

**THE ARIZONA STATE BOARD OF PHARMACY
HELD A REGULAR MEETING SEPTEMBER 20 & 21, 2006
GLENDALE, ARIZONA**

September 20, 2006

The following Board Members and staff were present: President Chuck Dutcher, Vice President Tom Van Hassel, Zina Berry, Louanne Honeyestewa, Dennis McAllister, Linda McCoy, Paul Sypherd, Ridge Smidt, and Bryan Tippet. 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 Dawn Lee.

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

Ms. Frush explained that law continuing education would be offered for attendance at the meeting.

AGENDA ITEM 1 – Approval of Minutes

Following a review of the minutes and the opportunity for questions and **on motion by Dr. McCoy and Mr. Van Hassel**, the minutes of the Regular Meeting held on July 27, 2006 were unanimously approved by the Board Members.

AGENDA ITEM 2 – Reconsideration of Final Disposition of Complaints

President Dutcher asked Assistant Attorney Dawn Lee to open the discussion concerning this agenda item.

Assistant Attorney Dawn Lee opened the discussion by stating that she has submitted to the Board a memorandum of legal advice concerning the complaints listed on Agenda Item 2 for Rory Albert and Sean Shaffer. Ms. Lee stated that she could answer any questions that the Board Members may have concerning the two complaints.

Reconsideration of Complaint Against Rory Albert

Mr. Dutcher asked Ms. Lee to explain why the Board was reconsidering their final disposition of the complaints.

Ms. Lee stated at the July meeting she requested that the Board rescind their vote for formal hearing to reconsider new information that was submitted to the Board. Ms. Lee stated that Mr. Albert's attorney submitted new information to the Board that consisted of a signed affidavit from the doctor stating that he authorized the prescriptions dispensed by Mr. Albert. Ms. Lee stated that she felt that the Board should review this information and decide how they would like to proceed with the complaint. Ms. Lee stated that there is still the issue of failure to enter the prescription in the pharmacy database. Ms. Lee stated that the Board could dismiss the case, issue a letter of concern, offer a consent order, or revoke the matter to formal hearing. Ms. Lee stated that the Board voted the matter to Formal Hearing previously and now new information has been submitted.

Mr. Dutcher opened the discussion by asking for Board Members to discuss the new information and what action they would like to take concerning the complaint disposition.

Ms. Lee reviewed the options. Ms. Lee stated that the Board could dismiss the case. Ms. Lee stated that the Board could issue a letter of concern expressing the Board Member's concerns. Ms. Lee stated that a letter of concern would be a record of the action taken by the Board and placed in the respondent's file. Ms. Lee stated that the Board could offer a consent agreement to the respondent. The Board could determine the terms of the consent agreement and a time frame by which the consent agreement must be signed. Ms. Lee stated that the order should state that if the consent agreement is not signed by a certain time frame the complaint would be referred for a Formal Hearing.

President Dutcher asked if Mr. Albert was present. Mr. Albert was present. Mark Harrison was present as Legal Counsel for Mr. Albert.

Mr. Harrison stated that in his letter and affidavit to the Board the only issue is that Mr. Albert forgot to enter the

prescription into his pharmacy database. Mr. Harrison stated that based on the evidence it would seem that the Board should dismiss the case or issue a letter of concern. Mr. Harrison stated that he felt it did not warrant a consent agreement or a Formal Hearing.

Ms. Lee stated that the Board Members could ask questions or if additional investigation is warranted then the case could be postponed and placed on a future agenda.

Mr. Dutcher stated that he feels not entering the prescription into the database is not a minor infraction. Mr. Dutcher stated that he could not understand how a pharmacist could take a prescription for a controlled substance for a family member and not enter the prescription into the computer.

Mr. Albert replied that he took the prescription and placed the prescription in the file and did not enter the prescription into the computer. Mr. Albert stated that he took the bottle and gave it to his father-in-law.

Mr. Dutcher asked Mr. Albert if his father-in-law took the bottle out of the pharmacy without a label. Mr. Albert replied that is correct.

Mr. Dutcher asked if this is standard practice. Mr. Albert replied no. Mr. Dutcher asked Mr. Albert if the prescription was ever entered into the computer. Mr. Albert replied no.

Mr. Harrison stated that the prescription was probably not entered into the computer due to human error.

Dr. Sypherd asked Mr. Albert if he paid for the prescription. Mr. Albert replied yes. Dr. Sypherd asked Mr. Albert if the prescription was refilled three times, since the prescription had three refills. Mr. Albert stated that he does not recall if all three refills were dispensed.

Dr. McCoy asked Mr. Albert if the three refills were also unlabeled. Mr. Albert replied yes. Dr. McCoy stated that it is not human error when a prescription is dispensed four times unlabeled.

Mr. Harrison stated that it was his understanding that there was not going to be a hearing today and if the Board was going to ask his client questions he would have liked to have had time to prepare his client to answer the questions.

Mr. Harrison stated that the previous Consent Agreement was based on the fact that he had dispensed a prescription without a valid prescription. Mr. Harrison stated that they were able to prove that Mr. Albert did have a valid prescription and the doctor's affidavit indicates that he did authorize the prescription. Mr. Harrison stated that he and his client are not prepared to answer questions concerning the issue of not entering the prescription into the database. Mr. Dutcher replied that not entering the prescription into the database is not standard practice.

Mr. McAllister stated that the Board has been presented new evidence that the prescription was valid, but has discovered that the prescription was not entered into the database and was dispensed four times. Mr. McAllister stated that he feels that there was some reason for not entering the prescription into the database. Mr. McAllister stated that he feels that the Board should move forward with a hearing.

Mr. Wand stated that the Board could offer Mr. Albert a Consent Agreement to be signed within 10 days or move to a Formal Hearing in November instead of asking questions at this meeting.

Dr. McCoy asked about the Consent Agreement. Dr. McCoy asked if the respondent does not agree to the Consent Agreement would the complaint move to a hearing. Mr. Wand replied yes.

Ms. Lee stated that if the Board is not satisfied with disposing of the complaint today, then the Board could discuss the Consent Agreement and no disciplinary action would be taken at this meeting. Ms. Lee stated that the respondent and his counsel could review the Consent Agreement and negotiate any terms with the Board Counsel and/or Board Staff. Ms. Lee stated that in the motion the Board would state if the Consent Agreement is not signed in a certain time frame then the complaint would proceed to Formal Hearing in November.

Dr. Sypherd stated that he feels a Consent Agreement would be premature since the Board does not have all the facts.

Mr. Wand suggested that the physician could appear or the Board could obtain a deposition from the doctor since he gave the Board conflicting information. Ms. Lee stated that the Board does have investigative powers to interview individuals that they deem might be able to provide pertinent information to clarify the complaint. Ms. Lee stated that the Board could set a conference for the November meeting and ask the physician to appear.

Mr. Van Hassel asked Mr. Albert if he knew any reason why the doctor would change his mind. Mr. Van Hassel stated in the first letter the doctor stated that he did not write the prescriptions and the affidavit stated that he did not write the prescriptions. Mr. Van Hassel noted that the signature of the doctor is different on each document. Mr. Harrison replied that he, nor his client, could predict what motivated the doctor to change his mind.

On motion by Mr. Van Hassel and Dr. Sypherd, the Board unanimously agreed to move the complaint against Mr. Albert to a Formal Hearing at the November meeting.

Dr. Smidt asked if a consent agreement could be offered prior to the Hearing. Ms. Lee stated that a consent agreement could be offered and then the Board would approve the agreement at the next meeting if signed by the respondent. Ms. Lee stated that if the Board did not approve the signed consent agreement, then the complaint would proceed to a Formal Hearing.

Mr. Dutcher asked how the complaint originated. Ms. Frush stated that the complaint was filed as a result of a routine inspection. Ms. Frush stated that Ms. Sutcliffe conducted a controlled substance audit as part of her inspection. Ms. Sutcliffe discovered the Ambien shortage. Ms. Frush stated that Mr. Albert told Ms. Sutcliffe that he did not enter prescriptions into the computer for his wife and father-in-law. Ms. Sutcliffe asked Mr. Albert to write a statement stating that he did not enter the prescriptions into the computer and Mr. Albert wrote the statement and signed the statement. Ms. Frush stated that Ms. Sutcliffe sent letters to the doctors. His wife's doctor indicated that she authorized the prescriptions while his father-in-law's doctor stated that he did not write the prescriptions. Ms. Frush stated that in either case Mr. Albert failed to enter the prescriptions into the computer system resulting in the discrepancy found during the audit.

Dr. Smidt asked if there were other shortages of narcotics. Ms. Frush explained that at each pharmacy during the routine inspection the Compliance Officers select controlled substances to be audited. In this case, the Ambien was selected and a shortage existed. Ms. Frush stated that other controlled substances could be audited if necessary.

Dr. Tippett asked what would be the benefit of not entering the prescription into the database.

Mr. McAllister stated that is a standard of care to create a patient record and this was avoided four times.

Reconsideration of Complaint Against Sean Shaffer

President Dutcher asked if Mr. Shaffer was present. Roger Morris, Legal Counsel, for Mr. Shaffer was present. Mr. Shaffer was not present.

Mr. Wand addressed the original complaint. Mr. Wand stated that it was reported to the Board that Mr. Shaffer had sold a prescription medication to a person that did not have a permit or license. Mr. Wand stated that information received later indicated that the prescription product was sold to a representative of a permit holder. Mr. Wand stated that the new information indicates that there were no violations and that is why the Board is being asked to reconsider their decision.

Mr. Wand stated that after reading the information the Board could dismiss the complaint, offer a consent agreement, or proceed to a conference or formal hearing at the November meeting if the Board would like any clarification of statements found in the transcript.

Both Mr. Wand and Mr. Morris stated that as far as they know the DEA has closed the case.

Mr. Wand stated that the Board has since revoked the permit of the permit holder that purchased the product. Mr. Wand stated that there is no violation under the original consent agreement offered to the respondent because the permit holder was licensed at the time.

Mr. McAllister indicated that the violation for the current complaint is unfounded. Mr. McAllister indicated that he would like to see an investigation of the wholesaler's sales.

Ms. Lee stated that if the inspection of the sales records indicates any violations then a new complaint could be issued.

On motion by Mr. McAllister and Dr. Sypherd, the Board unanimously agreed to dismiss the current complaint and open an investigation of the sales records of the wholesaler.

AGENDA ITEM 3 – Low Cost – Consideration of Respondent's Petition for Rehearing or Review

President Dutcher stated that this is the time and place for consideration of the Respondent's motion for rehearing or review in the matter of Low Cost Pharmacy license Number 3561.

President Dutcher asked if the Respondent was present or represented by Counsel.

Mr. John Rao, the permit holder was present. Adam Palmer, Legal Counsel, for Mr. Rao was present.

President Dutcher told Mr. Rao that the Board has received and reviewed his Motion for Rehearing or Review, and the State's Response to the Motion for Rehearing or Review.

President Dutcher asked Mr. Rao if he would like to make a brief statement at this time. Mr. Rao stated that he would like to make a brief statement. President Dutcher asked Ms. Rao to limit his statements to less than five minutes.

Mr. Rao stated that the future is now for telemedicine. The definition of telemedicine, one in which this individual helped define on behalf of the American Telemedicine Association addresses Internet Prescribing in its language. Mr. Rao stated that Tamiflu is prescribed yearly and requested by patients from many Internet doctors. Mr. Rao stated that they wish to continue to make this flu vaccine available to Arizona patients much like the flu shot that can be received in retail establishments. Also, any other medication that the Pharmacy Board decides meets this type of dispensing.

Mr. Rao stated that Low Cost would like to see the pharmacist's role elevated to more than a clerk to one that the pharmacist can issue prescriptions for these lifestyle drugs based on a questionnaire. Mr. Rao stated that pharmacists do this for a small number of other drugs currently.

Mr. Rao stated that Low Cost would like to know why they did not receive a fair hearing and why they were not allowed to enter testimony from one of the leading experts in the pharmacy industry. Mr. Rao stated that Low Cost would like to know why they did not have the right to see the real judge presiding over the case, as many of the decisions by the presiding judge were not his. Mr. Rao stated that the judge left the room several times to converse with the real decision maker in this case.

Mr. Rao stated that he would like to know why their right to interstate commerce has been denied. Mr. Rao stated that he has spent tens of thousands of dollars in various states obtaining licenses to fill prescriptions from doctors in their states with Board approval in their state for this type of prescribing. Mr. Rao stated that Low Cost did not fill any prescriptions for Arizona patients derived from a questionnaire or phone call.

Mr. Rao stated that twenty percent of the prescriptions filled by Low Cost were from the Internet and the other eighty percent were from phone calls. Mr. Rao stated that the prescriptions filled by Low Cost were prescribed by doctors that never rendered a diagnosis but were prescribed for a pre-existing condition. Mr. Rao stated that based on pharmacy statutes a diagnosis was never rendered for any Internet prescriptions; therefore no pharmacy laws were broken.

Mr. Rao stated that Low Cost has never filled a prescription for a controlled substance. Mr. Rao stated that Low Cost has

only filled prescriptions for safe lifestyle drugs that are safer than some of the drugs sold over the counter to young adults in Arizona.

Mr. Rao stated that Low Cost does not feel that the intent of the Board's actions are directed to the safety of Low Cost's patients because these issues have never been addressed by the Board in any of its testimony. Mr. Rao stated that Low Cost finds this concerting and could only surmise that this is selective enforcement and the Board is abusing its regulatory authority.

Mr. Rao stated that they have filled over six hundred thousand lifestyle prescriptions the last few years with never a medical issue or lawsuit of any kind.

In closing, Mr. Rao stated that any damages resulting from any forced patient abandonment by this Board should be the responsibility of the Pharmacy Board, each of its Board Members, in making an assessment of its actions to have Low Cost discontinue refilling lifestyle prescriptions, especially since some of these prescriptions are for sexually transmitted diseases.

President Dutcher asked Ms. Lee, the Assistant Attorney General, if she had any comments to make in response.

Ms. Lee stated that she would like to make a few points. Ms. Lee stated that the Board has not been presented with any new information today that would make the Board alter their decision that the statutes have been violated and that disciplinary action is warranted.

Ms. Lee stated that the Respondent had the opportunity to be heard at the time of the hearing and thoroughly litigated all issues before the Administrative Law Judge. Ms. Lee stated that because the respondent is now unhappy with the results after they have litigated all issues it does not mean the Board is obligated to provide a new hearing or reconsideration of the entire matter. Ms. Lee stated that the Board's decision to accept the Administrative Law Judge's decision was justified and supported by all the evidence. Ms. Lee stated that the evidence supported the Findings of Fact and Conclusions of Law. Ms. Lee stated that the Board accepted the decision with minor alterations and that decision was appropriate and at this time the State is requesting that the Board deny the Respondent's motion for rehearing or review.

Mr. Palmer, Legal Counsel for the permit holder asked President Dutcher if he could respond to the comments made by the Board Counsel.

Mr. Munns, the Solicitor, advised Mr. Dutcher it was the Board's decision if they wanted to allow Mr. Palmer to speak. The Board granted Mr. Palmer five minutes to respond to the comments made by Counsel.

