



Arizona State Board of Pharmacy

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**THE ARIZONA STATE BOARD OF PHARMACY
HELD A REGULAR MEETING JULY 25 AND JULY 26, 2007
AT THE WESTIN LA PALOMA RESORT & SPA
TUCSON, AZ**

MINUTES FOR REGULAR MEETING

AGENDA ITEM 1 – Call to Order – July 25, 2007

President Van Hassel convened the meeting at 9:08 A.M. and welcomed the audience to the meeting.

The following Board Members were present: President Tom Van Hassel, Vice President Zina Berry, Chuck Dutcher, Steven Haiber, Louanne Honeyestewa, Dennis McAllister, Ridge Smidt, and Paul Sypherd. The following staff members were present: Compliance Officers Rich Cieslinski, Chuck Cordell, Larry Dick, Ed Hunter, Sandra Sutcliffe, and Dean Wright, Drug Inspector Heather Lathim, Deputy Director Cheryl Frush, Executive Director Hal Wand, and Assistant Attorney General Elizabeth Campbell.

Mr. Wand explained that law continuing education would be offered for attendance at the meeting.

AGENDA ITEM 2 – Declaration of Conflicts of Interest

Due to a conflict of interest, Mr. Haiber recused himself from participating in the review, discussion, and proposed action concerning Agenda Item 10, Conference for Complaint #3349.

Due to a conflict of interest, Mr. Haiber recused himself from participating in the review, discussion, and proposed action concerning Agenda Item 12, Complaint # 3362, #3368, #3371, and #3382.

Due to a conflict of interest, Dr. Berry recused herself from participating in the review, discussion, and proposed action concerning Agenda Item 10, Conferences for Complaint #3341, #3333, and #3322.

AGENDA ITEM 3 - Introduction of New Assistant Attorney General

Mr. Wand introduced Elizabeth Campbell. Ms. Campbell is the new Assistant Attorney General assigned to the Board of Pharmacy. Ms. Campbell is a graduate of Seattle University, School of Law.

AGENDA ITEM 4 - Introduction of New Compliance Officer

Mr. Wand introduced Chuck Cordell. Mr. Cordell has recently been hired as a Compliance Officer. Mr. Cordell has served as a Past Board Member and Board President.

AGENDA ITEM 5 – Approval of Minutes

Following a review of the minutes and an opportunity for questions and **on motion by Dr. Berry and Mr. Dutcher**, the minutes of the Regular Meeting held on May 9, 2007 and the Telephonic Meeting held on June 7, 2007 were unanimously approved by the Board Members.

AGENDA ITEM 6 – Requests/Applications for Permits & Licenses

President Van Hassel stated that all permits were in order for resident pharmacies.

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

RESIDENT (In Arizona)

Pharmacy	Location	Owner
Scottsdale Healthcare- Thompson Peak Pkwy.	7400 E. Thompson Peak Parkway, Scottsdale, AZ 85255	Scottsdale Healthcare Hospitals
Food City United Drug #171	2000 E. Irvington, Tucson, AZ 85714	Bashas' Inc.
Cactus & 35 th Family Physicians	12450 N. 35 th Ave. #25, Phoenix, AZ 85029 (O)	Global Rx Solutions
Food City United Drugs #164	900 W. Rex Allen Dr., Willcox, AZ 85643	Bashas' Inc.
Wal-Mart Pharmacy 10-3861	5290 S. Power Rd., Gilbert, AZ 85236	Wal-Mart Stores, Inc.
Allen Drugs	699 S. Mill Ave. #330, Tempe, AZ 85281	Doctor Allens Pharmacy, LLC
Kindred Hospital Northwest Pharmacy	13216 N. Plaza Del Rio Blvd., Peoria, AZ 85381	Kindred Hospitals East, LLC
Sterile Intravenous Admixture Labs, Inc.	5411 W. Orange Dr., Suite 11, Glendale, AZ 85301 (O)	SIVAL Corp.
Target Store T-2236	16806 N. 7 th St., Phoenix, AZ 85022	Target Corporation
Target Store T-2354	5715 N. 19 th Ave., Phoenix, AZ 85015	Target Corporation
Target Store T-2353	951 N. Promenade Pkwy, Casa Grande, AZ 85222	Target Corporation
Target Store T-2341	10404 N. 43 rd Ave., Glendale, AZ 85302	Target Corporation
Walgreens #10111	3434 W. Southern Ave., Phoenix, AZ 85041	Walgreen Arizona Drug Co.
Yuma Infusion Services	2170 W. 24 th St. #2, Yuma, AZ 85364	Greg Fox, Greg German, Kevin Nestrick
Hearthstone Hospital –Mesa, LLC	215 S. Power Rd., Mesa, AZ 85206	Unispec Facilities Management, LLC
Hearthstone Hospital- Sun City, LLC	13818 N. Thunderbird Blvd., Sun City, AZ 85351	Unispec Facilities Management, LLC

(O) = Ownership Change

Non-Resident Permits

At the conclusion of questions from the Board Members and **on motion by Dr. Berry and Mr. McAllister**, the Board unanimously approved the non-resident permits listed below.

NON-RESIDENT (Out of State)

Pharmacy	Location	Owner
Sina Drug Corporation	6 Park Avenue, Manhasset, NY 11030	Sina Drug Corporation
Advanced Care Scripts, Inc.	3160 Southgate Commerce Blvd, Ste. 60, Orlando, FL 32806	Advanced Care Scripts, Inc.
HomeMed Pharmacy	6210 Technology Center Dr., Indianapolis, IN 46278 (O)	HomeMed Pharmacy, LLC
Advanced Pharmacy Staffing, Inc.	6295 S. Harrison Dr., Ste 3, Las Vegas, NV 89120	Advanced Pharmacy Staffing, Inc.
PX Drugstore	5160 Vineland Ave., #101, North Hollywood, CA 91601	Modern HealthCare, Inc.
Matrix Pharmacy	5706 Benjamin Center Dr., Suite 103, Tampa, FL 33634	Matrix Pharmacy, LLC
Custom Medications of St. Louis	633 N. New Ballas Rd., St. Louis, MO 63141	Lee Ori
Lowens's Drug Store, Inc.	6902 Third Ave., Brooklyn, NY 11209	Lowen's Drug Store Inc.
California Pharmacy and Compounding Center	4000 Birch St., Ste 120, Newport Beach, CA 92660	Steven & Marilyn Feldman
Worksite Pharmacy #11578	14210 Scottslawn Rd., Maryville, OH 43041 (O)	Walgreen Co.
Drug Source Inc.	2020 Lunt Ave., Elk Grove, IL 60007 (O)	DrugSource, Inc.
Atlas Respiratory Services, Inc.	502 Elmwood Ave., Sharon Hill, PA 19079 (O)	Atlas Respiratory Services, Inc.
Health Stat Rx	7205 Bryan Dairy Rd., Largo, FL 33777	Healthstat Rx
America's Best Care Plus, Inc.	266 Industrial Dr., Ste.B, Rainsville, AL 35986	Community Health Services, Inc.
Millers of Wyckoff	678 Wyckoff Ave., Wyckoff, NJ 07481	David Miller
CuraScript SP Specialty Pharmacy	2 Boulden Circle, Ste. 1, New Castle, DE 19720	CuraScript, Inc.
RightSource Pharmacy	655 Eden Park Dr., Cincinnati, OH 45202	Humana
Maxor Correctional Pharmacy Services	416 Mary Lindsay Polk Dr., Suite 515, Frankin, TN 37067	Maxor National Pharmacy Services Corp.

