Ms. Galindo –aye, Dr. Berry – aye, Mr. Van Hassel –aye, Mr. Milovich – aye, Mr. Haiber – aye, Dr. Smidt – aye, and President McAllister – aye.)

#6 Robert Neuman

President McAllister 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 Robert Neuman, License #T014468, Case 09-0029-PHR.

President McAllister asked if Mr. Neuman was present. Mr. Neuman was not present.

President McAllister 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. Milovich, the Board unanimously agreed to grant the State's Motion to Deem Allegations Admitted

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

On motion by Mr. Haiber and seconded by Dr. Smidt, the Board unanimously agreed to revoke Pharmacy Technician Trainee License T014468 issued to Robert Neuman. A roll call vote was taken. (Ms. Galindo –aye, Dr. Berry – aye, Mr. Van Hassel –aye, Mr. Milovich – aye, Mr. Haiber – aye, Dr. Smidt – aye, and President McAllister – aye.)

#7 Joshua Adams

President McAllister 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 Joshua Adams, License #T006970, Case 09-0040-PHR.

President McAllister asked if Mr. Adams was present. Mr. Adams was not present.

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

On motion by Mr. Haiber and seconded by Dr. Berry, the Board unanimously agreed to revoke Pharmacy Technician License T006970 issued to Joshua Adams. A roll call vote was taken. (Ms. Galindo –aye, Dr. Berry – aye, Mr. Van Hassel –aye, Mr. Milovich – aye, Mr. Haiber – aye, Dr. Smidt – aye, and President McAllister – aye.)

8 Angelina Williams

President McAllister 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 Angelina Williams, License #T013239, Case 09-0042d-PHR.

President McAllister asked if Ms. Williams was present. Ms. Williams was not present.

President McAllister 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. Van Hassel, the Board unanimously agreed to grant the State’s Motion to Deem Allegations Admitted

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

On motion by Mr. Milovich and seconded by Mr. Haiber, the Board unanimously agreed to revoke Pharmacy Technician License T013239 issued to Angelina Williams. A roll call vote was taken. (Ms. Galindo –aye, Dr. Berry – aye, Mr. Van Hassel –aye, Mr. Milovich – aye, Mr. Haiber – aye, Dr. Smidt – aye, and President McAllister – aye.)

HEARINGS

HAROLD OLSHANSKY – CASE #09-0004-PHR

President McAllister stated that this is the date, time, and place where the matter dealing with Case Number 09-0004-PHR for Respondent Harold Olshansky is scheduled to be heard by the Arizona State Board of Pharmacy.

President McAllister stated that the subject of the hearing is set forth in the Complaint and Notice of Hearing. This is a formal administrative hearing to determine if there have been violations of the Board's statutes and rules, and whether disciplinary action is warranted.

A roll call vote was taken. The following Board Members were present: Joanne Galindo, Zina Berry, Tom Van Hassel, Dan Milovich, Steve Haiber, Ridge Smidt, and Dennis McAllister.

President McAllister stated that let the records show that the Board Members have been furnished with copies of:

1. The Complaint and Notice of Hearing
2. The Respondent's Answer
3. All pleadings of record

President McAllister asked all parties to please identify themselves.

Elizabeth Campbell, Assistant Attorney General for the State was present.

Harold Olshansky, Respondent, was present.

Teresa Sanzio, Legal Counsel for Mr. Olshansky, was present.

President McAllister made the opening statements concerning the hearing.

The witnesses were sworn in by the court reporter.

President McAllister asked the participants if prior to hearing testimony from witnesses, if there were any preliminary matters the Board should consider.

Ms. Sanzio stated that she would like the sworn in witnesses to leave the room. Ms. Sanzio asked that Ms. Olshansky be allowed to remain in the room. Ms. Campbell objected and Ms. Olshansky was asked to leave because she was sworn as a witness.

Ms. Sanzio stated that she found out this morning that Mr. Crispin was to be called as a witness and she had not received a copy of the investigative report concerning his testimony and asked that Mr. Crispin be struck as a witness.

Ms. Campbell stated that she did not want to strike Ms. Crispin as a potential witness.

Dr. Smidt asked if the Board could move forth without Mr. Crispin's testimony.

Ms. Campbell stated that she would like to use Mr. Crispin and there is no report, just his testimony.

Ms. Sanzio asked that the hearing be postponed.

Ms. Campbell stated that she opposes Ms. Sanzio's request to postpone the hearing and do as much as we can today.