Mr. Palmer stated that one of the reasons for their request that the Board reject the Administrative Law Judge's findings was that they believe that the Judge abused his discretion by precluding their pharmacy expert from testifying on issues. Mr. Palmer stated that they were denied the right to have their expert testify. Mr. Palmer stated that this case will be appealed to the higher level courts, such as the Court of Appeals and the Arizona Supreme Court.

Mr. Palmer stated that the eyes of the court would be looking at the selective enforcement of issues by the Board. Mr. Palmer stated that the Board's Counsel responded that influenza and pneumonia vaccines that are provided to individuals on a regular basis are not dispensed but administered as a one-dose injection. Mr. Palmer stated that Board's Counsel indicated that the administration of the injections is not administered in an environment where there is a lack of contact with the patient. Mr. Palmer stated that these statements are untrue. Mr. Palmer stated that the medical expert for the Board stated during testimony that influenza, Tamiflu, and other flu vaccines are legend drugs and that they need to be dispensed by prescription only. Mr. Palmer stated that in this case against Low Cost Pharmacy the Board has interpreted that since the doctor has not examined the patient at least one time, the prescription is deemed to be misbranded and has violated Arizona law. Mr. Palmer stated in influenza cases that anyone could go to any retail establishment and get a flu shot without a pharmacist being present. Mr. Palmer stated that the Board turns a blind eye to this type of medical practice and finds that this type of medical practice is appropriate. Mr. Palmer stated that the Court of Appeals would agree with Low Cost that the Board selectively enforces pharmacy law in this state.

Mr. Palmer stated that another reason the Board should reject the Administrative Law Judge's decision is that the Judge

erroneously adopted word for word the findings by a collateral Medical Board. Mr. Palmer stated that they cited numerous cases and that this type of adoption of another Board's findings when different parties are involved in administrative hearings violates Arizona law.

Mr. Palmer stated that Board Counsel stated that the Judge did not abuse his discretion. Mr. Palmer stated that the Board's Counsel did not cite one case that the Judge did not abuse his discretion and Low Cost cited several cases that show the Judge did abuse his discretion.

Mr. Palmer stated that that Board should refer this matter back to the Administrative Law Judge to have Low Cost's expert witness testify.

President Dutcher stated that the Board Members would now proceed to deliberate on the request for rehearing or review.

Dr. Sypherd asked if the application of a vaccine being given without being examined by a physician is the basis of their appeal.

Mr. Dutcher replied that is correct, but that the issue was not addressed the last time they appeared in front of the Board. Mr. Dutcher stated that the complaint before the Board is filling Internet prescriptions with a diagnosis by a questionnaire. Mr. Dutcher stated that Low Cost Pharmacy violated the laws on the books for all pharmacies to read and follow.

Mr. McAllister stated that he would like to clarify the issue of administration of a vaccine by a nurse. Mr. McAllister stated that the administration by a nurse is covered under the Department of Health Services. The Board of Pharmacy deals with the dispensing of medications to the public. Mr. McAllister noted that administration and dispensing are two separate and distinct issues.

Dr. Smidt stated that the Board has reviewed and discussed all the information presented to them by Low Cost. Mr. Munns asked Dr. Smidt to clarify his statement concerning the discussion of the information. Dr. Smidt stated that the Board has discussed this information thoroughly at the Board Meetings with the Respondent.

On motion by Mr. McAllister and Mr. Van Hassel, the Board unanimously denied the Respondent's request for rehearing or review. A roll call vote was taken. (Mr. McAllister – aye, Ms. Honeystewa – aye, Dr. Tippett – aye, Dr. Smidt – aye, Dr. Berry – aye, Dr. McCoy – aye, Dr. Sypherd – aye, Mr. Van Hassel – aye, and President Dutcher – aye.)

President Dutcher concluded the request for rehearing or review by Low Cost Pharmacy.

AGENDA ITEM 4 – Permits and Licenses

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

The Guidance Center

President Dutcher asked if anyone from The Guidance Center was present. No one came forth.

Ms. Frush stated that they were sent a letter to appear. Ms. Frush stated that the pharmacist is still negotiating with the owners. Ms. Frush stated that the CFO was told that he should still appear and state that they are currently negotiating with the pharmacist.

Mr. Wand stated that applicants are asked to appear if they are non-pharmacist owners, first-time pharmacy owners, or their pharmacy business is different than the normal retail pharmacy.

Mr. Wand stated that the Board could approve their permit without talking to the owners.

Mr. Wand stated that they are invited to attend the meeting and describe their business, so that the Board has a record of their proposed business plans.

Mr. Wand stated that the permit is in order and the Board has received the floor plans and zoning information. Mr. Wand stated that the Board could approve the permit. Mr. Wand stated that the Compliance Officer could review the requirements with the pharmacy owners or the Board could wait to approve the permit at the next meeting.

Dr. McCoy asked if the pharmacy size was clarified. Ms. Frush stated that she received an e-mail from the CFO stating that the pharmacy will be roughly 900 square feet.

The Board decided that they would have the Compliance Officer review the pharmacy regulations with the Pharmacist In Charge and Pharmacy Owners.

WR Group

Owner and CEO Carey Williams and Pharmacist In Charge Cindy Vlosic were present to address question from the Board Members.

President Dutcher opened the discussion by asking the applicants to describe the nature of their business. Mr. Williams stated that they would have an Internet pharmacy for pet medications. Mr. Williams stated that the pharmacy would be in an enclosed space in a warehouse in Phoenix.

Mr. Dutcher asked Mr. Wand if the same regulations apply to veterinary Internet prescriptions. Mr. Wand stated that the regulations are the same for dispensing human and veterinary prescriptions. Mr. Wand stated that there must be a valid patient-doctor relationship. Mr. Wand stated that there must be an examination of the animal and the doctor must have a history of the animal on file. Mr. Wand stated that a prescription could not be issued for an animal as the result of an Internet questionnaire. Mr. Williams explained that the animal would be examined and they would either have the prescription faxed or e-mailed to them.

Mr. Wand asked if they would be compounding any medications. Ms. Vlosic stated that they would not be compounding.

Mr. Dutcher asked about the pharmacy being located in the warehouse. Mr. Dutcher asked what products they sell in the warehouse. Mr. Williams stated that the company sells health products for humans and pets. Mr. Williams stated that they sell pet supplements, pet toys, and other pet supplies.

Mr. Dutcher asked where the prescription items are being stored. Ms. Vlosic stated that they would be stored in a secure area. Mr. Williams stated that the pharmacy is a contained area and the prescription items would be stored within the pharmacy.

Mr. Dutcher reminded the owner that the pharmacist is the only person that can open the pharmacy.

Dr. Smidt asked if they would fill a prescription for a human. Ms. Vlosic stated that they did not have any plans to dispense human medications. Mr. Williams stated that the products that they sell for humans are mainly supplements, herbs, and vitamins. Mr. Williams stated that most of these customers are located in Europe.

Mr. Wand asked if they would be selling prescription items to doctors in addition to dispensing prescriptions. Ms. Vlosic stated that they would only be filling prescriptions.

Dr. Smidt asked if all his businesses are located in Phoenix. Mr. Williams stated that he bought this company last year and has a large customer base and decided to start the pharmacy to compliment his current businesses.

President Dutcher wished the applicants luck with their new business.

Holbrook Hospital

Andrew Maestasos appeared on behalf of Holbrook Hospital.

President Dutcher asked Mr. Maestasos about the business plan for the Holbrook Hospital. Mr. Maestoes stated that they would be reopening the hospital and would be operating both an inpatient and outpatient pharmacy.

Mr. Dutcher asked if they had hired a pharmacist. Mr. Maestasos stated that they are in the process of hiring a pharmacist.

President Dutcher asked if the pharmacy met the square footage requirements. Ms. Frush stated that they have adequate square footage. Ms. Frush stated that the hospital would need to have two pharmacists because the inpatient and outpatient pharmacies appear to have a dividing wall between the two pharmacies. Mr. Wand further clarified that it would be difficult for one pharmacist to directly supervise the pharmacy staff in both areas if they could not see the employees because a dividing wall blocks their view.

Ms. Frush asked Mr. Maestasos how many inpatient beds were in the hospital. Mr. Maestasos replied that there would be fifteen beds.

Mr. Wand asked Mr. Maestasos if both pharmacies would be open 40 hours a week. Mr. Maestasos replied that the outpatient pharmacy would not be open 40 hours.

Mr. McAllister stated that he feels that a door could be placed between the two pharmacy areas to allow the pharmacist to view both areas. Mr. Maestasos stated that the Department of Health Services requires that they have a separate inpatient and outpatient area. Mr. Maestasos stated that originally the hospital was designed to have twenty-eight beds and the number of beds was reduced to fifteen beds. Mr. Maestasos stated that the dividing wall is a firewall and a door could not be placed in the firewall.

Mr. McAllister stated that he feels that a pharmacist would not be needed full-time in the inpatient pharmacy for fifteen beds. Mr. McAllister stated that the pharmacist could lock the inpatient pharmacy when he is not needed and supervise the outpatient staff.

Dr. McCoy asked Mr. Maestasos if they could use the same space for the inpatient and outpatient pharmacy since there is adequate space. Mr. Maestasos stated that the Department of Health Services requires a separation of inpatient and outpatient areas. Mr. Wand stated that he would check with the Department of Health Services for clarification if separate inpatient and outpatient pharmacy areas are required.

Mr. Wand asked Mr. Maestasos to fax a copy of the Department of Health Services permit to the Board Office.

Mr. Dutcher asked Mr. Maestasos if the outpatient pharmacy would be open to the public. Mr. Maestasos replied yes.

Mr. Dutcher wished the applicant luck on opening the hospital.

Arizona Rx Solutions

Owner and Pharmacist In Charge Raymond Barone appeared to answer questions from Board Members.

President Dutcher opened the discussion by asking Mr. Barone what type of limited service pharmacy he would be operating.

Mr. Barone stated that he would be opening a closed door retail pharmacy. Mr. Barone stated that he would not be doing any mail order prescriptions. Mr. Barone stated that he plans on operating in the Phoenix area. Mr. Barone stated that prescriptions would be faxed or phoned to the pharmacy and the prescriptions would then be delivered to the patients.

Mr. Dutcher asked if the pharmacy would be open to the public. Mr. Barone replied no.

Mr. Dutcher asked if this would qualify as a limited service pharmacy. Mr. Wand stated the reason for him to be licensed as a limited service pharmacy would be more structural in nature than the type of clientele that he would service. Mr. Wand stated that by being licensed as a limited service pharmacy he would not need a sneeze barrier. Mr. Wand stated that Mr. Barone would need to write policies and procedures for his business.

Mr. Wand asked Mr. Barone how the doctors would know about the pharmacy. Mr. Barone stated that he plans to focus on assisted living homes.

Mr. Dutcher wished Mr. Barone good luck with his business.

Safescript Pharmacy

Owner Ghanshyam Patel appeared to answer questions from Board Members concerning the change of ownership of this pharmacy.

President Dutcher opened the discussion by asking Mr. Patel about his business. Mr. Patel stated that he is buying an existing business. Mr. Patel stated that he is a licensed pharmacist.

Mr. Wand asked Mr. Patel to describe the pharmacy business. Mr. Patel stated that he would be taking over the business next month. Mr. Patel stated that twenty percent of the business is retail and the remainder of the business is filling prescriptions for assisted living homes.

Ms. Frush stated that they were asked to appear because the previous owner supplied physicians with PDA's to prescribe pain management medications. Mr. Patel stated that he would be evaluating that practice when he takes over the business. Mr. Patel stated that currently there are only three doctors participating in the pain management program and he will evaluate the program. Mr. Patel stated that the pain management program is only ten percent of the business and that is why the pharmacy has been switched to a retail pharmacy. Mr. Wand indicated that originally the pain management portion was one hundred percent of the business.

President Dutcher wished the applicant luck in his new business.

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

RESIDENT PHARMACIES (In State)

- The Guidance Center
2187 N. Vickey St.
Flagstaff, AZ 86004
The Guidance Center, Inc.
- Walgreens Pharmacy #09179
5075 W. Baseline Rd.
Phoenix, AZ 85338
Walgreen Arizona Drug Co
- Wal-Mart #10-3807
1106 N. Gilbert Rd., Suite #1
Mesa, AZ 85213
Wal-Mart Stores, Inc.
- Wal-Mart #10-4264
7951 N. Oracle Rd.
Oro Valley, AZ 85704
Wal-Mart Stores, Inc.
- WR Group, Inc.
518 W. Knudsen Dr., Suite 102,
Phoenix, AZ 85024
WR Group, Inc.
- CVS/pharmacy #1743

- 13870 Greenway Rd.
Surprise, AZ 85374
German Dobson CVS LLC
- Holbrook Hospital, Inc.
500 E. Iowa
Holbrook, AZ 86025
Holbrook Hospital Gov. Board
- Havasu Regional Med. Center Rehab.
101 Civic Center Ln.
Lake Havasu City, AZ 86403 (O)
Havasu Regional Med. Ctr. LLC
- Havasu Regional Medical Center
101 Civic Center Ln.
Lake Havasu City, AZ 86403 (O)
Havasu Regional Med. Ctr. LLC
- Tucson Heart Hospital
488 N. Stone Ave.
Tucson, AZ 85705 (O)
Medcath of Tucson, LLC
- Arizona Cancer Center
3838 N. Campbell Ave.
Tucson, AZ 85743
University Medical Center
- Arizona Rx Solutions, LLC
2431 W. Peoria Ave., #1005,
Phoenix, AZ 85029
Arizona Rx Solutions, LLC
- Safescript Pharmacy
310 N. Wilmot Rd., #310
Tucson, AZ 85711
Sayona Pharmacy, Inc.

NON-RESIDENT PHARMACIES (Out of State)

- US Bioservices
359 Inverness Dr. South, Suite J
Englewood, CO 80112
IHS Acquisition
- Emissary HMO Pharmacy
2546 E. Second St., #100,
Casper, WY 82609
Emissary Professional Group, LLC
- Mt. Laurel Veterinary Pharmacy
17 Mt. Laurel Ave.
Birmingham, AL 35242
Mt. Laurel Veterinary Pharmacy
- Fairview Specialty Services Pharmacy
711 Kasota Ave. SE
Minneapolis, MN 55414
Fairview Pharmacy Services, LLC
- PCM Venture I LLC
5201 Green St., Suite 225
Murray, UT 84123
PCM Venture I LLC

- Prescription Solutions
6800 W. 115th St., Suite 150
Overland Park, KS 66211
UnitedHealth Group
- Anazao Health Corporation
5211-B W 9th
Amarillo, TX 79106
Anazao Health Corporation
- SaveDirectRx, Inc.
4243 Center Gate
San Antonio, TX 78217
SaveDirectRx Inc.
- RX Depot, LLC
317 SW Wilshire Blvd., Ste 100-B
RX Depot, LLC
- Pharmacy 101, LTD
5620 Jefferson Hwy.
Elmwood, LA 70123
Elizabeth Prechter
- Icore Healthcare, LLC
855 SW 78th Ave., Suite 110
Plantation, FL 33324 (O)
Green Spring Health Services
- Medfusion Pharmacy
2211 5th St. N., Ste. B
Columbus, MS 39705
Medfusion RX, LLC
- Borg Warner Family Pharmacy
4005 W. Kilgore Ave.
Muncie, IN 47304
CHDM, LLC

(O) = Ownership Change

Wholesalers

President Dutcher stated that all wholesale permits were in order and one applicant was present to answer questions from Board Members

Maricopa County Department of Public Health Pharmacy

Shawn Tennant, Pharmacy Manager for the Maricopa County Department of Public Health Pharmacy and Diane Temporado, the designated Manager for the Wholesale business were present to answer questions. Ms. Tennant stated that the pharmacy is no longer processing pharmaceutical services for several grants that reduced the pharmacy revenue from six million dollars to two hundred thousand dollars. Ms. Tennant stated that as a result of the decrease in revenue the medication that they distribute to other clinics now exceeds the 5% business limit.