(O) = Ownership Change

Wholesaler Permits

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

Bashas' Inc.

Don Featherstone, Pharmacy District Manager for Southern Arizona, was present to answer questions from Board Members.

Mr. Dutcher asked Mr. Featherstone if the wholesale operation would be housed at the Corporate Office. Mr. Featherstone stated that the wholesale operation would be at the same site as the corporate office. Mr. Featherstone stated that Mike Basha would be the Manager and Responsible Individual for the wholesale operation.

Mr. Dutcher asked if they would be stocking Controlled Substances. Mr. Featherstone stated that initially they would not be stocking Controlled Substances. Mr. Featherstone stated that initially they plan on stocking the top fifty generic products in their warehouse. Mr. Featherstone stated that they would then add other products in the future.

Mr. Wand stated that the company had checked that they would be stocking Controlled Substances because they anticipate stocking controlled substances in the future.

Mr. Featherstone stated that they currently are in discussions with the FDA concerning the cage area for the storage of the controlled substances.

Mr. Dutcher asked if they would be wholesaling medications for their chain. Mr. Featherstone replied yes.

Mr. Van Hassel asked if the company would only be wholesaling to the stores owned by the chain. Mr. Featherstone stated that they would only be wholesaling to the stores that they own. The stores that they would be wholesaling to include: Bashas' , Food City, AJ's, and Ikes.

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

WHOLESALER	LOCATION	OWNER
Bashas' Inc.	200 S. 56 th St., Chandler, AZ 85226	Bashas' Inc.

Manufacturer

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

Abraxis Bioscience, Inc.

David Moore, Pharmacist in Charge and Manager of Regulatory Affairs was present to answer questions from Board Members.

Mr. Dutcher asked Mr. Moore about the ownership change. Mr. Moore stated that it is a buyout of Watson Laboratories by Abraxis Bioscience. Mr. Moore stated that at the onset, the company would continue to manufacture some of the products that Watson manufactured and over the next two years they would retool the factory to manufacture new products.

Mr. Wand asked Mr. Moore how long he has worked for the company. Mr. Moore stated that he has worked for the company for 19 years and has been through several buyouts.

Mr. Wand asked Mr. Moore about the current output. Mr. Moore stated that the output is currently low, but the new company is working with the FDA to make changes and the output would then improve as new products are introduced.

On motion by Dr. Berry and Mr. Dutcher, the Board unanimously approved the resident manufacturer permit listed below. All permits are subject to final inspection by a Board Compliance Officer where appropriate.

MANUFACTURER	LOCATION	PHARMACIST IN CHARGE
Abraxis Bioscience, Inc.	620 N. 51 st Ave., Phoenix, AZ 85043 (O)	David Moore

(O) = Ownership Change

AGENDA ITEM 7– License Applications Requiring Board Review

#1 Scott Bergen

Scott Bergen appeared on his own behalf to request to proceed with reciprocity.

President Van Hassel opened the discussion by asking Mr. Bergen to describe the nature of his request.

Mr. Bergen stated that he is a pharmacist in California and would like to reciprocate to Arizona.

Mr. Van Hassel asked Mr. Bergen why he was asked to appear in front of the Board. Mr. Bergen stated that his license was disciplined in California and he was placed on probation by the California Board.

Mr. Haiber asked Mr. Bergen about the current status of his California license. Mr. Bergen stated that his license has been clear since February of 2004.

Mr. Van Hassel asked Mr. Bergen if both his California and Nevada license are in good standing at this time. Mr. Bergen replied yes.

Mr. Dutcher asked Mr. Bergen if the violations in California involved controlled substances. Mr. Bergen replied yes.

Mr. Dutcher asked Mr. Bergen if he participated in a recovery program. Mr. Bergen replied that he completed the program in February of 2002.

Mr. Van Hassel asked Mr. Bergen if he has a job in Arizona. Mr. Bergen replied he has not looked for a job in Arizona at this time.

Mr. Haiber asked Mr. Bergen if he paid his fine in California. Mr. Bergen replied yes.

Mr. Wand informed the audience that all applicants for licensure by reciprocity that have been disciplined by another state Board are requested to appear before the Board.

Mr. Dutcher asked Mr. Bergen if it was possible that he would succumb to the same desire again. Mr. Bergen stated that he has not taken anything since March of 1997. Mr. Bergen stated that he still attends AA meetings.

On motion by Mr. Dutcher and Mr. Haiber, the Board unanimously approved the request by Mr. Bergen to proceed with reciprocity.

#2 James Carter

James Carter appeared on his own behalf to request to proceed with reciprocity.

President Van Hassel opened the discussion by asking Mr. Carter to describe the nature of his request.

Mr. Carter stated that he is requesting to reciprocate his pharmacist license from Idaho his original state of licensure. Mr. Carter stated that he was disciplined in Colorado and received a letter of admonishment from the Colorado Board. Mr. Carter stated that he was issued a letter of admonishment because of a Darvocet prescription that he filled for himself that the doctor failed to authorize a quantity and he filled the prescription for 100 tablets.

Mr. Van Hassel asked Mr. Carter if his licenses in California, Colorado, and Idaho are all in good standing. Mr. Carter replied yes.

Mr. Van Hassel asked Mr. Carter when this discrepancy occurred. Mr. Carter stated that the discrepancy occurred in April of last year. Mr. Carter stated that he did voluntary drug testing for 4 months. Mr. Carter stated that he no longer takes any pain medications since his knee replacements.

Mr. Van Hassel asked Mr. Carter where he is currently residing. Mr. Carter stated that he resides in Colorado Springs and has a residence in North Phoenix. Mr. Carter stated that he works for a temporary agency and is currently working in California.

Mr. Haiber asked Mr. Carter what actions he would take if he were to receive a prescription with missing information. Mr. Carter stated that he would fax the doctor for the missing information and wait until the doctor responded to the fax with all the necessary information before filling the prescription.

On motion by Mr. McAllister and Dr. Berry, the Board unanimously approved the request by Mr. Carter to proceed with reciprocity.

#3 James Green

James Green appeared with Lisa Yates from the PAPA program to request that his revoked Pharmacist License be reinstated.

President Van Hassel opened the discussion by asking Mr. Green why he requested to appear in front of the Board today. Mr. Green stated that he would like to have his pharmacist license reinstated to probationary status.

President Van Hassel asked Ms. Yates about PAPA's recommendation. Ms. Yates stated that she has spoken to Mr. Green's counselor and he stated that Mr. Green is doing well. Ms. Yates stated that Mr. Green has been in the program in the past and the Steering Committee has seen a change in Mr. Green's behavior. Ms. Yates stated that he has been compliant.

Mr. Green stated that he has changed his behavior. Mr. Green stated that he has learned that he has choices and he must consider the consequences of his choices.

Mr. Dutcher asked Mr. Green if he has been in the PAPA program prior to this occurrence. Mr. Green stated that he was in the PAPA program once before this occurrence.

Mr. Dutcher asked Mr. Green if he was in the program for 5 years. Mr. Green stated that he was in the program for 5 years. Mr. Green stated that he was compliant the first time and did not take the program to heart. Mr. Green stated that he knows that he must change his behavior and not just be compliant.