On motion by Mr. Haiber and Dr. Smidt, the Board voted to go into Executive Session to obtain legal advice.

Dr. Smidt stated that the Board has now closed the Executive Session and will now come back into regular session.

On motion by Mr. Van Hassel and seconded by Dr. Berry, the Board unanimously agreed to postpone the hearing for at least 10 days.

HEARING

IVAN LAU – Case #09-0004-PHR

President McAllister stated that this is the date, time, and place where the matter dealing with Case Number 09-0005-PHR for Respondent Ivan Lau is scheduled to be heard by the Arizona State Board of Pharmacy.

President McAllister stated that the subject of the hearing is set forth in the Complaint and Notice of Hearing. This is a formal administrative hearing to determine if there have been violations of the Board's statutes and rules, and whether disciplinary action is warranted.

A roll call vote was taken. The following Board Members were present: Joanne Galindo, Zina Berry, Tom Van Hassel, Steve Haiber, Ridge Smidt, and Dennis McAllister.

President McAllister stated that let the records show that the Board Members have been furnished with copies of:

4. The Complaint and Notice of Hearing
5. The Respondent's Answer
6. All pleadings of record

President McAllister asked all parties to please identify themselves.

Elizabeth Campbell, Assistant Attorney General for the State, was present.

Ivan Lau, Respondent, was present.

Barry Mitchell, Legal Counsel for Lau, was present.

President McAllister made the opening statements concerning the hearing.

The witnesses were sworn in by the court reporter.

President McAllister asked the participants if prior to hearing testimony from witnesses, if there were any preliminary matters the Board should consider.

There were no preliminary matters to consider.

Opening statements were made by the counsel for the state and the counsel for the licensee. The hearing then proceeded.

The attorney for the state presented her evidence.

The attorney for the licensee presented his witnesses and evidence. Witnesses were cross-examined by the attorney for the state.

After both counsels presented their witnesses and evidence, the attorney for the state and the licensee made their closing arguments.

On motion by Dr. Smidt and seconded by Mr. Van Hassel, the Board unanimously adopted all factual allegations in the Complaint as findings of fact. A roll call vote was taken. (Ms. Galindo – aye, Dr. Berry – aye, Mr. Van Hassel – aye, Mr. Haiber- aye, Dr. Smidt – aye, Mr. McAllister – aye).

On motion by Dr. Smidt and seconded by Mr. Haiber, the Board adopted part of the alleged violations set forth in paragraphs 1,2, 3, and 10. A roll call vote was taken. (Ms. Galindo – aye, Dr. Berry – aye, Mr. Van Hassel – nay, Mr. Haiber- aye, Dr. Smidt – aye, Mr. McAllister – aye).

A motion was placed on the floor by Mr. Haiber and seconded by Dr. Smidt to place the licensee on suspension for three months with the suspension stayed with probation for one year. During this time, the pharmacist could not be a pharmacist in charge. The pharmacist would also be fined \$1,000 dollars. A roll call vote was taken. (Ms. Galindo – nay, Dr. Berry – nay, Mr. Van Hassel – nay, Mr. Haiber- nay, Dr. Smidt – nay, Mr. McAllister – nay).

The motion failed.

On motion by Mr. Haiber and seconded by Mr. Van Hassel, the Board agreed to impose a 3 month stayed suspension and place the licensee on probation for 1 year. During this time the licensee could not be a Pharmacist in Charge. The licensee would be fined \$1,000 for each violation. The number of violations would be 12 for each time the Butalbital/APAP was given to the patient and one violation for giving the patient Fluoxetine. The total fine would be \$13,000 dollars to be paid in 90 days. A roll call vote was taken. (Ms. Galindo – aye, Dr. Berry – nay, Mr. Van Hassel – aye, Mr. Haiber- aye, Dr. Smidt – aye, Mr. McAllister – aye).

The Hearing then concluded.

The Board Office will have copies of the transcript of the hearing prepared within two weeks.

AGENDA ITEM 21– Call to the Public

President McAllister 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.

No one come forth.

AGENDA ITEM 22 – Discussion of Items to be placed on a future meeting agenda

Mr. McAllister stated that he would like to discuss the regulations in R4-23-408 (C) (4) that requires the pharmacist to sign a daily log.

AGENDA ITEM 23 – Adjournment

There being no further business to come before the Board, **on motion by Dr. Berry and seconded by Mr. Haiber**, the Board unanimously agreed to adjourn the meeting at 3:55 P.M.