Mr. Wand stated that the medications could not be sold to clinics but must be sold to the doctors at the clinic because clinics do not have permits. Ms. Tennant stated that the medications are sold to the doctors at the various clinics.

President Dutcher thanked the applicants for appearing.

Western Research Laboratories

Ms. Frush explained that Western Research Laboratories was not asked to appear. Ms. Frush stated that this is an

ownership change. Ms. Frush stated that one of the original three owners would now be the sole owner. Ms. Frush stated that the facility has been inspected in the past and there have been no issues.

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

Resident Wholesalers

- Maricopa County Dept. of Public Health
1645 E. Roosevelt St.
Phoenix, AZ 85006
Maricopa County Pharmacy
- KB Bargain Wholesale Corp.
4480 N. 43rd Ave. A-4
Phoenix, AZ 85031
KB Bargain Wholesale Corp.
- Western Research Laboratories
2404 W. 12th St., Suite 4
Tempe, AZ 85281 (O)
RLC Labs, Inc.

(O) = Ownership Change

Manufacturers

President Dutcher stated that there was one manufacturers permit to be approved.

Ms. Frush stated that the applicants were not requested to appear because this is a change of ownership. Ms. Frush stated that one of the original three owners would now be the sole owner. Ms. Frush stated that the facility has been inspected in the past and there have been no issues.

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

- Western Research Laboratories
2404 W. 12th St., Suite 4
Tempe, AZ 85281(O)
RLC Labs, Inc.

(O) = Ownership Change (O) = Ownership Change

Pharmacist, Pharmacy Interns, and Pharmacy Technician Licenses

Following a review and discussion of the roster of applicants for licensure as pharmacists, interns, and pharmacy technicians and assurance by the staff that all applications were in order and all fees paid: **On motion by Mr. McAllister and Dr. McCoy**, the Board unanimously approved the Pharmacists licenses 15543 through 15740. **On motion by Dr. McCoy and Dr. Berry**, the Board unanimously approved the Intern licenses 7611 through 7780. **On motion by Dr. Tippett and Dr. McCoy**, the Board unanimously approved the Pharmacy Technician licenses 10983 through 11355. Also, approved were 186 licensee changes from Pharmacy technician trainee to Pharmacy Technician.

AGENDA ITEM 5 – License Applications Requiring Board Review

#1 Anthony Breeding

Anthony Breeding appeared on his own behalf to request to proceed with licensure as a Pharmacist.

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

Mr. Breeding stated that he is here to explain why the Iowa Board of Pharmacy placed his license on probation. Mr. Breeding stated that in May of 2004 he was charged with a DUI offense. Mr. Breeding stated that he was required by the College of Pharmacy to report the DUI within five days, which he did. Mr. Breeding stated his advisor had informed him at this time that she was notified by the Iowa Pharmacy Board that he had not applied for his Intern license. Mr. Breeding stated that on the application there is a question that asked if the applicant had ever been convicted of or pled guilty to a drug or alcohol offense. Mr. Breeding stated at that time he had not had his court date and his advisor told him that he did not have to include the charge because he was not convicted yet.

Mr. Breeding stated that the Iowa Pharmacy Board later told him that he withheld information and he would need to appear in front of the Board. Mr. Breeding stated that his advisor and Dean called the Board to inform them that Mr. Breeding was advised by them to answer no to the question since he had not been convicted. Mr. Breeding stated that the Board still asked him to appear.

Mr. Breeding stated that he signed a Consent Order that put his Intern license on probation. Mr. Breeding stated that he was not to drink alcohol as a requirement of his Consent Order. Mr. Breeding stated that for one and one-half years he did not drink alcohol. Mr. Breeding stated earlier this year he attended a Valentine's party and was not aware that the punch contained alcohol. Mr. Breeding stated that he was called for a random screen and he tested positive. Mr. Breeding stated that the next incident occurred at Easter when he drank alcohol at a family dinner. Mr. Breeding stated that he again was called for a random drug screen and tested positive. Mr. Breeding stated that the probation was then extended to his Pharmacist license.

Mr. Dutcher asked Mr. Breeding if he is on probation for two years. Mr. Breeding stated that is correct.

Mr. Dutcher asked Mr. Breeding if he is planning to move to Arizona. Mr. Breeding stated that he moved to Arizona about a month ago and is working as a cashier at CVS.

Mr. Dutcher asked Mr. Wand what are the Board's options in this case. Mr. Wand stated that the Board could offer the applicant a similar Consent Agreement to Iowa's Consent Order or the Board could deny the application because his license is on probation in Iowa.

Mr. Dutcher asked Mr. Breeding if he is in a recovery program. Mr. Breeding stated that he is participating in the Iowa Pharmacists Recovery Program. Mr. Breeding stated that it is his understanding that if he were licensed in Arizona then the Iowa Board would allow him to participate in the Arizona recovery program.

Mr. McAllister asked if there was a schedule for random screenings. Mr. Breeding stated that he called in daily Monday through Friday to see if he had been selected for a screening that day.

Mr. McAllister asked if he tested positive twice in a two month time period while under a Board Consent Order. Mr. Breeding replied yes.

Mr. Van Hassel asked Mr. Breeding if he has consumed any alcohol since moving to Arizona. Mr. Breeding stated that he has not consumed any alcohol. Mr. Breeding stated that the first time he did not know the alcohol was in the punch and the second time he chose to drink the alcohol.

Dr. McCoy asked Mr. Breeding if he has ever worked as a pharmacist. Mr. Breeding replied no.

Mr. McAllister made a motion that the Board deny Mr. Breeding's request to proceed with licensure. There was no second.

On motion by Dr. Tippett and Dr. Sypherd, the Board approved Mr. Breeding's request to proceed with licensure with the stipulation that he sign a Consent Agreement with similar stipulations as the Iowa Consent Order including the signing of a five-year PAPA contract. The consent agreement would be for the same time frame as the Iowa Consent Order.

A roll call vote was taken. (Mr. McAllister – nay, Ms. Honeyestewa aye, Dr. Tippett – aye, Dr. Smidt – aye, Dr. Berry – aye, Dr. McCoy – nay, Dr. Sypherd – aye, Mr. Van Hassel – nay, President Dutcher – aye).

Dr. McCoy stated that the individual does not have a reliable track record.

Mr. McAllister asked Mr. Wand if the Consent Agreement would state that Mr. Breeding must show the Consent Agreement to all his employers. Mr. Wand replied yes. Mr. Breeding stated that the Iowa Consent Order has the same stipulation.

#2 Duane Asp

Duane Asp appeared on his own behalf to proceed with reciprocity.

President Dutcher asked Mr. Asp why he was appearing in front of the Board. Mr. Asp stated that he applied for reciprocity and was told he needed to appear at the Board meeting this morning. Mr. Asp stated that he assumed it was to answer questions concerning his Wisconsin and Texas license.

Mr. Dutcher asked Mr. Asp about his Wisconsin incidences. Mr. Asp stated that when he sold his pharmacy in Wisconsin the State Board sent an inspector to his pharmacy to see if the transfer of ownership was completed properly.

Mr. Asp stated that when the Inspector checked his CV logbook it was noted that he sold a large number of bottles of an over-the-counter CV cough syrup in a short time frame.

Mr. Dutcher stated that Mr. Asp sold 150 bottles of cough syrup to nine individuals in a two to three month time frame.

Mr. Dutcher asked Mr. Asp about the misdemeanor charges. Mr. Asp stated that he was cited twice for disorderly conduct when arguments got out of hand and the police were called.

Mr. Dutcher asked Mr. Asp if he has a Texas license. Mr. Asp replied no.

Mr. Dutcher asked Mr. Asp if he has a job in Arizona. Mr. Asp replied that he has just moved to Arizona and does not have a job yet.

Dr. McCoy asked Mr. Asp if he could sell over-the-counter CV drugs. Mr. Asp stated that he could not sell over-the-counter CV cough syrups.

Mr. Wand stated that Federal Law states that four ounces of a CV cough syrup can be sold every forty-eight hours to one individual, unless the state law is stricter.

On motion by Mr. Van Hassel and Dr Smidt, the Board approved Mr. Asp's request to proceed with reciprocity. There were two nay votes by Dr. Tippett and Dr. Berry.

#3 John Hart

John Hart appeared on his own behalf to request to proceed with licensure as a Pharmacy Technician.

President Dutcher asked Mr. Hart why he was appearing in front of the Board. Mr. Hart stated that he is applying for a technician license and was told that he needed to appear at a Board Meeting because he has had felony convictions in the past.

Mr. Dutcher asked Mr. Hart if he is licensed in Colorado. Mr. Hart stated technicians are not licensed in Colorado.

Mr. Dutcher asked Mr. Hart if he has been working as a technician in Colorado. Mr. Hart replied yes.

Mr. Dutcher asked Mr. Hart if he is moving to Arizona. Mr. Hart stated that he wishes to move to Arizona.

Mr. Dutcher asked if Mr. Hart answered the questions honestly on the application. Ms. Frush stated that he answered the questions honestly and provided the proper paperwork.

Mr. Hart stated that the charges stem from paperwork that he submitted concerning unemployment claims in Colorado.

Mr. Dutcher asked about the charges of obtaining a controlled substance by fraud and deceit.

Mr. Hart stated that he had a friend that he was assisting when he fell and broke both his feet. Mr. Hart stated that his friend was in pain and did not have any insurance, so he forged a prescription for painkillers for his friend.

Mr. Dutcher asked if Mr. Hart was working as a Pharmacy Technician at the time of the forged prescription. Mr. Hart replied that he was working at a hospital as a mental health technician. Mr. Hart stated that he took a prescription from a prescription pad and wrote the prescription.

Mr. Dutcher asked Mr. Hart what happened to the charges for the forged prescription. Mr. Hart stated that charges were dropped after he completed the drug program.

Dr. Smidt asked if this was a one-time occurrence. Mr. Hart stated that he only forged one prescription for his friend and was caught. Mr. Hart stated that he really did not want to forge the prescription but was being pressured by his friend.

Dr. McCoy stated that there is a track record that shows a clean record since the infractions.

On motion by Dr. McCoy and Dr. Smidt, the Board approved the request by Mr. Hart to proceed with technician licensure. There was nay vote by Mr. Van Hassel.

AGENDA ITEM 6 – Special Requests

#1 Daniel Osborn

Daniel Osborn appeared on his own behalf to request the termination of probation imposed by Board Order 05-0011-PHR.

President Dutcher asked Mr. Osborn about the nature of his request. Mr. Osborn stated that he is requesting that his probation be terminated. Mr. Osborn stated that he has completed all the requirements of his Consent Agreement.

Mr. Van Hassel asked if Mr. Osborn had completed and submitted the CE units to the Board. Ms. Frush replied yes.

On motion by Mr. Van Hassel and Dr. Tippett, the Board unanimously agreed to terminate the probation of Mr. Osborn's license subject to the terms of Board Order 05-0011-PHR.

#2 Craig Westley

Craig Westley appeared with Lisa Yates from the PAPA program to request the termination of probation imposed by Board Order 02-0016-PHR.

President Dutcher asked Mr. Westley about the nature of his request. Mr. Westley stated that he is requesting that his probation be terminated and his Pharmacist license be returned to active status.

President Dutcher asked if Mr. Westley fulfilled all the requirements of his Consent Agreement. Mr. Westley stated that he has completed all the requirements.

Mr. Westley stated that living the life of recovery has been a positive change in his life and he has tried to serve as a role model for others.

Ms. Yates stated that Mr. Westley has been a participant that has reached out to help others in their recovery.

On motion by Dr. McCoy and Dr. Tippett, the Board unanimously agreed to terminate the probation of Mr. Westley's license subject to the terms of Board Order 02-0016-PHR.

#3 Remon Abd El-Malak

Remon Abd El-Malak appeared on his own behalf to request that the Board accept his TSE score of 45.

Mr. El-Malak stated that he has taken the TSE exam many times and each time he receives a score of 45.

Mr. Wand stated that it is important to note that the Board is not waiving the exam but the Board is giving an alternative exam when the Board Members ask questions of the applicant to ascertain if they are able to understand the individual when he speaks with them.

Mr. Van Hassel asked Mr. El-Malak to counsel the Board on a drug of his choice. Mr. El-Malak counseled the Board Member's on the use and side effects of Coumadin.

On motion by Mr. McAllister and Dr. McCoy, the Board unanimously approved Mr. El-Malak's request to accept his TSE score and proceed with licensure.

#4 Undra Patrice Graves- Guyton

Undra Patrice Graves-Guyton appeared on her own behalf to request to take the NAPLEX exam for the fourth time.

President Dutcher asked Ms. Graves-Guyton about the nature of her request. Ms. Graves-Guyton stated that she is requesting to take the NAPLEX exam for the fourth time.

Ms. Graves-Guyton stated that she has taken the exam three times and each time her score has improved. Ms. Graves-Guyton stated that she suffers from test anxiety and is currently being treated for her anxiety. Ms. Graves-Guyton stated that she has anxiety issues when taking tests.

Mr. Wand told Ms. Graves-Guyton that if her physician writes a letter to NABP she might be able to have extra time to take the exam.

On motion by Mr. Van Hassel and Dr. Smidt, the Board unanimously approved the request by Ms. Graves-Guyton to take the NAPLEX exam for the fourth time and if she is not successful she must take a review course before asking to take the exam for a fifth time.

AGENDA ITEM 7 – Reports

Executive Director Report

Mr. Wand opened the discussion by stating that online renewals with a credit card are available this year. Mr. Wand stated that 200 pharmacists, 22 technicians, and 10 pharmacies have renewed online so far.

Mr. Wand stated that there is a carry over of seventy thousand dollars from last year. Mr. Wand stated that some of the

carry over would be used to pay the Assistant Attorney General since this was not a budgeted expense. Mr. Wand stated that when there is an increase in salaries or retirement the legislature appropriates the necessary funds to cover the additional expenses.

Mr. Wand stated that the money is appropriated in allotments quarterly. Mr. Wand stated that the Board must remember that current revenues are not available for spending.

Mr. Wand reviewed the expenses with the Board Members.