Mr. Dutcher asked Mr. Green what action the Board took the first time he entered the PAPA program. Mr. Green stated that his license was suspended for three months and then he was placed on probation for the remainder of the time.

Mr. Dutcher asked Mr. Green about the current Board Order. Mr. Green stated that the order that revoked his license caught his attention.

Mr. Dutcher asked Mr. Green if he has signed a current PAPA contract. Mr. Green stated that he signed the contract in April of last year.

Mr. Wand asked Mr. Green how long his license has been revoked. Mr. Green replied that it is almost one year.

Mr. Van Hassel asked Mr. Green what he has been doing the last year. Mr. Green stated that he has completed some Community Service hours. Mr. Green stated that he has taken some time off to think about things and what he wants to do with his life.

Mr. Van Hassel asked Mr. Green if he has completed any CE hours. Mr. Green stated that he has completed about 24 hours of CE.

Dr. Smidt asked Mr. Green if he went to work under the influence of the medications. Mr. Green replied yes.

Mr. Van Hassel asked Mr. Green if he has any job prospects. Mr. Green replied no.

Mr. Dutcher asked Mr. Green if he feels that he would be able to handle the temptation if he returns to the workforce. Mr. Green stated that he would like to be in a position where he would not dispense. Mr. Green stated that if he is in a position where he would dispense he feels that he could handle the situation.

Mr. Van Hassel asked Mr. Green if he still has doubts about his ability to resist the temptation. Mr. Green stated he feels it would be safer for him in a non-dispensing position. Mr. Green stated that if he cannot find a non-dispensing position he feels it would not be a problem.

Mr. McAllister stated that if his license is reinstated the license could be used in any practice setting and could possibly place him and the public at risk. Mr. McAllister stated that he felt the Board could issue Mr. Green an Intern license which would allow him to complete 400 hours of internship under the supervision of a pharmacist. Mr. McAllister stated that at the end of the internship then Mr. Green could return to the Board and ask for his pharmacist license to be reinstated.

Mr. Green stated that he is not afraid to be in a dispensing position. Mr. Green stated that he believes that he has enough control. Mr. Green stated that he now realizes that he has choices and must live with the consequences. Mr. Green stated that he has people that he can talk to about his situation. Mr. Green stated that he has developed a new way of thinking and a new attitude.

Mr. Haiber asked Mr. Green what has changed in his life. Mr. Green stated that he has the support of support groups. Mr. Green stated that he has learned various techniques for handling stress and he is using those techniques to handle stressful situations.

Dr. Berry stated that she supports Mr. McAllister's recommendation that Mr. Green work under the direct supervision of another pharmacist.

Mr. Wand stated that with the reinstatement of a revoked license the Board can reinstate the license with or without conditions.

Ms. Campbell stated that the statutes state that the Board may reinstate a license. Ms. Campbell stated that Mr. Green's license was the license of a pharmacist. Ms. Campbell stated that the best practice would be to reinstate his pharmacist license with the condition that his practice be restricted to the practice of an intern. Ms. Campbell stated that the Board's power is to reinstate a license.

Mr. Dutcher asked Ms. Campbell if the Board could deny Mr. Green's request to reinstate his pharmacist license and issue him a graduate intern license, which upon completion of 400 hours of internship, he could request that the Board reinstate his pharmacist license.

Ms. Campbell stated that the intern license is a separate category of licensure and Mr. Green would need to make application for an intern license and the Board would need to approve his request at a future Board Meeting.

Mr. Wand stated that if the Board would like to issue an intern license to Mr. Green the request would need to be placed on a future agenda for discussion and action.

On motion by Dr. Smidt and Mr. Haiber, the Board unanimously agreed to deny Mr. Green's request to reinstate his license.

Ms. Campbell stated that the Board may want to include in their motion the reasons for denial which would include the following: A.R.S. § 32-1927 (S), A.R.S. § 32-1901.01 (B) (2), and A.R.S. § 32-1901.01 (B) (11).

Dr. Smidt amended his motion to include the reasons for denial suggested by Ms. Campbell. **On motion by Dr. Smidt and Mr. Haiber**, the motion was then withdrawn for further discussion.

Dr. Smidt stated that he does not feel that his license should be given back to him at this time. Dr. Smidt stated that he feels that it has been less than a year since his license was revoked. Dr. Smidt stated that he feels that by returning his license to him the Board may not be protecting the public.

Mr. Wand asked Mr. Green if the first contract he had with PAPA was because the drugs were taken from the pharmacy by him for someone else. Mr. Green stated that his wife had back pain and he decided to take some drugs from the pharmacy for her. Mr. Green stated that he decided to steal some medication for her and the drugs never left the pharmacy because he was caught leaving the pharmacy.

Mr. Wand asked Mr. Green about the circumstances that led to his second PAPA contract. Mr. Green stated that he had a prescription for medication for his severe headaches. Mr. Green stated that the doctor prescribed the medication for about one year and then the doctor would not renew his prescription. Mr. Green stated at that time he tried self-medicating himself.

On motion by Dr. Smidt and Dr. Berry, the Board unanimously agreed to deny Mr. Green's request for reinstatement of his pharmacist license based on conclusions of law based on the original consent order from August, 2006, which would include the following reasons for denial: A.R.S. § 32-1927 (S), A.R.S. § 32-1901.01 (B) (2), and A.R.S. § 32-1901.01 (B) (11). A roll call vote was taken. (Dr. Smidt – aye, Ms. Honeyestewa – aye, Mr. Haiber – aye, Dr. Sypherd – aye, Mr. McAllister – aye, Mr. Dutcher – aye, Dr. Berry – aye, and Mr. Van Hassel – aye)

Mr. Green asked if he could appear at the next Board Meeting.

Mr. Wand explained that Mr. Green could petition the Board at anytime. Mr. Wand stated that Mr. Green could come to the next Board Meeting and present his request.

#4 Carlos Bujanda

Carlos Bujanda appeared on his own behalf to request to proceed with technician licensure.

President Van Hassel opened the discussion by asking Mr. Bujanda to describe the nature of his request.

Mr. Bujanda stated that he would like to proceed with licensure as a pharmacy technician.

President Van Hassel asked Mr. Bujanda why he was appearing in front of the Board. Mr. Bujanda stated that in December of 2004 he received a DUI charge and in December of 2005 he received a second DUI charge. Mr. Bujanda stated that when he applied for technician licensure he was told that he would need to appear in front of the Board to explain the charges.

Mr. Van Hassel asked if the DUI charges were drug or alcohol related. Mr. Bujanda stated that the charges were for alcohol use.

Mr. Dutcher asked Mr. Bujanda if he is applying for licensure as a Pharmacy Technician or as a Pharmacy Technician trainee. Mr. Bujanda stated that he is applying for licensure as a Pharmacy Technician because he is certified.

Mr. Van Hassel asked Mr. Bujanda if he is currently working. Mr. Bujanda stated that he works for Walgreens as a clerk. Mr. Bujanda stated that he works the front register and stocks merchandise in the store.