Mr. Wand stated that he has passed out a copy of the Proposed Budget to the Board Members. Mr. Wand stated that Dr. Smidt reviewed the Proposed Budget. Mr. Wand stated that the Board is requesting approximately one million dollars more than in the 2008-2009 Budget. Mr. Wand stated that the Board is asking for additional funds for the following: a one-time contribution to the University of Arizona Pharmacy School, an increase in the Compliance Officer's salary, an increase in PAPA contributions, additional cars for the two new proposed Compliance Officers, and funds for the Prescription Monitoring Program.

Mr. Wand stated that the Budget was turned in on September 1, 2006. Mr. Wand stated that the JLBC (Joint Legislative Budget Committee) and the OSBP (Office of Strategic Planning and Budgeting) analysts would review the Budget. Mr. Wand stated that the analysts testify before the Joint Legislative Budget Committee and state whether or not they support the Budget. Mr. Wand stated if they do not support the Budget then he would need to appear and state why the item should be supported. Mr. Wand stated that this would occur in January and any Board Member could accompany him to testify.

Mr. Wand stated that if the JLBC and OSBP analysts support the Budget then the Budget would be placed on the Consent Agenda and he would not need to testify. Mr. Wand

stated that the Board might need to testify this year due to the increased amount of funds requested.

Deputy Director Report

Deputy Director Frush directed the Board Members attention to the activity reports for the Compliance Staff. Ms. Frush noted that the Compliance Staff is slightly behind in the number of inspections completed during the same period last year due to the increased number of non-prescriptions inspections earlier in the year and the increased number of complaint investigations being conducted. Ms. Frush stated that the number of inspections by the Drug Inspector is ahead of the number of inspections completed last year at this time.

Ms. Frush stated during the months of July and August the Compliance Staff issued letters for the following violations.

Controlled Substance Violations

1. Controlled Substance Overage – 4
2. Controlled Substance Shortage – 7
3. Controlled Substance Inventory Not Complete – 3
4. Failure to Conduct Controlled Substance Inventory upon change of Pharmacist in Charge – 1
5. Failure to Conduct Controlled Substance Inventory upon change of Ownership - 1
6. Annual Controlled Substance not available - 2

Documentation Violations

1. Failure to Document Medical Conditions – 15
2. Failure to Document Required Information on an Oral Prescription – 2
3. Failure to Document Correct Date Prescription was Written -1
4. Failure to have signed technician statements concerning job description, policies & procedures and Board rules - 12
5. Failure to have a technician training manual – 2
6. Failure to have a technician policy and procedure manual - 1
7. Daily prescription log not signed – 1

8. Failure to document allergies – 1
9. Failure to maintain Compounding Documentation – 1
10. Failure to obtain the name of a the agent authorizing a refill – 1
11. Failure to maintain counseling documentation –1

Dispensing Violations

1. Outdated Rx and OTC items in the pharmacy – 5
2. Failure to obtain a signed CII Emergency prescription -1

Pharmacy Violations

1. Allowing technicians to work without a license – 1
2. Allowing a technician to work with an expired license - 3
3. Wall certificates not posted – 11
4. Failure to notify the Board of a Pharmacist in Charge change – 2
5. Failure to maintain sanitary restroom conditions – 1
6. Failure to have a working prescription balance - 1

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

1. Documentation of medical conditions
2. Name Badges – Lack of title

The following areas were noted on the inspection reports where pharmacists and technicians are meeting or exceeding standards:

1. Cleanliness of pharmacy

Areas outside the inspection reports that may be of interest:

1. CII – Quantity to be dispensed – Not limited to 30 days
2. Change of Pharmacist In Charge – Immediate Notification to Board – 10 days must complete the Controlled Substance Inventory

PAPA Report

Lisa Yates was present to represent the PAPA program. Ms. Yates stated that there are a total of forty-one (41) participants in the PAPA program. Ms. Yates stated that since the last report on May 25, 2006 six participants have entered the program and there have been two terminations. Ms. Yates discussed with the Board Members issues with several participants.

APA Report

Mindy Rasmussen, Executive Director of the Arizona Pharmacy Alliance (APA), was present to update the Board concerning the activities of the Alliance.

Ms. Rasmussen stated that 500 people attended the annual meeting and the Alliance offered 24.5 hours of CE.

Ms. Rasmussen stated that the Alliance is establishing a list of pharmacists that would like to participate as members of the Medical Therapy Management Task Force. Ms. Rasmussen stated that the goal of the task force would be to obtain funding to pay for cognitive services.

Ms. Rasmussen stated that future legislative action would include obtaining prescriptive authority for pharmacists to give immunizations and extending the Collaborative Practice Agreements to the community pharmacist.

Ms. Rasmussen stated that there are a few pharmacy employers that are interested in purchasing the Pharmacy Quality Management Program.

Ms. Rasmussen updated the Board on upcoming CE events that the Alliance would be sponsoring.

AGENDA ITEM 8 – Caremark

Richard Chin, Pharmacy Supervisor, and Vicky Long, Pharmacist In Charge, were present on behalf of Caremark's Remote Verification Program.

Mr. Dutcher opened the discussion by asking the representatives about their program.

Mr. Chin stated that Caremark would like to offer their pharmacists the chance to work remotely and verify prescriptions that are entered by the technicians on site.

Ms. Sutcliffe stated that she has visited the initial two home sites. She stated that the e-mail function has been discontinued. Ms. Sutcliffe stated that the logout period was changed from fifteen minutes to five minutes.

Ms. Long stated that they have provided the Board with copies of their policies and procedures for remote verification.

Mr. Wand stated that the Board has set precedence by the Board approving previous requests for remote verification. Mr. Wand stated that the standards were set when Walgreens established the first home verification sites. Mr. Wand stated that the companies seeking to do remote verification ask to appear before the Board so that the Board is aware that their company is doing remote verification.

Mr. Dutcher asked how many pharmacists would be doing remote verification. Mr. Chin stated that they are starting with two pharmacists and anticipate up to ten pharmacists would participate in the program.

Mr. Dutcher thanked the representatives for appearing and presenting their remote verification program to the Board.

AGENDA ITEM 9 – Proposed Rules and Substantive Policy

Counseling – Pharmacist Initials Rule

Compliance Officer /Rules Writer Dean Wright opened the discussion by stating that he has added the changes requiring the initials of the pharmacist or intern that did or did not provide counseling.

Mr. Wright stated that a Public Hearing was held on July 24, 2006. Mr. Wright stated that there were two attendees and written comment was submitted. Mr. Wright stated that the Board Members have received copies of the written comments.

Mr. Wright stated that he prepared the Notice of Final Rulemaking and the Economic Impact Statement for the Board's approval. Mr. Wright stated that if the Board approves the Notice of Final Rulemaking and the Economic Impact Statement, the rulemaking would be placed on GRCC's December agenda and would become effective in February.

Dr. McCoy stated that the letter from the Arizona Community Pharmacy Committee stated that it would require the pharmacist to remember facts about the conversation with the patient about counseling. Dr. McCoy stated that the intent of this rule just documents the initials of the pharmacist counseling the patient and does not require the pharmacist to recall the conversation.

On motion by Mr. McAllister and Dr. McCoy, the Board unanimously agreed to approve the Notice of Final Rulemaking and Economic Impact Statement for the change in counseling rules.

Drug Wholesaler Rules

Mr. Wright stated that the Forty- Seventh Legislature in 2005 added five new sections to the statutes, which are A.R.S. § 32-1981 through A.R.S. § 32-1985. These statutes deal with the wholesaling of prescription drugs. Mr. Wright stated that the statutes require such items as bonds, pedigrees, and designated representatives.

Mr. Wright stated that this is the first draft of rules to implement the statutes.

Mr. Wand stated that the rules are written to clarify the statutes.

Mr. Wright stated that the statutes are very specific and spell out the requirements, so he has incorporated parts of the statutes into the rules.

Mr. Wright stated that the statutes give the Board the authority to fingerprint the designated representatives and if they are fingerprinted then DPS must run a background check. Mr. Wright stated that the rule would reflect the fingerprinting process. Mr. Wright stated that the applicant would be charged by DPS.

Mr. Wand asked Mr. Wright if there is any wording in the proposed rules that would prevent a wholesaler from selling a package that is repackaged from a legitimate manufacturer. Mr. Wright replied no.

Mr. Wand asked if the statute states that the Board may request the fingerprints. Mr. Wright stated that it does say, "may". Mr. Wright stated that he added it as a source of verification. Mr. Wand asked if it could be left in the rules as "may". Mr. Wright stated then the Board would need to decide who would be fingerprinted.

Mr. Dutcher stated that he would like to see it as shall fingerprint. Mr. Wand stated that if fingerprinting is required then staffing would be needed to process the requests.

Dr. Sypherd asked what is the goal of fingerprinting the designated representatives. Mr. Wright stated that the Board does not know if the person had any problems with drug distribution in the past.

Mr. Wand asked what would happen if it shows the person had a record. Mr. Wright stated that the wholesaler would then need to appoint a new representative.

Gary Cacciatore, Director of Regulatory Affairs for Cardinal Health, was called forth to address Board Member's concerns.

Mr. Van Hassel asked Mr. Cacciatore if he fingerprints his employees. Mr. Cacciatore stated that the designated representatives are fingerprinted because some state regulations require the fingerprints. Mr. Cacciatore stated that other employees are not fingerprinted.

Mr. Cacciatore stated that they do criminal background checks. Mr. Cacciatore stated that fingerprinting is not a hardship.

Mr. Van Hassel stated that he would like to leave the fingerprint check as "shall" in the rules.

Mr. Wand stated that if the background check comes back positive then the individual could not be the designated representative, but could still work at the company. Mr. Wand stated that he is not sure this is an advantage.

Dr. Sypherd stated that due to the inaccuracies with fingerprinting he is not sure what the advantage would be of fingerprinting the designated representative.

Dr. Tippet asked Mr. Wright to define failure to pass. Mr. Wright stated that DPS would determine who passed by whether they had a criminal record or not.

Dr. Tippet asked who would establish the criteria for passing the background check. Mr. Wright stated that the Board would establish the criteria. Mr. Wright stated that if the background check comes back that the representative has a record then it would come before the Board to determine if the individual could be the designated representative. Mr. Wright stated that the Board would make the determination.

Mr. Wand read the statement on page 409 that stated if the person fails to pass the wholesaler shall select another person. Mr. Wand stated that the Board could not make the determination that the individual who failed the background check could be the designated representative.

Mr. Wright stated that he would modify the statement to say the individual would need to appear in front of the Board.

Dr. Tippett asked if the Board would have guidelines in determining if an individual could be the designated representative. Dr. Tippett stated that guidelines would be useful to insure that the Board takes similar action in each case.

Ms. Lee asked if the criminal background check states that the individual passed or failed. Mr. Wright stated that he does not know. Ms. Lee suggested that the rule could be written stating that the agency that conducts the investigation would determine if an individual passed or failed and this would remove the burden from the Board.

Mr. Dutcher asked if the Board could receive comments from the wholesaler and DPS concerning these issues.

Mr. Wand stated that he would like to request that DPS make a presentation to the Board concerning background checks.

At this time, the Board decided to continue to review the rules and talk about the rules at a future meeting.

Pharmacist Licensing by Examination Rule

Mr. Wright stated that there is an incorrect citation in the rules and this change would correct the citation.

Mr. Wright stated that a Public Hearing was held on September 18, 2006. No one attended the hearing and no written comments were received.

Mr. Wright stated that if the Board approves the Notice of Final Rulemaking and the Economic Impact Statement, the rule change would be on GRCC's December agenda and become effective in February.

On motion by Dr. McCoy and Mr. McAllister, the Board unanimously agreed to approve the Notice of Final Rulemaking and Economic Impact Statement for the change in Pharmacist Licensing by Examination Rule.

Substantive Policy – SPS09- Pharmacist In Charge of a Drug Manufacturer

Mr. Wright stated that at the July meeting he was asked to draft a substantive policy statement addressing the Pharmacist In Charge at a manufacturer and how many hours the Pharmacist In Charge must be present a week when the manufacturing process occurs 24/7.

Mr. Wright stated that the Pharmacist must be there a minimum of 40 hours a week and no drug can leave the facility until checked by the pharmacist.

Mr. Wand stated that policies are stopgaps. Mr. Wand stated that there is a proposed statute change for next year.

Mr. Wright stated that the statute change would allow a non-prescription manufacturer to operate without a pharmacist.

Dr. Smidt asked why a pharmacist is required at a manufacturing plant. Mr. Wand stated that Arizona is one of seven states that has this requirement. Mr. Wand asked if the Board would like to remove this requirement.

Dr. McCoy asked if the pharmacist adds any degree of safety. Mr. Wand stated that many manufacturing plants are automated.

Mr. Wright stated that a Bill would need to be introduced to remove manufacturer from A.R.S. § 32-1961.

Mr. Wand stated that the policy should be put in place as a stopgap until the statute could be changed. Mr. Wand stated

that the policy would allow a manufacturer to open with a Pharmacist for only forty hours a week when operating 24/7.

On motion by Dr. Smidt and Dr. McCoy, the Board unanimously approved the acceptance of Substantive Policy SPS09 setting guidelines for the hours a Pharmacist In Charge must be present at a drug manufacturer.

AGENDA ITEM 10 – Complaint Review

The Consumer Complaint Review committee met prior to the Board Meeting to review 35 complaints. Dr. Berry, Dr. Sypherd, and Ms. Honeyestewa served as the review committee. Board Members were encouraged to discuss issues and were encouraged to ask questions.

The Board Members discussed Complaint # 3201. The Board Members decided that they would like Mr. Wand to order a psychological test.

Ms. Lee stated that the Board could have the examiner ask specific questions during the psychological exam.

Dr. Smidt asked about the psychological exam. Ms. Lee stated that the Board could ask that the exam be completed in a certain time frame. Mr. Wand stated that the results of the exam would stay in the respondent's file and would be a permanent record.

The Board decided that Mr. Wand would request the individual to submit to a psychological test and the complaint review committee prior to the November meeting would review the results and then the Board could act upon the committee's recommendations at the November meeting.

The Board asked why the committee recommended revocation on Complaint 3223. Mr. Wand stated that the individual has had three PAPA contracts in the past.

The following summary represents the final decisions of the Board in each complaint:

- Complaint # 3150 - Conference (Both Pharmacists)
- Complaint # 3154 - Advisory Letter
- Complaint # 3155 - Conference (Both Incidents)
- Complaint # 3157 - No Further Action
- Complaint # 3158 - No Further Action
- Complaint # 3161 - No Further Action
- Complaint # 3163 - No Further Action
- Complaint # 3167 - No Further Action
- Complaint # 3169 - Conference (Incident 1) No Further Action (Incident 2)
- Complaint # 3172 - Conference (Pharmacist In Charge and Supervisor)
- Complaint # 3175 - Advisory Letter
- Complaint # 3176 - Advisory Letter
- Complaint # 3179 - No Further Action

- Complaint # 3180 - Conference (Verifying and Customer Service Pharmacist)
- Complaint # 3183 - Conference
- Complaint # 3189 - No Further Action
- Complaint # 3191 - Consent – Voluntary Surrender
- Complaint # 3192 - No Further Action
- Complaint # 3193 - No Further Action
- Complaint # 3194 - Conference
- Complaint # 3195 - No Further Action
- Complaint # 3196 - No Further Action
- Complaint # 3197 - No Further Action
- Complaint # 3199 - Advisory Letter
- Complaint # 3200 - Consent (PAPA)
- Complaint # 3201 - Order Psychological Test
- Complaint # 3202 - No Further Action
- Complaint # 3203 - Conference (Pharmacist and Technician)
- Complaint # 3205 - Conference (Both Pharmacists)
- Complaint # 3206 - Refer to Executive Director
- Complaint # 3209 - Consent – Voluntary Surrender
- Complaint # 3210 - No Further Action
- Complaint # 3221 - No Further Action
- Complaint # 3222 - Consent – Revocation
- Complaint # 3223 - Consent – Revocation

AGENDA ITEM 11 – Conferences

Complaint #3142

Pharmacist Doan Phuong, Pharmacy Supervisor Joe Leyba, Divisional Pharmacy Director Robbie Jacobs, and National Director of Pharmacy Affairs Phil Burgess were present in response to a consumer complaint. Compliance Officer Rich Cieslinski gave a brief overview of the complaint.