Mr. Haiber asked Mr. Bujanda what has changed in his life to give the Board comfort that another DUI charge would not occur. Mr. Bujanda stated that since his second charge he attends AA meetings twice a week. Mr. Bujanda stated that he had attended a DUI education class. Mr. Bujanda stated that he had attended a cognitive skills class that had taught him to think about the consequences of his actions. Mr. Bujanda stated that prior to taking this class he did whatever he wanted and he did not care about the outcome. Mr. Bujanda stated that he now thinks about his actions. Mr. Bujanda stated that since his second DUI he no longer drinks alcohol. Mr. Bujanda stated that his Probation Officer has helped him with his issues. Mr. Bujanda stated that he has changed since that date because it was a real wake-up call.

Mr. Haiber asked Mr. Bujanda about the reckless endangerment charge. Mr. Bujanda stated that he was charged with reckless endangerment because there were other people in the car.

Mr. Van Hassel asked Mr. Bujanda about his work history. Mr. Bujanda stated that he has worked for Walgreens the last two years. Mr. Bujanda stated that prior to that time he was enrolled in the pharmacy technician program at Pima Medical College. Mr. Bujanda stated that while he was attending school he worked through a temporary agency doing jobs in construction or waiting at events.

Mr. Bujanda stated that he wanted to be a pharmacist for a long time. Mr. Bujanda stated that it was interesting learning about medications and found the field interesting.

Mr. Dutcher asked Mr. Bujanda if he wants to attend pharmacy school. Mr. Bujanda stated that he would like to take pre-pharmacy classes at the University of Arizona and then apply to pharmacy school.

Mr. Wand asked Mr. Bujanda how much longer his probation would last. Mr. Bujanda stated that it could last approximately three more years or be reduced based on his ability to comply with the probation requirements.

On motion by Mr. Dutcher and Dr. Berry, the Board unanimously approved the request by Mr. Bujanda to proceed with technician licensure.

AGENDA ITEM 7 – Special Requests

#1 Thomas Dalkin

Thomas Dalkin appeared on his own behalf to request that the Board terminate the suspension of his pharmacist license and impose probation per Board Order 07-0016-PHR. Ms. Yates was present to answer questions concerning Mr. Dalkin's participation in the PAPA program.

President Van Hassel opened the discussion by asking Mr. Dalkin to describe the nature of his request. Mr. Dalkin stated that he would like to have his license changed from suspension to probation.

Mr. Van Hassel asked Mr. Dalkin if he is enrolled in the PAPA program. Mr. Dalkin replied yes.

President Van Hassel asked Ms. Yates about PAPA's recommendation. Ms. Yates stated that Mr. Dalkin has been in the program since September of 2006. Ms. Yates stated that the recommendation from the counselor is for Mr. Dalkin's suspension to be lifted.

Mr. Van Hassel asked Mr. Dalkin about his relapse in January of this year. Mr. Dalkin stated that he still sticks by his August 8th sobriety date. Mr. Dalkin stated that he did have a positive urine screen. Mr. Dalkin stated that he was in New York City and was hanging out with some people that felt he was too stiff and placed something in his drink. Mr. Dalkin stated that he got mad and the other people were kicked out and they said that they were joking. Mr. Dalkin stated that he then tested positive on a drug screen. Mr. Dalkin stated that he discussed the results with the PAPA counselors and they documented his response to the positive screen.

Mr. Haiber asked Mr. Dalkin if he would be spending any time in jail as a result of his sentencing. Mr. Dalkin stated that as long as he obeys his probation order he would not serve any jail time.

Mr. Van Hassel asked Mr. Dalkin what led to his consent. Mr. Dalkin stated that he was addicted to opiates.

Mr. Van Hassel asked Mr. Dalkin if he took drugs from the hospital. Mr. Dalkin replied yes.

Mr. Van Hassel asked Mr. Dalkin if he took the drugs while he worked. Mr. Dalkin replied yes. Mr. Dalkin stated that he self-reported to the hospital. Mr. Dalkin stated that he would have reported the problem sooner, but he thought that he could take care of the problem by himself.

Mr. Van Hassel asked Mr. Dalkin if there was something in his life that caused his addiction and what has changed in his life since that time. Mr. Dalkin stated that his father died and a long-term relationship ended. Mr. Dalkin stated that he has been through the Valley Hope program and is now attending PAPA group counseling. Mr. Dalkin stated that he also sees Jim Corrington for individual counseling. Mr. Dalkin stated that he chairs NA meetings three times a week.

Mr. Dutcher asked Mr. Dalkin if he has a job. Mr. Dalkin stated that he was told that he should not seek employment until his license was placed on probation.

Mr. Dutcher asked Mr. Dalkin in what area of pharmacy he would like to practice when his license is placed on probation. Mr. Dalkin stated that he would like to return to hospital pharmacy.

Mr. Dutcher asked Mr. Dalkin if it would be a problem for him to return to work. Mr. Dalkin stated no that he does not want to return to the situation he was in before.

Dr. Smidt asked Mr. Dalkin if he is seeing a counselor. Mr. Dalkin replied that he is seeing Jim Corrington for individual counseling.

Dr. Berry asked if this is his first incident. Mr. Dalkin replied yes.

A motion was placed on the floor by Dr. Berry and Mr. Dutcher to approve Mr. Dalkin's request to terminate suspension and impose probation.

Dr. Sypherd stated that Mr. Dalkin stole drugs from his employer and it would not hurt Mr. Dalkin's career if the suspension lasted the full term of one year.

Mr. Van Hassel asked Mr. Dalkin if he was drinking alcohol in the January incident. Mr. Dalkin stated that he was drinking soda.

Mr. Van Hassel stated that the January failure concerns him. Mr. Van Hassel stated that he feels that the consent could go for one year

A roll call vote was taken on the motion placed on the floor by Dr. Berry and Mr. Dutcher to approve Mr. Dalkin's request to terminate suspension and impose probation. (Dr. Smidt – aye, Ms. Honeyestewa –aye, Mr. Haiber – nay, Dr. Sypherd –nay, Mr. McAllister – nay, Mr. Dutcher – aye, Dr. Berry – aye, and Mr. Van Hassel – nay)
The motion fails.

Ms. Campbell asked Ms. Yates if the Steering Committee is recommending that Mr. Dalkin's suspension be terminated and probation imposed. Ms. Yates stated that they rely on the counselor's recommendations and she spoke with the counselor. Ms. Yates stated that since the incident Mr. Dalkin initiated the individual counseling with Jim Corrington. Ms. Yates stated that PAPA recommends that his license be placed on probation.

On motion by Mr. Dutcher and Dr. Berry, the Board agreed to convene in Executive Session to obtain legal advice. There was one nay vote from Dr. Sypherd.

The Board meeting reconvened in open session.

#2 Southern Desert Pharmacy

Paul Smith, General Manager of Southern Desert Pharmacy, was present to request a waiver of R4-23-670 (A) which states the minimum requirements for square footage of a sterile pharmaceutical compounding area.

President Van Hassel asked Mr. Smith to address the nature of his request. Mr. Smith stated that in remodeling their clean room to comply with USP 797 the size of the clean room would be decreased from 95 square feet to roughly 63 square feet. Mr. Smith stated that they would be encapsulating the interior of the room in a plastic bubble. Mr. Smith stated that the contractor that is retrofitting the room would yield about 63 to 70 square feet of surface area.

Mr. Smith stated that he has supplied the Board with the various options and the option that they selected would not require them to build into the existing pharmacy area.

Mr. Smith stated that they are building a clean room in a clean room and the issue is that the square footage does not meet the required 100 square feet for a sterile compounding room.

Mr. Smith stated that the current room meets the square footage requirements, but does not meet the current USP 797 standards and by incorporating the new envelope within the room the overall square footage decreases.

Mr. Smith stated that in the option they selected the airflow would be consistent with the required standards, but the square footage would not meet the Board's requirements.

Mr. Smith stated that there would be one four foot hood in the area. Mr. Smith stated that they would prepare 15 to 20 compounds a day.

Mr. Van Hassel asked if the original clean room met the standards. Mr. Smith stated that the original room was a clean room. Mr. Smith stated that the old room was designed for the older standards. Mr. Smith stated that with the advent of 797 the airflow became the issue.

Mr. Smith stated that Plan B would be to remove the wall and remove the floor tile to expand the clean room into the existing pharmacy. The problem is that the clean room would encroach on the compounding space in the pharmacy. Mr. Smith stated that the air exchange would meet the standards but not the square footage.

Dr. Smidt asked if Southern Desert is owned by Omnicare. Mr. Smith replied yes.

Dr. Smidt asked if Omnicare is following the guidelines of 797. Mr. Smith replied yes and Omnicare was not aware of the 100 square foot requirement in Arizona.

Dr. Smidt asked if they would be compounding high risk products. Mr. Smith stated that they would be compounding simple admixtures.

Dr. Smidt asked if they currently have 95 square feet of space with Iso Class 8. Mr. Smith stated that they have 95 square feet and he believes that it is classified as Iso 8.

Dr. Smidt stated that the current room meets the square footage and additional filters would meet the requirements for an Iso 7 room.

Mr. Smith stated that the new room would not have 100 square feet of Iso 7. Mr. Smith stated that he would be putting a clean room within a clean room.

Mr. Van Hassel stated that as long as they keep the current clean room they would have 95 square feet.

Dr. Smidt asked Mr. Smith if they told him if the room was classified as Iso 7 or Iso 8. Mr. Smith stated that he believes it was classified as Iso 8.

Dr. Smidt stated that the room could be adapted to Iso 7 and the whole room would meet the requirements of an Iso 7 room.

Dr. Berry stated that an extra filter would not require remodeling and reduction in space.

Mr. Van Hassel stated that the integrity of the original room would be compromised. Mr. Van Hassel stated that the original room could be retrofitted to meet the requirements.

Mr. Wand stated that a waiver can only be given for technological advances or for experimental basis.

Mr. Van Hassel asked Mr. Smith if he has any specifications on the bubble that would show any basis for the waiver.

Mr. Smith stated that the Omnicare facility in Chandler has the bubble and he could obtain information from them on the bubble.

Mr. Van Hassel stated that he feels that 60 square feet is not adequate space for a clean room.

Dr. Berry noted that the 60 square feet would not only include the compounding area but the cleaning area.

Dr. Berry asked about the square footage of the Chandler pharmacy. Mr. Smith stated that the Chandler room is large and exceeds 100 square feet.

On motion by Dr. Berry and Dr. Sypherd, the Board unanimously agreed to table Southern Desert's request for a waiver of R4-23-670 (A) until further information is received from Southern Desert Pharmacy.

#3 Omnicare – Request Postponement until September Meeting

AGENDA ITEM # 10 - Reports

Executive Director Report

Mr. Wand opened his discussion by reviewing the budget. Mr. Wand discussed the revenues and expenditures. Mr. Wand stated that by June 30th there was 2% left of unspent appropriations. Mr. Wand stated that an additional amount of money was spent to bring the final unspent funds to 0.4%. The majority of the money was spent on the remodel for the new office space. Mr. Wand stated that the unspent money would go back into the pharmacy fund.

Mr. Wand stated that there was extra money budgeted for additional employees and salary increases for the Compliance Staff. Mr. Wand stated that a new Compliance Officer was hired and the Compliance Officers received a salary increase.

Mr. Wand stated that he is trying to uncover all the positions in the office to have more flexibility in hiring and issuing of raises.

Mr. Wand updated the Board on the move to the Capitol Mall. Mr. Wand stated that the office space is larger than the office space at the old location.

Mr. Wand stated that three employees have been lost because of the move downtown. Mr. Wand stated that two employees have retired and the positions have been changed to uncovered positions and both positions have been filled. Mr. Wand stated that Tiffany has accepted the position of Office Manager. Mr. Wand stated that he has hired an Executive Secretary to assist the Executive and Deputy Director. Mr. Wand stated that the Executive Secretary is currently helping with the licensing until a new employee is hired to fill the position.

Mr. Wand stated that when the Board moved to the new office the Board Office began using a new web-based system. The applications were turned on sooner than anticipated and there were several problems.

Mr. Wand stated that IBM was not awarded the contract and starting sometime in January the Board would be working with the new developer for the web-based system.

Deputy Director Report

Ms. Frush gave a brief overview of the Compliance Officer's Report and the Inspector's Report.

Ms. Frush stated during the months of April, May, and June, the Compliance Staff issued letters for the following violations:

Controlled Substance Violations

1. Controlled Substance Overage – 5
2. Controlled Substance Shortage – 1

3. Failure to Conduct Controlled Substance Inventory upon change of Pharmacist in Charge – 1
4. Failure to Conduct Annual Controlled Substance Inventory - 2

Documentation Violations

1. Failure to Document Medical Conditions – 5
2. Failure to have signed technician statements concerning job description, policies & procedures and Board rules - 2
3. Daily prescription log not signed – 2
4. Failure to maintain counseling documentation -2

Pharmacy Violations

1. Allowing technicians to work without a license – 1

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

1. Documentation of Medical Conditions

Areas outside the inspection reports that may be of interest:

1. CII prescriptions do not have a quantity limit.

AzPA Report

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

Ms. Rasmussen welcomed everyone to the Annual Meeting. Ms. Rasmussen stated that they are expecting about 500 participants. Ms. Rasmussen stated that there would be 45 pharmacists taking the anticoagulation class.

Ms. Rasmussen stated that the theme for this years meeting is Raising the Bar. Ms. Rasmussen stated that there will be several keynote speakers and there will be lots of breakout sessions offering CE credit.

Ms. Rasmussen stated that there will be a Town Hall Meeting where practitioners can express their concerns.

Ms. Rasmussen stated that all exhibit booth space was sold.

Ms. Rasmussen stated that membership has increased by 25%.

Ms. Rasmussen stated that the Alliance has held a stakeholders meeting to receive comments and input on future legislation concerning pharmacist administered immunizations.

Ms. Rasmussen discussed Federal Legislation. Ms. Rasmussen stated that federal requirements would require all Medicaid prescriptions to be written on tamper resistant prescription pads by October 1, 2007. Ms. Rasmussen stated that pharmacies could be penalized if they fill a prescription not written on tamper resistant prescription pads. Ms. Rasmussen stated that if the

prescription was not written on tamper resistant prescription form then the pharmacist would need to contact the prescriber for an oral or faxed prescription.

Ms. Rasmussen stated that there is an opportunity for pharmacists to provide medication therapy management. Ms. Rasmussen stated that the Alliance would be the network coordinator for the program.

The meeting recessed for lunch.

The meeting reconvened at 2:00 P.M.

AGENDA ITEM 10 - Conferences

Complaint #3332

The following individuals were present to answer questions from Board Members concerning a consumer complaint: Pharmacist Barry Siegel and Legal Counsel Laura Carpenter.