Mr. Cieslinski stated that the complainant had a prescription for Zyrtec syrup refilled for her six-year-old daughter. The complainant noted that the medication was a different consistency and smelled different when her daughter said the

medicine tasted different.

The complainant returned the medication to the pharmacy and the pharmacy was unable to identify the contents of the bottle. The complainant requested that the medication be sent away for analysis. The Insurance Company delayed getting the medication analyzed and offered the complainant a settlement. The complainant filed a complaint with the Board. The medication was analyzed and it was determined that the medication was Zantac syrup.

President Dutcher opened the discussion by asking Ms. Phuong to address the complaint. Ms. Phuong stated that the scale was not used to identify that the correct product was being dispensed. Ms. Phuong stated that the technician is supposed to place the stock bottle in front of her, but she cannot recall if the stock bottle was placed in front of her.

Ms. Phuong stated that it is her responsibility to look at the medication in the bottle and verify that the correct medication is in the prescription bottle.

President Dutcher asked about the delay in having the medication analyzed by the Insurance Carrier. Mr. Leyba stated that when the issue was brought to his and Phil's attention the product was analyzed immediately. Mr. Leyba stated that they were unaware of the delay until contacted by the complainant.

Mr. Dutcher asked why this error is still occurring. Mr. Dutcher stated that the Board has cautioned the Pharmacy chain about this particular error in the past.

Mr. Leyba replied that the company has sent out several memos to all the pharmacies concerning the potential for a Zyrtec/Zantac error. Mr. Leyba stated that when visiting the pharmacies the Pharmacy Supervisors are reviewing with the pharmacy staff the potential for a Zyrtec/Zantac error. Mr. Leyba stated that the company has required that the two products be placed in separate areas of the pharmacy and not just on different shelves in the same section. Mr. Leyba stated that they have sent out quality stickers to place on the shelf in front of the products. Mr. Leyba assured the Board that the company takes this very seriously.

Mr. Burgess addressed the Board. Mr. Burgess stated that as a company they take this error very seriously. Mr. Burgess passed out a memo that was e-mailed to all pharmacies within the chain. Mr. Burgess stated that the error does not occur in just Arizona, so the memo has been e-mailed nationwide. Mr. Burgess stated that the company has significantly strengthened their message with this memo. Mr. Burgess stated that the Zyrtec syrup would be located in the fast mover section and the Zantac syrup would be stored in the liquid section. Mr. Burgess stated that there would be no overstock of Zyrtec syrup near the Zantac syrup in the Liquid section. Mr. Burgess passed out Bright Orange CQI stickers that are placed on the shelf to alert the staff to double-check that they have the correct product.

Mr. Jacobs addressed the system changes the company has put into place to prevent this error from occurring. Mr. Jacobs stated that during data entry a pop up box would appear when a Zyrtec or Zantac prescription is entered. The technician is asked to check the drug and enter their initials into the box that they have checked the drug. After the technician enters their initials, the box would disappear. Mr. Jacobs stated that the same box would appear when the pharmacist verifies the prescription. Mr. Jacobs stated that the pharmacist must enter their initials indicating that they have selected the correct product.

Mr. Burgess stated that the pop up box was put into place because of concerns raised by the Arizona Board. Mr. Burgess stated that the technician and the pharmacist could not bypass the box and must put their initials in the box to proceed with the prescription.

Mr. Burgess stated that there have been some procedural changes. Mr. Burgess stated that the stock bottle must be passed to the pharmacist. The pharmacist should check the contents of the prescription bottle because each product has a distinct smell and an error could be caught at this step of the process.

Mr. Burgess stated that they have discovered one problem with the Zyrtec barcode that prevents them from scanning the barcode. Mr. Burgess stated that the barcode for Zyrtec is located on the outer box and not on the stock bottle itself. Mr. Burgess stated that the company has contacted Pfizer to place the barcode on the bottle in addition to the outer box.

Mr. Burgess stated that the company hopes these changes demonstrate to the Board that the company takes this error seriously.

Mr. Dutcher asked if the supervisors are seeing that these changes are occurring in the stores. Mr. Leyba stated that all the supervisors are checking each pharmacy location.

Mr. Dutcher asked why the Orange CQI stickers are only required to be on the shelf for 90 days. Mr. Leyba stated that the company policy required the stickers for 90 days, but most pharmacies are keeping the stickers on the shelf permanently.

Mr. Burgess stated that the insurance carrier should have taken quicker steps to get the product assayed and the company has talked to the insurance carrier about this issue.

Dr. McCoy stated that she would commend the company on their commitment to ensure this error does not occur again. Dr. McCoy reminded others in the audience that it is better to be proactive instead of reactive. Dr. McCoy stated that this company has suggested several actions that could be taken to be proactive and prevent this error from occurring in another pharmacy.

Dr. Smidt asked if the company had any statistics on how these changes have impacted the error rate with these two drugs. Mr. Burgess stated that the program has just been loaded into the computer in the last three to four weeks and no statistics have been gathered yet. Mr. Burgess stated that it would be an excellent study to see if errors decrease as a result of these changes.

Mr. Dutcher asked Ms. Phuong what she has changed in her practice to ensure this error does not occur again. Ms. Phuong stated that she requires the technicians to leave all stock bottles that were used to fill the dispensing bottle with the completed prescription. Ms. Phuong stated that she has slowed down and carefully checks all prescriptions.

Dr. McCoy asked the Board also send a letter to Pfizer requesting that the barcode be placed on the product bottle.

Dr. Berry recused herself due to a conflict of interest.

On motion by Mr. McAllister and Ms. Honeyestewa, the Board unanimously agreed to issue an advisory letter to Ms. Phuong and a copy of the advisory letter would be kept in her file.

Complaint # 3077

Pharmacy Technician Donna Long and Pharmacy Supervisor Terry Daane were present to answer questions concerning a consumer complaint. Compliance Officer Larry Dick gave a brief overview of the complaint.

Mr. Dick stated that the complainant stated that the Pharmacy Technician was incompetent and tried to represent their Store Brand as the generic equivalent for Dayquil.

President Dutcher opened the discussion by asking Ms. Long why she was giving the patient advice on a non-prescription medication. Ms. Long stated that the complainant came to the pharmacy asking for generic Dayquil. Ms. Long stated that the product was behind the counter and the complainant would need to pay for the product at the pharmacy counter. Ms. Long stated that that complainant did not want to pay for the product at the pharmacy counter and later came back to the pharmacy counter telling her that he found the product out front and did not have to pay at the pharmacy. Ms. Long stated that the complainant did not want to wait and speak to the pharmacist who was in the restroom at the time.

Mr. Daane stated that part of the issue is that the product has recently been reformulated. Ms. Long had the product that contained pseudoephedrine behind the counter and the product containing phenylephrine was stocked on the shelves in front of the pharmacy.

Mr. Daane stated that Ms. Long did not know the patient was looking for the non-pseudoephedrine product.

Mr. Dutcher asked if it is company policy to allow the technicians to advise patients about their medications. Mr. Daane stated that is not company policy and Ms. Long should have insisted that the patient wait for the pharmacist.

On motion by Mr. McAllister and Dr. McCoy, the Board unanimously agreed to dismiss the complaint against Ms. Long and take no further disciplinary action against Ms. Long.

Complaint # 3078

Pharmacist Richard Mickle and Pharmacy Supervisor Buck Stanford were present in response to a consumer complaint. Bruce Crawford, Legal Counsel, was present on behalf of Mr. Mickle. Compliance Officer Sandy Sutcliffe gave a brief overview of the complaint.

Ms. Sutcliffe stated that the complainant brought in a prescription for Effexor XR 75 mg capsules and received Effexor 75 mg tablets. The complainant stated that she took one dose of the medication and reported that she became dizzy, nauseous, and had a headache. The complainant stated that she felt that the pharmacist tried to cover up the error.

President Dutcher asked Mr. Mickle how the error occurred. Mr. Mickle replied that he misread the prescription.

President Dutcher stated that the letter from the patient stated that the pharmacist tried to cover up the error. Mr. Dutcher asked Mr. Mickle if he tried to cover up the error. Mr. Mickle replied not to his knowledge.

Mr. Van Hassel stated that in his reply Mr. Mickle stated that he did not have enough technician help. Mr. Van Hassel asked Mr. Mickle if he had enough help. Mr. Mickle replied that he had less than adequate help. Mr. Mickle stated that it was just himself and one technician working that day.

Mr. Van Hassel stated that only 90 prescriptions were filled that day. Mr. Mickle stated that he also had to answer the phone, counsel patients, and answer questions about OTC products.

Mr. Dutcher stated that a technician and a pharmacist could do 90 prescriptions a day. Mr. Dutcher asked Mr. Stanford if Mr. Mickle had adequate help.

Mr. Stanford replied that Mr. Mickle had adequate help. Mr. Stanford stated that a spreadsheet is created based on the number of scripts filled per day per week. Mr. Stanford stated that there was enough technician help budgeted for this store. Mr. Stanford stated that there is no shortage of technician help.

Mr. Van Hassel asked if there is a certain point that additional technician help is authorized. Mr. Stanford stated that every store opens with 40 hours of technician help a week. Mr. Stanford stated that when a store reached 300 prescriptions a week then they are authorized to use 60 hours of technician help per week.

Mr. Stanford stated that 92 prescriptions were filled that day at Mr. Mickle's store and the store averaged 500 prescriptions per week. Mr. Stanford stated that the store used 90 technician hours that week.

Mr. Dutcher asked Mr. Mickle why the prescription was rewritten. Mr. Mickle stated that is his writing but he does not recall the prescription.

Ms. Sutcliffe stated that Mr. Mickle stated in his reply that he phoned the doctor for the prescription. Ms. Sutcliffe stated that she called the doctor as part of her investigation and was told that the doctor never issued a telephone prescription.

Mr. Stanford stated that he also had called the doctor's office and was told that they never phoned a prescription for Effexor XR to the pharmacy for the complainant.

Mr. Dutcher asked about the original prescription. Mr. Stanford stated the original was deleted, so it does not show on the profile.

Mr. Dutcher asked Mr. Mickle if he took the prescription by telephone why is there no directions on the prescription and no initials of the pharmacist who transcribed the oral prescription. Mr. Mickle stated that he does not remember.

Dr. Sypherd noted that Mr. Mickle has not been very helpful in resolving the complaint. Mr. Crawford, Legal Counsel for

Mr. Mickle, stated that Mr. Mickle truly does not remember and to answer the questions otherwise would be dishonest.

Dr. Sypherd then asked Mr. Crawford if Mr. Mickle had any explanation for a partly written prescription. Mr. Crawford replied he does not have any explanation.

Mr. McAllister stated that Mr. Mickle had his first opportunity to catch the error when he counseled the patient. Mr. McAllister stated that if he told the patient the name of the drug she might have told him that was the wrong drug.

Mr. McAllister noted that the directions state to take one tablet daily. Mr. McAllister stated that Mr. Mickle should have noted during counseling that the tablets, which are not sustained-release, are given more than once daily.

Mr. Sowers, a Target pharmacist, told the Board Members that their system will not allow a pharmacist to go to the original prescription and correct the error.

Dr. McCoy stated that the error is a filling error and asked Mr. Mickle how he has changed his practice so this error does not occur again. Mr. Mickle stated that he does each prescription separately if the patient has multiple prescriptions. Mr. Mickle stated that he uses a scanner to check the product if a scanner is available. Mr. Mickle stated that he underlines the name of the medication on the prescription and checks the name of the medication with all the paperwork.

Dr. McCoy stated that according to the patient's account the error was not handled forthright and honestly. Dr. McCoy told Mr. Mickle to be truthful and not cover up the error. Dr. McCoy stated that the error was not handled appropriately and Mr. Mickle should learn how to handle errors when a patient states that a mistake was made on their prescription.

On motion by Mr. Van Hassel and Mr. McAllister, the Board unanimously agreed to issue an advisory letter to Mr. Mickle and a copy of the advisory letter would be kept in his file.

Complaint # 3108

Pharmacist Angie Oh, Pharmacy Supervisor Carl Dawson, and Director of Pharmacy Services Jason Reiser appeared to discuss a consumer complaint. Compliance Officer Rich Cieslinski gave a brief overview.

Mr. Cieslinski stated that the complainant presented the pharmacy with a prescription for Morphine SA 30 mg and the prescription was filled with immediate release Morphine 30 mg. Mr. Cieslinski stated that the patient refused counseling because she had the medication before. Mr. Cieslinski stated that the patient realized the error when she went to take her first tablet. Mr. Cieslinski stated that the patient was at her ranch, which was approximately an hour and a half away from the pharmacy. The patient decided to take the tablets with Benadryl and did experience some side effects.

President Dutcher asked Ms. Oh to address the complaint. Ms. Oh stated that when she verified the prescription she did not see the SA and filled the prescription incorrectly.

Mr. Dutcher asked Ms. Oh if the SA on the prescription confused her. Ms. Oh stated that she misread the prescription and knew what SA meant.

Mr. Reiser stated that the company has contacted the doctor concerning the electronic prescription he ordered. Mr. Reiser stated that if the Board Members looked at the prescription they would note that the SA is at the end of the line that says Morphine Sulfate 30mg Tablet SA. Mr. Reiser stated that this is confusing and has asked the doctor if his software can be changed to place the SA after the drug name. Mr. Reiser stated that they have not received a reply from the doctor.

Mr. Reiser stated that he has talked to the Pharmacist In Charge about the appropriate way to handle errors.

Mr. Reiser stated that he also had concerns looking at the prescription because the dosage would be for an immediate dose form and not a sustained release form.

Dr. McCoy stated that she agrees with Mr. Reiser and that the pharmacist should still verify with the doctor if he wanted a sustained release product or an immediate release product.

Mr. Dutcher asked Ms. Oh what she has done to change her practice. Ms. Oh stated that if there were any question about a prescription she would contact the prescriber. Ms. Oh stated that if a patient refuses counseling she would be more aggressive in talking to the patient even if they had the medication before. Ms. Oh stated that she is now aware of how to document whether or not counseling took place.

Dr. Smidt stated that during counseling Ms. Oh should ask any pertinent questions and stress the dosage form of the medication. Dr. Smidt stated that the patient might have caught the error if Ms. Oh had counseled her and stated that it was the immediate release product.

Mr. Dawson stated that they have reviewed the documentation of counseling with their pharmacies.

Ms. Oh stated that she contacted that patient and apologized for the error.

Mr. Reiser stated that if the complainant had called Ms. Oh and told her about the error the day the error occurred Ms. Oh told him that she would have driven the correct prescription to the complainant's ranch herself.

Mr. Dutcher asked Mr. Wand to alert the Medical Board to potential errors with electronic prescriptions using this particular software. Mr. Wand asked Mr. Reiser if he knew the name of the software the doctor used to issue the prescription. Mr. Reiser stated that they are waiting for a return call from the doctor and would ask the name of the software vendor and would contact Mr. Wand with the information.

On motion by Dr. Tippett and Mr. McAllister, the Board agreed to dismiss the complaint against Ms. Oh and take no further disciplinary action against Ms. Oh. There was one nay vote by Mr. Van Hassel.

Complaint #3110

Pharmacist In Charge and Director Bill Ng and Hospital CEO Beverly Carpenter appeared as a result of a consumer complaint filed by the Department of Health Services. Compliance Officer Rich Cieslinski gave a brief overview.

Mr. Cieslinski stated that a complaint was filed from the Department of Health Services alleging that a nurse had taken medications from a narcotics box. Mr. Cieslinski stated that he conducted an audit of all drugs stored in the narcotics box and significant losses were found. Mr. Cieslinski noted that the numbers on the DEA loss report did not match the losses on the audit. The billing and documentation of doses is a manual process at this hospital and has been a problem in the past and noted on inspections with the Pharmacist In Charge agreeing to make the necessary change. Mr. Cieslinski completed the audit after receiving some additional invoices. Mr. Cieslinski stated that the Pharmacy Director did not report the loss to the Board because the DEA agent told him that he did not have to report the loss to the Board.

President Dutcher asked Mr. Ng if he knew why he was appearing. Mr. Ng stated that the nurse diverted the medications and was subsequently fired. Mr. Ng stated that he felt he had addressed the complaint in his written response.

Mr. Dutcher stated as Pharmacist in Charge Mr. Ng is responsible for the pharmacy inventory. Mr. Ng. stated that after Mr. Cieslinski completed his audit he did an audit the same day and came up with a zero inventory difference. Mr. Ng had a copy of the audit sheets he did and alleged that he faxed to the Board Office. The Board Office has no record of receiving the audit sheets from Mr. Ng.

Mr. Dutcher asked Mr. Ng to explain the discrepancy. Mr. Ng stated that the process is a manual process within the hospital and that the billing did not come up correct. Mr. Ng stated that billing sheets were not correct and he had tracked down the discrepancies.

Mr. Wand asked Mr. Ng if he gave all the necessary paperwork to Mr. Cieslinski while he was conducting the audit. Mr.

Ng. stated that he gave all the paperwork he had at the time to Mr. Cieslinski, but the billing was incorrect.

Mr. Dutcher asked Mr. Ng to explain how the billing could be wrong. Mr. Ng stated that if the nurse gives the patient a medication it is marked on the MAR and then the patient is billed from what the nurse enters in the MAR. Mr. Ng stated that the Nurse also marks what she takes from the box on a controlled substance sheet and that is the sheet that he used to conduct his audit.

Mr. Dutcher asked Ms. Carpenter if action was taken against the nurse. Ms. Carpenter replied yes. Mr. Ng stated that the locks have been changed since the nurse was terminated.

Mr. McAllister stated that he worked in a hospital with a manual system and billing and receiving of orders was an issue.

On motion by Mr. McAllister and Dr. Smidt, Board unanimously agreed to review the data submitted by Mr. Ng and have Mr. Cieslinski review the audit and gather additional information if needed to complete the audit. If the audit is satisfactory then the complaint is dismissed and if there are still discrepancies then Mr. Ng would be asked to appear in November.

Complaint #3114

Pharmacist Robert Waugh, Pharmacy Director Chris Wernke, and Winn Sammons Legal Counsel for Mr. Waugh appeared in response to a consumer complaint. Compliance Officer Rich Cieslinski gave a brief overview of the complaint.

Mr. Cieslinski stated that the complainant's three-year-old daughter has been receiving compounded Arginine 10% for a metabolic condition. The complainant's daughter was hospitalized for a worsening condition. Mr. Cieslinski stated that the pharmacist had been compounding the medication incorrectly since August of 2005 and discovered the error in October of 2005. Mr. Cieslinski stated that the pharmacist was preparing a 1% solution of Arginine instead of a 10% solution of Arginine.

President Dutcher opened the discussion by asking Mr. Waugh how the wrong strength was compounded. Mr. Waugh stated that he makes four metabolic compounds. Mr. Waugh stated that the rest of the compounds are 10mg/ml and that is how he compounded that medication incorrectly. Mr. Waugh stated that the error occurred when he transcribed the compounding sheets to a new book. Mr. Waugh stated that he compounded the medication incorrectly for four patients. Mr. Waugh stated that when he noticed the error, he contacted all the patients.

Mr. Dutcher asked Mr. Waugh how long he compounded the medication incorrectly. Mr. Waugh stated from August to October.

Dr. Smidt asked Mr. Waugh if he batched the compound. Mr. Waugh stated that he compounded the product for each new prescription and refill at the time ordered.

Ms. McCoy asked how the compounding sheet was transcribed incorrectly. Mr. Waugh stated that he was updating the compounding book and transcribed the Arginine sheet incorrectly.

Mr. Waugh stated that when he found the error he was not aware that any children were sick. Mr. Waugh stated that all the prescriptions were made at the same strength. Mr. Waugh stated that two of the children were hospitalized.

Mr. McAllister asked if the compounding sheet was computer generated. Mr. Waugh stated that it is a handwritten sheet that he developed.

Mr. McAllister asked if the technicians are allowed to compound. Mr. Waugh replied that he was the only person that compounded the medications. Mr. Waugh stated that as a result of the errors they have changed procedures. Mr. Waugh stated that a second pharmacist checks all calculations before a medication is compounded.

Dr. McCoy asked Mr. Waugh how many prescriptions he compounds daily. Mr. Waugh stated that he compounds roughly 16 prescriptions a day.

Dr. McCoy asked Mr. Waugh if he has had any specialized training in compounding. Mr. Waugh replied no. Mr. Waugh stated that they are fairly simple compounds. Mr. Waugh stated that these compounds consist of a single ingredient and a vehicle.

Mr. McAllister told Mr. Waugh that compounded medications put the patient at most risk and a pharmacist should scrutinize all compounding records carefully. Mr. McAllister stated that this is a very simple math error. Mr. McAllister told Mr. Waugh that the pharmacy needs to look very closely at all its systems.

Mr. Wernke stated that they have looked at all look-alike and sound alike drugs. Mr. Wernke stated that they are instituting a new system with barcode technology.

Dr. McCoy asked if they reviewed the rest of the compounding sheets. Mr. Waugh and Mr. Wernke replied yes.

Mr. Wernke stated that when Mr. Waugh realized his error he contacted all the patients and doctors and informed them of the error.

On motion by Dr. Sypherd and Dr. Smidt, the Board unanimously agreed to issue an advisory letter to Mr. Waugh and a copy of the advisory letter would be kept in his file.

Dr. McCoy asked Ms. Lee to include in the letter to the complainant that the Board did address the issue and the pharmacist does take the error seriously and the pharmacy has made changes in their procedures to prevent the error from occurring again.

Complaint #3131

Pharmacist James Thompson and Pharmacy Supervisor Greg Shumaker were present to answer questions from Board Members concerning a consumer complaint. Compliance Officer Larry Dick gave a brief overview of the complaint.

Mr. Dick stated that the complainant received Deconamine SR instead of Amoxicillin 500 mg. The complainant took the prescription for three days before experiencing side effects and discovering the error.

President Dutcher opened the discussion by asking Mr. Thompson how this error occurred. Mr. Thompson stated that they have a prescriber that orders three medications consistently and two of the medications are Amoxicillin 500 mg and Deconamine SR. Mr. Thompson stated that they prefilled the prescriptions and placed the bottles in bins that were beside each other. Mr. Thompson believes that a wrong bottle was placed in the wrong bin. Mr. Thompson stated that he did not look in the vial to see if the correct drug was in the vial.

Mr. Dutcher asked if the bins were beside each other. Mr. Thompson replied yes. Mr. Thompson stated that the bins have been removed and they count each prescription each time.

Mr. Dutcher asked Mr. Shumaker if this is a common practice in his stores to prepackage medications. Mr. Shumaker replied that this is not the normal routine and the Pharmacist In Charge stated that he tried this practice as a pilot program.

Mr. Dutcher asked about the technology in the pharmacy. Mr. Thompson stated that they have a scanner for scanning the barcode on the medication bottles and the label.

Dr. Smidt asked if the individual prefilled bottles were barcoded. Mr. Thompson replied no that they scanned the bulk bottle left in the bin.

Mr. Wand asked if the pharmacy had any automated machines. Mr. Shumaker stated that they have Kirby counters.

Mr. Shumaker stated that for the Board's clarification there were 4 technicians working that day. Mr. Shumaker stated that would mean that there were 8 prescriptions filled per man-hour. Mr. Shumaker stated that the technicians enter the prescriptions and count the medications and the pharmacist performs the final check.

Mr. Dutcher noted that the pharmacy has changed their practices to prevent this error from occurring in the future.

On motion by Dr. Smidt and Ms. Honeyestewa, the Board unanimously agreed to issue an advisory letter to Mr. Thompson and a copy of the advisory letter would be kept in his file.

Complaint # 3120

Pharmacist Robert DaSilva and Pharmacist In Charge Chris Meilinger were present in response to a consumer complaint. Compliance Officer Dean Wright gave a brief overview of the complaint.

Mr. Wright stated that the patient received Furosemide 40 mg instead of Fluoxetine 40mg. Also, the patient's caregiver could not reach a pharmacist to receive help in resolving the error.

Mr. Dutcher asked Mr. DaSilva how this error occurred. Mr. DaSilva stated that he misinterpreted the prescription when he verified the prescription.

Mr. Wand asked if the pharmacist reviews a scanned copy of the prescription or the original hard copy. Mr. Meilinger stated that the pharmacist reviews a scanned copy of the prescription.

Mr. Wand asked if the order form is scanned where the patient may list the medications that they are taking. Mr. Meilinger stated the order form is scanned and is available to the pharmacist.

Mr. McAllister stated that he is concerned that the caregiver could not receive help in resolving the issue. Mr. McAllister stated that mail order pharmacies need to have pharmacists available to assist the patients. Mr. McAllister stated that customer service is very important in helping patients resolve their issues.

Mr. Meilinger stated that two days after Mr. Wright's visit, an option was placed on the telephone system that allows the patient to speak with a pharmacist.

Mr. Dutcher asked if Mr. Meilinger has adequate staffing. Mr. Meilinger stated that he has sufficient staff for the number of calls being received.

President Dutcher asked Mr. DaSilva how he has changed his practice. Mr. DaSilva stated that he takes the error very seriously. Mr. DaSilva stated that he has went to the Pharmacy Accuracy website to review pharmacy errors that occur. Mr. DaSilva stated that he has reviewed how he verifies prescriptions. Mr. DaSilva stated that he looks at each drug individually. Mr. DaSilva stated that he has slowed down and is more careful.

Dr. Smidt asked if the mail order pharmacy is exempt from recording medical conditions. Mr. Wand replied no. Dr. Smidt told Mr. DaSilva if he had reviewed the medical conditions he might have caught the error.

On motion by Mr. McAllister and Dr. Tippett, the Board unanimously agreed to issue an advisory letter to Mr. DaSilva and a copy of the advisory letter would be kept in his file.

Complaint # 3133

Pharmacist In Charge Chris Meilinger appeared to answer questions concerning a consumer complaint. Compliance Officer Dean Wright gave a brief overview of the complaint.

Mr. Wright stated that the complainant had mailed his prescription for Hydrocodone/APAP 10/500 to his mail order pharmacy. When the patient did not receive his medication, he called the pharmacy. The patient felt that the pharmacy seemed unconcerned. The patient was worried that his prescription was stolen. The patient obtained a new prescription from his doctor and had the prescription filled locally. The pharmacy had received the prescription and shipped the prescription to another mail-order facility for dispensing. The pharmacy did not follow proper transfer procedures.

Mr. Dutcher opened the discussion and asked Mr. Meilinger if there were procedural issues. Mr. Meilinger stated that when they opened their facility was contracted to do Medicare Part D for Humana. Mr. Meilinger stated that the first day they anticipated receiving 50 prescriptions and received 500 prescriptions that day. Mr. Meilinger stated that they could not process all the prescriptions due to space limitations. Mr. Meilinger stated that Humana contracted with two other mail order pharmacies and it was decided that they could overnight prescriptions to the Wal-Mart mail order facility for dispensing. Mr. Meilinger stated that the mail was opened and a record of the patient's name was kept and the prescriptions were sent overnight to Wal-Mart. Mr. Meilinger stated that the last time prescriptions were sent to Wal-Mart was on February 13, 2006. Mr. Meilinger stated that they now have adequate space and personnel to handle the prescription volume.

Mr. Dutcher asked about entering and transferring the prescriptions. Mr. Wand stated that he is not sure if the policy would apply to mail order facilities where the whole prescription is sent to another facility for processing.

Dr. Berry asked if any other prescriptions were lost during this process. Mr. Meilinger stated that they did not have any other complaints.

Mr. Dutcher asked if the patient received his prescription back. Ms. Frush stated that she received an e-mail from the patient indicating that he did receive his prescription back in the mail. Ms. Frush stated a copy of the e-mail is in the book for the Board Members to review.

On motion by Dr. Tippett and Mr. McAllister, the Board unanimously agreed to dismiss the complaint against Right Source Pharmacy and its Pharmacist In Charge and take no further disciplinary action against Right Source Pharmacy.

Call to the Public

President Dutcher 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 came forth

There being no further business to come before the Board, **on motion by Dr. Sypherd and Dr. McCoy**, the Board unanimously agreed to adjourn the meeting at 3:50 P.M.

September 21, 2006

The following Board Members and staff were present: President Chuck Dutcher, Vice President Tom Van Hassel, Zina Berry, Louanne Honeyestewa, Dennis McAllister, Linda McCoy, Ridge Smidt, and Bryan Tippett. 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 Dawn Lee.

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

Ms. Frush explained that law continuing education would be offered for attendance at the meeting.

AGENDA ITEM 11 – Conferences

Complaint #3137

Pharmacist Jeff Gubernick and Pharmacy Supervisor Mick Calli were present in response to a consumer complaint. Compliance Officer Rich Cieslinski gave a brief overview of the complaint.

Mr. Cieslinski stated that the physician on behalf of his patient filed the complaint. Mr. Cieslinski stated that the physician wrote a prescription for Fluoxetine 20mg and the prescription was filled with Paroxetine 20 mg. The patient took the incorrect medication for 45 days. The patient was told of the error on the next refill and was told that there should be no problem since the drugs

were in the same class. The physician was notified of the error by the patient.