President Van Hassel opened the discussion by asking the respondents to discuss the complaint.

Ms. Carpenter opened the discussion by stating that Mr. Siegel's employer had sent a notice to the Board indicating that he had taken medication from stock bottles for personal use without a prescription.

Ms. Carpenter stated that Mr. Siegel takes chronic medications for high blood pressure and diabetes. Ms. Carpenter stated that one morning Mr. Siegel forgot to take his medications before coming to work. Ms. Carpenter stated that Mr. Siegel did not want to close the pharmacy to go home and pick up his medications, so Mr. Siegel took one tablet of his blood pressure medicine and his diabetes medication from the stock bottles. Mr. Siegel also took one capsule of either Amoxicillin or Clindamycin for his dental infection that he was also suffering from at this time. Ms. Carpenter stated that Mr. Siegel told the technician that he was taking the medication. Ms. Carpenter stated that the policy where Mr. Siegel worked was to give the patient an emergency supply of medication and felt the policy also applied to his medication since he was a patient of the pharmacy.

Ms. Carpenter stated that Mr. Siegel believes that when his prescriptions were refilled the next time he took out the tablet that he had taken that day when he forgot his medications.

Ms. Carpenter stated that following this incident Mr. Siegel placed a tablet of each of his medications in a bottle and kept the bottle at work, so he would never be without his medications.

Ms. Carpenter stated that six months after this event occurred Mr. Siegel gave notice to his employer. Ms. Carpenter stated that Mr. Siegel was then called to the store manager's office about a week after giving his notice. Ms. Carpenter stated that the Manager asked Mr. Siegel if he had ever taken any drugs from the pharmacy. Ms. Carpenter stated that Mr. Siegel replied yes that the technician and pharmacy manager were aware that he had

taken several tablets the day he had forgotten his medication. Ms. Carpenter stated that Mr. Siegel worked the remainder of his shift that day and the rest of the weekend. Ms. Carpenter stated that on Monday when Mr. Siegel returned to work he was called to the Manager's office and his employment was terminated for gross misconduct.

Mr. Haiber asked Mr. Siegel who he had worked for when he was terminated. Mr. Siegel stated that he worked for Target.

Mr. Haiber asked Mr. Siegel if Target had a policy about filling your own prescriptions. Mr. Siegel stated that it was okay with the Pharmacy Manager that they fill their own prescriptions because they only overlapped one day a week.

Mr. Haiber asked Mr. Siegel if the Pharmacist in Charge was aware that he took the tablets. Mr. Siegel stated yes.

Mr. Haiber asked Mr. Siegel if there was anyone at home that could have brought Mr. Siegel's medications to him at the pharmacy. Mr. Siegel replied that there was no one at home because he lives alone.

Mr. Van Hassel asked Ms. Sutcliffe to come forth and discuss her investigation of the complaint. Ms. Sutcliffe stated that she went to the pharmacy after receiving Mr. Siegel's response to the complaint indicating that he had valid prescriptions on file. Ms. Sutcliffe stated that Mr. Siegel did have valid prescriptions on file at the store.

Mr. Sypherd asked Mr. Siegel why he was terminated after giving notice. Mr. Siegel replied he does not know why they decided to terminate him at this time.

Mr. Van Hassel asked Mr. Siegel if they described to him what they meant by gross misconduct. Mr. Siegel replied that they did not.

Ms. Carpenter stated that the Store Manager made the determination that Mr. Siegel's employment would be terminated.

On motion by Mr. McAllister and Dr. Berry, the Board unanimously agreed to dismiss the complaint.

Complaint #3357 – Postponement requested until September

Complaint #3341

The following individuals were present to answer questions from Board Members concerning a consumer complaint: Pharmacist Margaret Martuszewski and Pharmacy Supervisor Darren Kennedy. Compliance Office Dean Wright gave a brief overview of the complaint.

Mr. Wright stated that the complainant stated that she presented a prescription for Acetaminophen #3 to the pharmacy. Mr. Wright stated that the complainant took her first tablet that evening at 10:00 P.M. and a second tablet at 2:00 A.M. because she was still in pain. The next morning after the patient arrived at work she was still in pain and decided

to take another pain pill. When the patient looked at her bottles, she discovered that she had been given another patient's medication and she was taking Paroxetine 20 mg instead of her pain medication. Mr. Wright stated that two different pharmacists filled the prescriptions.

President Van Hassel asked Ms. Martuszewski to address the complaint. Ms. Martuszewski stated that she was working at this store that particular day covering for the store manager. Ms. Martuszewski stated that all the safety measures were followed. Ms. Martuszewski stated that she verified the prescription for the pain medication and the other pharmacist verified the other patient's prescription. She believes the mix-up occurred at the out window and the pamphlets were switched on the two bags.

Mr. Dutcher asked Ms. Martuszewski what steps have been taken to prevent this from occurring in the future. Ms. Martuszewski stated that when she counsels a patient she takes the bottles out of the bag and ensures that all the prescriptions are for the patient. Ms. Martuszewski stated that if the patient presents a new insurance card and the prescription is re-entered the staff knows that the pharmacist must reverify the prescription. Ms. Martuszewski stated that the error was entered into the monthly peer review as a learning experience.

Mr. Haiber asked Mr. Kennedy if the company has standardized the policy across the chain to show patients their bottles during counseling. Mr. Kennedy replied that they do not have a corporate policy to use show and tell.

Ms. Martuszewski stated that she submitted a suggestion to corporate to have clear dispensing bags so that the pharmacist could see all the bottles during counseling.

Mr. McAllister stated that patients do have some responsibility in their own care. Mr. McAllister stated if the patient had read the bottle initially, she would have realized that it was not her medication and the side effects she experienced would not have occurred.

On motion by Mr. Dutcher and Mr. McAllister, the Board unanimously agreed to dismiss the consumer complaint.

Complaint #3349 – Postponement requested until the September meeting

AGENDA ITEM 11 – Proposed Rules

Prescription Medication Donation Program Rules

Compliance Officer/Rules Writer Dean Wright opened the discussion by stating that a Notice of Proposed Rulemaking was published on March 23, 2007. Mr. Wright stated that a public hearing was held on April 23, 2007. Mr. Wright stated that no one attended the hearing. Mr. Wright stated that the office received one written comment in support of the rulemaking.

Mr. Wright stated that he has prepared a notice of Final Rulemaking and Economic Impact Statement. Mr. Wright stated that if the Board approves the Notice of Final Rulemaking and the Economic Impact Statement, he would send them to GRRC for final

approval. Mr. Wright stated that the Notice of Final Rulemaking would be on GRRC's October agenda.

On motion by Mr. Dutcher and Dr. Berry, the Board unanimously agreed to approve the Notice of Final Rulemaking and Economic Impact Statement for the Prescription Medication Donation Program Rules.

Wholesaler Rules

Compliance Officer/Rules Writer Dean Wright opened the discussion by stating that a Notice of Proposed Rulemaking was published on March 16, 2007. Mr. Wright stated that a public hearing was held on April 23, 2007. Mr. Wright stated that both oral and written comments were received.