President Dutcher asked Mr. Gubernick how the error occurred. Mr. Gubernick stated that the technician entered the prescription incorrectly and he verified the prescription incorrectly.

Mr. Dutcher asked why the patient came back to get a refund. Mr. Gubernick stated that he sold the prescriptions from his old pharmacy to CVS and the patient requested a refund to match the old price. Mr. Gubernick stated that the second pharmacist should have caught the error because the prescription should have been run through the system again to process the refund.

Mr. Dutcher asked Mr. Gubernick if the patient profile comes up when entering the prescription. Mr. Gubernick replied no.

Mr. Dutcher asked Mr. Gubernick what he has changed in his practice to keep this error from occurring again. Mr. Gubernick stated that he missed the error and the other pharmacist missed the error when the refund was issued. Mr. Gubernick stated that the doctor was upset because he was not notified of the error. Mr. Gubernick stated that the stock bottle must now be left with the basket with the completed prescription vial. Mr. Gubernick stated that he verifies everything on the screen.

Dr. McCoy asked Mr. Gubernick if reviewed the patient profile . Mr. Gubernick stated that he reviews the patient profile when drug interactions occur or there is something that he is notified about. Dr. McCoy reminded Mr. Gubernick that it is the pharmacist's responsibility to review the patient's medications.

Mr. Calli, the Pharmacy Supervisor, stated that duplication of therapy shows up on the first screen that the pharmacist reviews and the second screen that the pharmacist reviews shows the image of the prescription.

Dr. McCoy asked if these screens were in place when this error occurred. Mr. Calli stated that these screens have been in place for four years.

Mr. Van Hassel asked if the system is user friendly. Mr. Calli stated that the pharmacists are trained on how to use the system and the same screen comes up every time there is an overlap of therapy.

Dr. Smidt asked if the pharmacist must initial in some fashion the overlap of therapy.

Mr. Calli stated that the pharmacist must enter his initials and the pharmacist must assess the therapy. Mr. Calli stated that the screens would pop-up for geriatric doses, pediatric doses and duplication overlaps.

Dr. Smidt asked when the prescription is verified. Mr. Callis stated that the technician would enter the prescription. The technician would then scan the prescription. A label is printed for the medication and the filling technician would fill the prescription from the label. The completed prescription vial is then passed to the pharmacist for final verification. Mr. Calli stated that the pharmacist would see the image of the medication and the prescription on the screen. Mr. Calli stated that the pharmacist would verify the prescription is entered correctly and filled with the correct product. Mr. Calli stated that the pharmacist would approve all Dur comments at this time and perform the final verification check.

Dr. Smidt asked if a technician is capable of putting the pharmacist's initials on the DUR screen. Mr. Calli stated that the technician could not because they have separate workstations.

Dr. McCoy asked if a log could be pulled to see who overrode the DUR. Mr. Calli stated that no log could be printed. Mr. Calli stated that the pharmacist who was on duty and verified the prescription would be the pharmacist that overrode the DUR.

Dr. Berry asked if it is possible for a technician to verify a prescription. Mr. Calli replied in order to do that the technician would need to walk over to the pharmacist's station and enter the pharmacist's initials. Mr. Calli stated the production system would not allow a technician to verify a prescription.

Mr. Dutcher asked if the patient had the opportunity to ask why the medication was different when she came for the

refund. Mr. Cieslinski stated that the patient thought that she had the correct medication because she had both capsules and tablets of Fluoxetine in the past and she did not question a color change because different generics are different colors.

Dr. McCoy stated that if the computer systems are tracking DURs then the pharmacist must review the interactions.

Mr. Dutcher told Mr. Gubernick that he is ignoring the warning systems.

Mr. McAllister told Mr. Gubernick that when a pharmacist ignores the DURs and potentially harms a patient the pharmacist is held responsible.

Dr. McCoy told Mr. Gubernick that if paid attention to the DUR the error probably would have been prevented.

Dr. Smidt asked when the patient signs that they do not want counseling. Mr. Calli stated that the patient signs the refusal when they pick up the prescription at the register. Mr. Calli stated that the label states "New Prescription" then the technician knows that the pharmacist must counsel the patient. If the patient refuses counseling, then the technician has the patient sign the log. Mr. Calli stated that the signature log is signed first, then the prescription is rung up, and then the patient is counseled.

Dr. Berry asked if the technician takes the refusal for counseling. Mr. Calli replied yes. Dr. Berry reminded Mr. Calli only the pharmacist can accept the refusal for counseling. Mr. Calli stated that he would note that and rely the message to his company.

On motion by Dr. Smidt and Mr. McAllister, the Board unanimously agreed to issue an advisory letter to Mr. Gubernick and a copy of the advisory letter would be kept in his file.

Complaint # 3140

Pharmacist Paul Sanchez, Pharmacy Technician Trainee Randy Simmons, and Pharmacy Supervisor Sandy Cravens appeared in response to a consumer complaint. Compliance Officer Sandy Sutcliffe gave a brief overview of the complaint.

Ms. Sutcliffe stated that the patient's prescription for Vesicare 5mg was labeled to take 5 tablets daily. The directions should have read to take 5 mg daily. Ms. Sutcliffe stated that the patient took five tablets and experienced blurred vision and dry mouth as a result.

President Dutcher opened the discussion by asking Mr. Sanchez to address the complaint. Mr. Sanchez stated that the prescription was dropped off by the patient's caregiver and was entered incorrectly by the technician. Mr. Sanchez stated that the prescription was entered to take 5 tablets daily. Mr. Sanchez stated that the DUR was overridden and a label was generated. Mr. Sanchez stated that the item was ordered and the correct medication was dispensed with the wrong directions. Mr. Sanchez stated that the patient took the prescription off the counter and asked if 5 tablets was correct. Mr. Sanchez stated that the caregiver signed the log. Mr. Sanchez stated that the next day the Pharmacist In Charge received a phone call from the caregiver and the caregiver was informed the prescription was labeled incorrectly. Mr. Sanchez stated that a misfill report was reported and the doctor was contacted. Mr. Sanchez stated that he contacted the patient and family and apologized for the error. The patient was supplied with a corrected label.

Mr. Dutcher asked Mr. Sanchez if he verified the prescription. Mr. Sanchez replied yes. Mr. Dutcher asked Ms. Simmons if she entered the prescription. Ms. Simmons stated she entered the prescription and misread the prescription.

Mr. Dutcher stated that the Board has a copy of the DUR screen indicating a potential high dose. Mr. Dutcher asked Ms. Simmons if she overrode the DUR. Ms. Simmons stated that she overrode the DUR. Ms. Simmons stated that the DUR screen looks like a regular page.

Mr. Dutcher asked Mr. Sanchez if he saw the DUR screen. Mr. Sanchez replied no.

Mr. Dutcher asked Mr. Sanchez if he does many prescriptions from the Mayo clinic. Mr. Sanchez stated yes. Mr. Dutcher asked if Mr. Sanchez is familiar with the Mayo clinic blanks. Mr. Sanchez stated yes.

Dr. Smidt asked Ms. Simmons about the DUR override. Ms. Simmons stated that she was not used to the DUR screen.

Dr. Smidt asked Ms. Simmons if she was trained on the use of the system. Ms. Simmons stated that she was trained to advise the pharmacist of any DUR warnings.

Dr. Smidt told Mr. Sanchez that when the caregiver asked about taking five tablets this should have been a red flag for the pharmacist. Mr. Sanchez stated that he does not have any explanation. Mr. Sanchez stated that it was an unusual day and there were many distractions that day. Mr. Sanchez stated that if he would have looked at the DUR that would have been a red flag for him.

Mr. McAllister noted that Mr. Sanchez stated in his reply that he felt that there was not adequate staffing. Mr. McAllister stated that they only filled 60 prescriptions that day. Mr. McAllister asked Mr. Sanchez how long he worked that day. Mr. Sanchez stated that he worked 12 hours. Mr. McAllister asked Ms. Simmons how many hours she worked that day. Ms. Simmons replied that she worked 8 hours.

Mr. Dutcher asked if initials are required to override a DUR. Ms. Simmons stated that she spells out Bypass and the computer will go past the DUR.

Mr. Dutcher asked Ms. Simmons who taught her how to override the DUR. Ms. Simmons stated that she rather not say.

Dr. Smidt asked Ms. Simmons if it was a pharmacist or technician that taught her to use Bypass. Ms. Simmons stated that she does not recall.

Dr. Smidt asked Ms. Cravens, the Pharmacy Supervisor, if anyone can type Bypass and override the DUR. Ms. Cravens stated that anyone can type Bypass and the computer would assume that it is a pharmacist authorizing the override. Ms. Cravens stated that they have policies that state a technician could not do overrides.

Ms. Cravens stated that the computer shuts off every 15 minutes and the technician cannot logon until the pharmacist signs on to the system.

On motion by Mr. McAllister and Dr. Smidt, the Board agreed to offer Mr. Sanchez a consent agreement with the following terms: the completion of 8 hours of CE on patient and error safety and a thousand dollar fine. Mr. Sanchez would be placed on probation until all requirements are complete. There were two nay votes by Mr. Van Hassel and Dr. Tippet.

On motion by Mr. McAllister and Mr. Van Hassel, the Board agreed to offer Ms. Simmons a consent agreement with the following terms: the completion of 8 hours of CE on patient and error safety and a two hundred and fifty dollar fine. Ms. Simmons would be placed on probation until all requirements are complete. There was one nay vote by Dr. Tippet.

On motion by Mr. McAllister and Dr. Smidt, the Board unanimously agreed to open a complaint against the permit holder for allowing DUR overrides and ask them to appear at the next meeting.

Complaint # 3140

Pharmacist Joel Schulte and Pharmacy Supervisor Holly Prievo were present in response to a consumer complaint. Roger Morris was present as Legal Counsel for Mr. Schulte. Compliance Officer Dean Wright gave a brief overview.

Mr. Wright stated that the complainant's prescription for Levbid was filled with Lopid. The patient took the original prescription for 30 days and then the refill for 18 days before the doctor discovered the error.

President Dutcher asked Mr. Schulte how the error occurred. Mr. Schulte stated that he looked at the scanner and looked at the right side of the screen and then looked at the left side of the screen and his mind set was that it was entered for the correct drug.

Mr. Morris stated that the prescription is scanned into the computer system. Mr. Morris stated that the pharmacist is asked to verify the prescription on the computer screen. Mr. Morris stated that on one side of the screen is the imaged prescription and on the other side of the screen is the information entered by the technician.

Mr. Morris stated that Mr. Schulte now reverses his practice. Mr. Schulte reads the prescription first and then determines if the prescription is entered correctly.

Mr. Morris stated that the patient refused counseling and if the patient was counseled Mr. Schulte might have been able to catch the error.

Mr. Schulte stated that he has completed CE units on medication errors and how medication errors occur.

Dr. McCoy told Mr. Schulte by changing the way he verifies the prescription he could avoid conformational bias.

Mr. Schulte stated that he has printed a list of sound alike drugs, so he is familiar with drugs that sound alike or their names appear to be alike.

On motion by Dr. McCoy and Dr. Tippett, the Board unanimously agreed to issue an advisory letter to Mr. Schulte and a copy of the advisory letter would be kept in his file.

Complaint # 3186

Pharmacist Dennis Haag appeared to respond to a complaint filed by the Department of Juvenile Corrections. Ms. Frush gave a brief overview of the complaint.

Ms. Frush stated that the Board office received a complaint from the Department of Juvenile Corrections. Ms. Frush stated that the Department had conducted an investigation after receiving a complaint from the family that a detainee had received a Depo-Provera shot upon release and the family had not authorized the injection.

Ms. Frush stated that Mr. Haag had not received a copy of the Department of Juvenile Corrections investigation until mailed to him by the Board. Ms. Frush stated that Mr. Haag responded to the complaint and his reply is in the Board Book. Ms. Frush stated that Mr. Cieslinski was at the facility doing a routine inspection at the same time and violations were noted that Mr. Haag corrected.

President Dutcher asked Mr. Haag to address the investigation to help clarify any issues that the Board may have as a result of the investigation.

Mr. Haag stated that he has been a pharmacist for many years and have not had any complaints filed against him. Mr. Haag stated that he had not seen the report until the Board sent the report to him. Mr. Haag stated that he was interrogated for hours and many of his statements were misinterpreted.

Mr. Haag stated that he filled the prescriptions for multiple correctional sites and does not have any technician help. Mr. Haag stated that he filled approximately five hundred prescriptions a week.

Mr. Haag admitted that there were procedural problems when he was inspected and he did take corrective action.

Mr. Dutcher asked Mr. Haag why he resigned. Mr. Haag stated that he had worked at the Department of Juvenile Corrections for five years. Mr. Haag stated that he resigned because of accusations that were incorrect.

Mr. Haag stated that they stated that he recycled CII medications. Mr. Haag stated that was incorrect. Ms. Haag stated that the CII medications that are returned are set aside for drug destruction by the Board.

Mr. Haag stated that he was told that all trash from the pharmacy was to placed in one trash bag and he was to carry the bag to the dumpster to be destroyed. Mr. Haag stated that the investigator stated that he was destroying medications that were in date. Mr. Haag stated that the empty bottles in the trash were the stock bottles that he used to fill the prescriptions. Mr. Haag stated that the prescription vials with patient's names on the bottle were from prescriptions that were not for controlled substances that he was able to reuse and he threw the prescription vials into the trash that he was told was

secure.

Mr. Wand asked Mr. Haag if a nurse had access to the pharmacy after hours. Mr. Haag replied yes.

Mr. Wand asked Mr. Haag about the remote drug storage area and if Depo-Provera was stored in this area. Mr. Haag stated that there is a blank prescription pad in the remote drug storage area and when a product is taken the nurse pulls the drug and the doctor fills out the prescription and he inputs the prescription when he opens the pharmacy the next day.

Mr. Wand asked Mr. Haag how many prescriptions were generated from the remote storage daily. Mr. Haag replied about ten prescriptions.

Mr. Wand asked Mr. Haag if Depo-Provera was being given to discharged patients. Mr. Haag stated that the shot was offered to patients being discharged from the Black Canyon facility.

Mr. Haag stated that if the drug was taken the remote storage area he often did not receive an order because the nurse documented the shot in the chart.

Dr. Smidt asked if the medication in the remote drug storage area is under the control of the physician. Mr. Wand stated that drugs in the remote drug storage area belong to the pharmacy.

Mr. Wand stated that the main infraction against Mr. Haag is that he was not accounting for pharmacy stock in the remote storage area.

Dr. McCoy stated that she feels that if the shot was administered by the nurse and not reported to Mr. Haag it would be difficult for him to account for the medication.

On motion by Mr. Van Hassel and Dr. Smidt, the Board unanimously agreed to dismiss the complaint against Mr. Haag and take no further disciplinary action against Mr. Haag.

AGENDA ITEM 12 – Consent Agreements

President Dutcher 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.

Assistant Attorney General Lee opened the discussion by stating that she would like the Board to review and discuss two consent Agreements. Ms. Lee stated that the first consent agreement she would like to discuss is the agreement signed by Denise Sudkamp. Ms. Lee stated that Ms. Sudkamp is a Pharmacy Technician that negotiated with her to set up terms of a consent agreement instead of surrendering her license. Ms. Lee stated that Ms. Sudkamp has agreed to participate in the TASC program at her own expense in order to keep her technician license. Ms. Lee stated that if the Board does not accept the consent agreement then Ms. Sudkamp is scheduled for a hearing this morning.

Mr. McAllister stated that he feels that the resolution is good and commends the technician for taking action.

Mr. Wand noted that if the technicians contact the Board or Ms. Lee they are told that they could participate in the same type of program or could negotiate a consent agreement with similar terms.

On motion by Mr. Van Hassel and Mr. McAllister, the Board unanimously agreed to accept the consent agreement 07-001-PHR for Denise Sudkamp as presented in the meeting book and signed by the respondent. A roll call vote was taken. (Mr. McAllister – aye, Ms. Honeyestewa –aye, Dr. Smidt –aye, Dr. Tippet – aye, Dr. Berry –aye, Dr. McCoy – aye, Mr. Van Hassel – aye, and President Dutcher – aye.)

Ms. Lee stated that the second consent order she would like to discuss is for Guadalupe Rocha. Ms. Lee stated that Mr. Rocha signed a consent agreement, which would require him to surrender his Pharmacy Technician license.

Mr. Wand stated that Mr. Rocha has now become certified and submitted an application for Pharmacy Technician.

Ms. Lee stated that if the Board accepts Mr. Rocha's signed consent agreement, Mr. Rocha has agreed not to apply for a license for two years.

Dr. McCoy asked if he could apply for a Pharmacy Technician license. Ms. Lee stated that the Board could deny his application for Pharmacy Technician based on him committing acts of unprofessional conduct.

On motion by Mr. McAllister and Dr. McCoy, the Board unanimously agreed to accept the consent agreement 07-0004-PHR for Guadalupe Rocha as presented in the meeting book and signed by the respondent. A roll call vote was taken. (Mr. McAllister – aye, Ms. Honeyestewa –aye, Dr. Smidt –aye, Dr. Tippett – aye, Dr. Berry –aye, Dr. McCoy – aye, Mr. Van Hassel – aye, and President Dutcher – aye.)

The Board then considered Mr. Rocha's application for Pharmacy Technician.

President Dutcher opened the discussion by asking the Board Member's what action they would like to take concerning Mr. Rocha's application.

Ms. Lee stated that the Board could deny Mr. Rocha's application based on unprofessional conduct. Ms. Lee stated that Mr. Rocha could ask to appear before the Board and supply additional information if he does not agree with the Board's decision.

On motion by Dr. Smidt and Mr. McAllister, the Board unanimously agreed to deny Mr. Rocha's Pharmacy Technician Application based on unprofessional conduct. A roll call vote was taken. (Mr. McAllister – aye, Ms. Honeyestewa –aye, Dr. Smidt –aye, Dr. Tippett – aye, Dr. Berry –aye, Dr. McCoy – aye, Mr. Van Hassel – aye, and President Dutcher – aye.)

The Board Members asked if they could speak with William Brophy concerning some questions that they had concerning his consent agreement. Roger Morris was present as legal counsel for Mr. Brophy.

Dr. Smidt asked Mr. Brophy how he could fill prescriptions for the same patient two days in a row for Tramadol. Mr. Brophy stated that the patient used a fake first name and it was difficult to ascertain that it was for the same patient. Dr. Smidt asked if the prescription was mailed to the same address. Mr. Brophy replied yes. Mr. Brophy stated that the company that accepted the order asked for a photo id or driver's license when the patient received the prescription.

Dr. Smidt asked if this was the rationale he used for filling the prescriptions. Mr. Brophy replied yes.

Mr. McAllister stated that he would like to see individuals fined for violations of pharmacy practice.

Mr. Dutcher noted for the audience that fines imposed by consent agreements are not credited to the Pharmacy Board but are placed in the State General Fund.

- Ryan Lodge - 06-0022B-PHR
- Bernadette Serna - 07-0003-PHR
- Brandee Provo - 07-0005-PHR
- Samantha Miles - 07-0007-PHR
- Brett Roberson - 07-0009-PHR
- James O'Neil - 07-0011-PHR
- Richard Pillon - 07-0012-PHR
- William Brophy - 06-0027-PHR
- Pamela Bates - 07-0006-PHR

A roll call vote was taken. (Mr. McAllister – aye, Ms. Honeyestewa –aye, Dr. Smidt –aye, Dr. Tippett – aye, Dr. Berry – aye, Dr. McCoy – aye, Mr. Van Hassel – aye, and President Dutcher – aye.)

AGENDA ITEM 13- Pharmacy Technician Trainee Reapplication

President Dutcher asked Mr. Van Hassel to address this issue. Mr. Van Hassel stated that the committee has reviewed that Pharmacy Technician Trainee requests to reapply for licensure. Mr. Van Hassel stated that the pharmacy technician trainees have received a letter stating that they may only reapply for licensure as a pharmacy technician trainee one time. Mr. Van Hassel stated that during the next two years the pharmacy technician trainee must take the PTCB test and become certified if they would like to continue to work as a pharmacy technician.

Ms. Honeyestewa asked what the reasons were that the pharmacy technician trainees were reapplying for licensure as a trainee. Mr. Wand stated that there were a variety of reasons, such as family issues, school issues, and the failure to pass the PTCB exam.

On motion by Dr. McCoy and Dr. Tippett, the Board 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. There was one nay vote by Ms. Honeyestewa.

Pharmacy Technician Trainees Approved to reapply for licensure as a Pharmacy Technician Trainee for an additional two years.

Pharmacy Technician Trainees Approved to reapply for licensure as a Pharmacy Technician Trainee for an additional two years.

1. Janice Haywood
2. Brandy Seaman
3. Sharon Smith
4. Ted Ricketts
5. Linda Pritchard
6. Gina Bernal
7. Cameo Rice
8. Bertha Littlehat
9. Kimberly Harris
10. Brian Williams
11. Marla Robles
12. Yvelisse Baldwin
13. Kathy Anderson
14. Emma Barcelo
15. Brian Hamilton
16. Crystal Mendez
17. Theresa Rao
18. Jeffrey Montgomery
19. Josie Rodriguez
20. Vicky Floyd
21. Tingirt Alemayehu
22. Lam-Dien Doan
23. Delia Bryant
24. Mary Stewart
25. Adriean Thomas
26. Vedrana Djurdjic
27. Robin Etheridge
28. Mark Montijo
29. Aracely Meza
30. Shenelle Leon
31. Tiffany Lanhart
32. Bisrat Edla

33. Adrian Valenzuela
34. Rebecca Hume
35. Paul Glenn
36. Lorenla Ramirez
37. Julian Chacon
38. Laura Johnson
39. Kristin Lawrence
40. Teresa LeMaitre
41. Allen Fries
42. Zelma Haugen
43. Virginia Waldrep
44. Shewit Tsegal
45. Bianca Huerta
46. Julie Bell
47. Sulaiman Darboh
48. Ivette Callejas
49. Shannon Cox
50. Amanda Smith
51. Darcy Reed
52. Ok Choo
53. Stephanie Ramirez
54. Christine Sutton
55. Robert Sant
56. Todd McGinnis
57. Terra Blair
58. Pamela Unger
59. Wilma Richmond
- 60.

AGENDA ITEM 14 – Covance

Tim Sifford was present on behalf of Covance in Arizona.

Mr. Wand stated that Covance asked to appear at the Board Meeting to inform the Board about their business endeavor in Arizona.

Mr. Sifford stated that Covance is one of the largest contract research organizations. Mr. Sifford stated that the company would be located in Chandler and would employ 400 to 1200 employees.

Mr. Dutcher asked if the company only did research. Mr. Sifford stated that there would be no pharmaceutical dispensing at this facility. Mr. Sifford stated that the company is involved in all phases of FDA testing.

Mr. Van Hassel asked if patients participating in the studies would come to the Chandler facility. Mr. Sifford replied yes.

Dr. Smidt stated that there is opposition to the company moving to Chandler. Dr. Smidt stated that the company is doing mandated studies that are required by the FDA to approve a medication.

Mr. Wand stated that there are other facilities in Arizona that conduct clinical trials for FDA approval of medications.

Mr. Wand noted that the Board would not license Covance because they are a research facility and not a pharmacy.

AGENDA ITEM 15 – Approval for Reimbursement of Travel and Registration Expenses For District 7 and 8 NABP Meeting

President Dutcher asked Mr. Wand to address this issue. Mr. Wand stated that he is asking the Board to approve the

reimbursement of travel and registration expenses for the District 7 and 8 NABP meeting to be held in Anaheim, California in October. Mr. Wand stated that two representatives could attend the meeting and be reimbursed. Mr. Wand stated that he and President Dutcher would like to attend the meeting. Mr. Wand stated that Ms. Berry's company would pay for her to attend the meeting.

On motion by Dr. Sypherd and Dr. Tippett, the Board unanimously approved the reimbursement of travel and registration expenses for two representatives for the District 7 and 8 NABP meeting to be held in Anaheim in October.

AGENDA ITEM 16 – Hearings

#1 Edward Espino

President Dutcher 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. The matter was set for formal hearing at this date and time. The attorney for the State has filed the current motion before us today.

President Dutcher asked if Mr. Espino was present. Mr. Espino was not present.

President Dutcher 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. Van Hassel and Dr. Smidt, the Board unanimously agreed to grant the State's Motion to Deem Allegations Admitted. A roll call vote was taken.

(Mr. McAllister – aye, Ms. Honeyestewa – aye, Dr. Tippett – aye, Dr. Smidt – aye, Dr. Berry – aye, Dr. McCoy – aye, Mr. Van Hassel – aye, and President Dutcher – aye)

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

Ms. Lee stated that the State is aware that the Board has made numerous attempts to contact Mr. Espino to allow Mr. Espino to speak with the Board. Ms. Lee stated that Mr. Espino did not respond to the Board's requests and this shows a lack of respect for the Board. Ms. Lee stated that the State would recommend that the Pharmacy Technician Trainee license for Mr. Espino be revoked.

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

Dr. McCoy asked if the Board revokes his technician trainee license could Mr. Espino apply for a Certified Technician license.

Ms. Lee stated that Mr. Espino could apply for a license and it would up to the Board to grant or deny future applications.

President Dutcher asked if the application asks if an applicant has ever been denied or lost a license. Mr. Wand replied yes.

Dr. Smidt asked if the Board could charge Mr. Espino with the cost of the hearing.

Ms. Lee stated that the Board could impose the costs of the hearing.

On motion by Dr. McCoy and Ms. Honeyestewa, the Board unanimously agreed to revoke Pharmacy Technician Trainee license 7615 issued to Edward Espino and assess him the costs of the administrative hearing. A roll call vote was taken.

(Mr. McAllister – aye, Ms. Honeyestewa – aye, Dr. Tippett – aye, Dr. Smidt – aye, Dr. Berry – aye, Dr. McCoy – aye, Mr. Van Hassel – aye, and President Dutcher – aye)

#2 Randy Savage

President Dutcher 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. The matter was set for formal hearing at this date and time. The attorney for the State has filed the current motion before us today.

President Dutcher asked if Mr. Savage was present. Mr. Savage was not present.

President Dutcher 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 Dr. Smidt, the Board unanimously agreed to grant the State's Motion to Deem Allegations Admitted. A roll call vote was taken.

(Mr. McAllister – aye, Ms. Honeyestewa – aye, Dr. Tippet – aye, Dr. Smidt – aye, Dr. Berry – aye, Dr. McCoy – aye, Mr. Van Hassel – aye, and President Dutcher – aye)

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

Ms. Lee stated due to the serious nature of the allegations the State would recommend for the safety of the public that the Board revoke the respondent's license.

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

On motion by Dr. McCoy and Dr. Berry, the Board unanimously agreed to revoke Pharmacy Technician Trainee license 5747 issued to Randy Savage and assess him the costs of the administrative hearing. A roll call vote was taken.

(Mr. McAllister – aye, Ms. Honeyestewa – aye, Dr. Tippet – aye, Dr. Smidt – aye, Dr. Berry – aye, Dr. McCoy – aye, Mr. Van Hassel – aye, and President Dutcher – aye)

#3 Denise Sudkamp

Ms. Lee stated that this hearing would not be held since the Board accepted Ms. Sudkamp's signed Consent Agreement.

#4 Jonathan Corey Ray

President Dutcher 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. The matter was set for formal hearing at this date and time. The attorney for the State has filed the current motion before us today.

President Dutcher asked if Mr. Ray was present. Mr. Ray was not present. Ms. Lee stated that the Board received a fax from Mr. Ray stating that he would not be appearing at the Board meeting today.

President Dutcher 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 Dr. Smidt, the Board unanimously agreed to grant the State's Motion to Deem Allegations Admitted. A roll call vote was taken.

(Mr. McAllister – aye, Ms. Honeyestewa – aye, Dr. Tippet – aye, Dr. Smidt – aye, Dr. Berry – aye, Dr. McCoy – aye, Mr. Van Hassel – aye, and President Dutcher – aye)

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

Ms. Lee stated that the Board has given Mr. Ray the opportunity to appear. Ms. Lee stated that Mr. Ray has failed to comply with his PAPA contract and has violated his Board Order. Ms. Lee stated that Mr. Ray has displayed a blatant disregard for the Board and cannot be regulated. Ms. Lee stated that the State recommends that the respondent's license be revoked.

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

On motion by Mr. Van Hassel and Dr. Tippett, the Board unanimously agreed to revoke Pharmacist license 13139 issued to Jonathan Corey Ray and assess him the costs of the administrative hearing. A roll call vote was taken. (Mr. McAllister – aye, Ms. Honeyestewa – aye, Dr. Tippett – aye, Dr. Smidt – aye, Dr. Berry – aye, Dr. McCoy – aye, Mr. Van Hassel – aye, and President Dutcher – aye)

A copy of the transcripts of all hearings will be available at the Board Office within two weeks.

AGENDA ITEM 17 – Potential Legislative Issues

President Dutcher asked Mr. Wand to address this issue.

Mr. Wand stated that the following are issues that the Board might want to consider as legislative issues.

Mr. Wand stated the Board discussed the resident manufacturer change earlier and have decided to eliminate the requirement for the Pharmacist In Charge.

Mr. Wand stated that the next issue involves the dispensing of Emergency Prescriptions. Mr. Wright stated that there would be two components to this legislation. The first would be to allow pharmacists to dispense non-controlled medications when there are disasters, such as floods and other natural disasters. The second part of the legislation would be filling non-controlled medications when a doctor could not be reached for authorization.

Mr. Wand stated that the third legislative issue could be handled by rule. The Board needs to consider if they would like to allow a Pharmacist to be the Pharmacist In Charge at more than one site.

Mr. Wand stated that he would place these items on a future agenda for further discussion.

Call to the Public

President Dutcher 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.

Mr. Morris came forth and asked that when considering Natural Disasters that the Board should require every pharmacy to have a disaster recovery plan so that they could continue to fill prescriptions.

There being no further business to come before the Board, **on motion by Dr. McCoy and Dr. Berry**, the Board unanimously agreed to adjourn the meeting at 2:40 P.M.