Mr. Wright stated that he has prepared a notice of Final Rulemaking and Economic Impact Statement. Mr. Wright stated that if the Board approves the Notice of Final Rulemaking and the Economic Impact Statement, he would send them to GRRC for final approval. Mr. Wright stated that the Notice of Final Rulemaking would be on GRRC's October agenda.

On motion by Mr. McAllister and Dr. Berry, the Board unanimously agreed to approve the Notice of Final Rulemaking and Economic Impact Statement for the Wholesaler Rules.

AGENDA ITEM 12 - Consideration of Consumer Complaint Committee Recommendations

The Consumer Complaint Review Committee met prior to the Board Meeting to review 25 complaints. Dr. Berry, Ms. Honeyestewa, and Dr. Sypherd served as the review committee. Board Members were encouraged to discuss issues and were encouraged to ask questions.

The Board Members discussed Complaint #3364. Board Members felt that the advisory letter should include a statement recommending that the pharmacy staff should explain to the patient what the log means that they are signing especially if they are refusing counseling.

On motion by Mr. Dutcher and Mr. McAllister, the Board unanimously agreed to accept the recommendations of the complaint review committee.

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

Complaint #3343 - Conference- Pharmacist

Complaint #3346 - Dismissed

Complaint #3356 - Dismissed

Complaint #3359 - Conference – Permit Holder, Pharmacist, Pharmacy Technician

- Complaint #3360 - Advisory Letter to the Pharmacist
- Complaint #3361 - Dismissed
- Complaint #3362 - Dismissed
- Complaint #3363 - Advisory Letter to the Pharmacist
- Complaint #3364 - Advisory Letter to the Pharmacist
- Complaint #3365 - Dismissed
- Complaint #3366 - Dismissed
- Complaint #3367 - Dismissed
- Complaint #3368 - Advisory Letter to the Pharmacy Technician
- Complaint #3370 - Consent Order for Substance Abuse Treatment Program. If not signed, proceed to Hearing.
- Complaint #3371 - Conference – Pharmacist
- Complaint #3372 - Conference – Pharmacist and Pharmacy Technician
- Complaint #3373 - Advisory Letter to the Pharmacist
- Complaint #3374 - Dismissed. Open a complaint against the Permit Holder concerning training and complying with company policies
- Complaint #3375 - Dismissed
- Complaint #3376 - Dismissed
- Complaint #3377 - Dismissed
- Complaint #3378 - Dismissed
- Complaint #3380 - Dismissed – Forward Complaint to Nursing Board
- Complaint #3382 - Advisory Letter to the Pharmacy Technician
- Complaint #3390 - Consent Agreement for Revocation. If not signed, proceed to Hearing.

AGENDA ITEM 14 – Recognition of Pharmacists for Service to the Public

Mr. Wand stated that he has received two letters from consumers concerning pharmacists recognizing them for their service to the public.

The first letter submitted concerned the recognition of Pharmacist Jay Wise. Mr. Wise is a pharmacist at the Sam's Club in Tucson. Mr. Wise was nominated by one of his customers to receive a Ben's Bell award. The customer nominated Mr. Wise for the award because of his acts of kindness towards his customers.

The second letter submitted concerned the recognition of Tombstone Pharmacy. The customer indicated that Tombstone Pharmacy provided outstanding service to her mother, who lived in an assisted living home in the Tombstone area.

The Board Members recommended sending a Letter of Recognition to the Pharmacists.

Mr. Wand stated that he could place the Pharmacist's picture on the website if the pharmacist agrees.

AGENDA ITEM 15 – Recognition of Past Board Member's Service to the Board – Linda McCoy

Ms. McCoy was unable to attend the Board Meeting.

AGENDA ITEM 16- CE Approval Request

President Van Hassel asked Mr. Wand to address this agenda item.

Mr. Wand stated that he has put the policy guidelines in the book for CE Approval that is not ACPE approved. Mr. Wand stated that in the past the Board had appointed a subcommittee to review requests for approval.

Mr. Wand stated that two pharmacists are requesting approval for CE for a cruise for medical doctors. The purpose of the program is to review the diagnosis and treatment of dermatological conditions. Mr. Wand stated that the program is approved by the Nursing Boards and CME. Mr. Wand stated that it is very expensive to obtain ACPE approval. Mr. Wand stated that the pharmacists did follow the policy guidelines.

Mr. Wand stated that this may open up a floodgate for CE approvals.

Mr. Dutcher stated that he would be reluctant to approve the program for CE if it was not accredited by other health organizations.

Mr. McAllister stated that he feels the substantive policy covers the requirements. Mr. McAllister stated that he feels that if another organization has approved the program he feels that the Board could authorize staff to approve the request and not bring the request to the Board.

On motion by Dr. Berry and Mr. McAllister, the Board unanimously approved the submitted CE request by Ms. Keaveny and Ms. Beno. The Board approved the staff to approve future CE requests in accordance to the policy guidelines.

AGENDA ITEM 17 – Instructions to Staff to Establish Task Forces as a Result of Recent Legislation

President Van Hassel opened the discussion. Mr. Van Hassel stated that due to recent legislation that was passed at this session the Board would need to establish task forces. Mr. Van Hassel stated that task forces need to be established as a result of the Prescription Monitoring Legislation and Quality Assurance Management Legislation.

Mr. Wand suggested that there should be at least one Board Member on each task force. Mr. Dutcher, Mr. McAllister, and Mr. Haiber stated that they would like serve on the Prescription Monitoring Task Force. Dr. Berry and Dr. Smidt stated that they would like to serve on the Quality Assurance Management task force.

Mr. Wand stated that each task force should not have more than 15 members.

Mr. Wand stated that the statutes take effect on September 19, 2007. Mr. Wand stated that Mr. Wright will be Program Director of the Prescription Monitoring Program.

Mr. Wand stated that at the September Meeting other names of task force would be named. Mr. Wand stated that the first meeting of the task force would be between September 19th and November 1st.

Mr. Wand stated that members could be selected for the Quality Assurance Management task force by the September meeting.

Mr. Wand stated that new requirements will be in place that will require all task force meetings to post a notice and agenda prior to the meeting. The task force must also take minutes and post the minutes after the meeting.

AGENDA ITEM 19 – Update on Drugs and More – Change logo to Over the Counter Drugs and More.

Mr. Wand stated that a letter has been sent to Drugs and More concerning the proposed changes to their signage. Mr. Wand stated that the letter from the attorney indicates that the company is in the process of making the appropriate changes.

AGENDA ITEM 21 – Call to the Public

Call to the Public

President Van Hassel 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. Lipsy came forward and thanked the Board and staff for their service to the profession and the public.

At this time, the Board recessed until Thursday morning at 9:00 A.M.

AGENDA ITEM 1 – Call to Order – July 26, 2007

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

The following Board Members were present: President Tom Van Hassel, Vice President Zina Berry, Chuck Dutcher, Steven Haiber, Louanne Honeyestewa, Dennis McAllister, Ridge Smidt, and Paul Sypherd. The following staff members were present: Compliance Officers Rich Cieslinski, Chuck Cordell, Larry Dick, Ed Hunter, Sandra Sutcliffe, and Dean Wright, Deputy Director Cheryl Frush, Executive Director Hal Wand, and Assistant Attorney General Elizabeth Campbell.

Mr. Van Hassel stated that Mr. Wright has the sign up sheets to obtain law continuing education and the CE attendance certificates will be mailed to each individual that signs the sheet.

AGENDA ITEM 6 – Requests/Applications for Permits & Licenses

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

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

AGENDA ITEM 8 – Special Requests

#4 Keith Likes

Keith Likes appeared on his own behalf to request termination of probation per Board Order 07-0016-PHR.

President Van Hassel asked Mr. Likes to describe the nature of his request. Mr. Likes stated that he would like the Board to terminate his probation.

Mr. Van Hassel asked if Mr. Likes has met all the requirements of his consent order. Mr. Wand replied that Mr. Likes has met all the requirements of his consent order. Mr. Wand stated that copies of Mr. Likes CE and a copy of his check showing that he paid the fine are included in the addendum.

On motion by Mr. Dutcher and Dr. Smidt, the Board unanimously approved the request by Mr. Like to terminate probation and return his license to active status.

AGENDA ITEM 10 – Conferences

Complaint #3333 – Postponement requested until September

Complaint #3332

The following individuals were present to answer questions from Board Members concerning a consumer complaint: Pharmacist Brandon Kurz and Pharmacy Supervisor Fauzia Somani. Compliance Office Sandra Sutcliffe gave a brief overview of the complaint.

Ms. Sutcliffe stated that the complainant's prescription for Nasonex was filled with Flonase. The error was caught when the patient requested a refill. The prescription was on a pre-printed blank with Flonase, Nasonex, and Rhinocort AQ printed on the same line. The Nasonex was circled on the form, however the Flonase was the first drug listed on the prescription form. The order entry Intern selected the Flonase and the incorrect entry was not caught by the verification pharmacist.

Mr. Van Hassel asked Mr. Kurz to address the complaint. Mr. Kurz stated that he made an error when he verified the prescription. Mr. Kurz stated that he saw the first drug on the pre-printed blank and missed the fact that the Nasonex was circled.

Mr. Van Hassel asked Mr. Kurz who entered the prescription. Mr. Kurz stated that the prescription was entered by an Intern. Mr. Kurz stated that the Intern selected the wrong drug and he did not catch the error.

Mr. Dutcher asked if the Board could send a letter to the doctor concerning the confusion caused by pre-printed blanks.

On motion by Mr. Dutcher and Mr. McAllister, the Board unanimously agreed to dismiss the complaint. Ms. Berry recused herself due to a conflict of interest.

Complaint #3295 – Postponement requested until September

Complaint #3366

The following individuals were present to answer questions from Board Members concerning a consumer complaint: Pharmacist Allan Bates and Pharmacy Owner Sam Patel. Compliance Office Ed Hunter gave a brief overview of the complaint.

Mr. Hunter stated that this complaint was sent to the Board by an assisted living home that is serviced by the pharmacy. Mr. Hunter stated that the complainant stated that there were numerous errors in medications that were sent to the home. Mr. Hunter stated that the errors included: empty bubbles on the medication card, multiple tablets in a bubble, directions that were unclear, and multiple cards for a prescription when the product would not fit in one bubble with little explanation to the home.

Dr. Smidt asked Mr. Bates what changes have been made at the pharmacy. Mr. Bates stated that an additional technician was hired to do the data entry. Mr. Bates stated that one technician entered the prescriptions and another technician checked the product with the pharmacist performing the final check. Mr. Bates stated that he began checking the prescriptions during the day instead of doing all the checks at the end of the day.

Mr. Dutcher stated that in the response it listed oversight as the cause for the error. Mr. Dutcher stated that it is an excuse because the pharmacist is responsible for the verification of the product.

Mr. Dutcher asked Mr. Bates if they have standards established for the facilities that they service. Mr. Bates stated that they requested that all facilities give them 24 hours notice when they needed medications. Mr. Bates stated that this home usually gave them 4 to 6 hours notice and they would hurry to prepare their medications.

Mr. Dutcher asked Mr. Bates if the volume was out of hand for him. Mr. Bates stated that the volume was overwhelming. Mr. Bates stated that there were problems and he is no longer working at the pharmacy.

Mr. Van Hassel asked who was responsible for the pharmacy because he noticed that a pharmacy technician was listed as manager of the pharmacy. Mr. Bates stated that he was the Pharmacist In Charge. Mr. Bates stated that the pharmacy technician was the manager and was responsible for the processing of the paperwork which relieved him of that burden.

Mr. Van Hassel asked who the Pharmacist In Charge is now that Mr. Bates has left. Mr. Patel stated that he is the owner of the Pharmacy and the Pharmacist In Charge.

Mr. Patel stated that he is in the process of purchasing an automated system to help with the workflow. Mr. Patel stated that the purchase is dependent on his ability to obtain financing.

Ms. Berry asked if the assisted living home sent the correct order to the pharmacy. Mr. Hunter stated that some of the complaints were pharmacy issues and others were the issues created by the home.

Mr. McAllister stated that some of the medications were potent medications and not every assisted living facility has licensed personnel handing out medications. Mr. McAllister stated that in some cases the patient is responsible for their own medications at an assisted living home and they are vulnerable to the mistakes made by the pharmacy.

Mr. Van Hassel asked Mr. Hunter if he has completed a recent inspection of the pharmacy. Mr. Hunter stated that there seemed to be a lot of confusion with the prior owner. Mr. Hunter stated that files were not in order and improvements have been made.

Mr. McAllister stated that he has concerns because this population is at risk. Mr. McAllister stated that the management of the pharmacy is poor and there is a lack of responsibility by the management.

On motion by Mr. McAllister and Dr. Smidt, the Board unanimously agreed to issue an advisory letter to Pharmacy Management and send a letter to the Assisted Living Home asking the home to report any further problems to the Board.

AGENDA ITEM 13 – Consent Agreements

President Van Hassel 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.

The Board Members indicated that they would like to discuss the Consent Agreement signed by Ms. Lisa Hunter.

On motion by Dr. Berry and Mr. Dutcher, the Board unanimously agreed to accept the following consent agreements as presented in the meeting book and signed by the respondents. The consent agreements are listed below. A roll call vote was taken. (Dr. Smidt – aye, Ms. Honeyestewa –aye, Mr. Haiber – aye, Dr. Sypherd –aye, Mr. McAllister – aye, Mr. Dutcher – aye, Dr. Berry – aye, and Mr. Van Hassel – aye)

- | | | |
|----------------|---|-------------|
| Sarah Vertrees | - | 07-0044-PHR |
| Andrew Marak | - | 07-0055-PHR |
| Alan Isaacson | - | 07-0057-PHR |

President Van Hassel opened the discussion concerning Lisa Hunter’s proposed consent agreement.

Ms. Hunter and Brent Peugnet, Legal Counsel for Ms. Hunter, were present to answer questions. Elizabeth Campbell, Assistant Attorney General, was present to represent the State.

Mr. Peugnet stated that they believe that they have presented to the Board a consent agreement that would protect the public and would allow Ms. Hunter to work under the direct supervision of a pharmacist. Mr. Peugnet stated that there is a stayed revocation that if Ms. Hunter does not complete the requirements of the consent agreement then the revocation would occur. Mr. Peugnet stated that Ms. Hunter must work under the supervision of a pharmacist and take the PSAM exam. Mr. Peugnet stated that they would agree to abide by all the timelines and terms of the consent agreement.

Ms. Campbell stated that she does support the agreement. Ms. Campbell stated that the purpose of the PSAM is an attempt to address the areas of deficiency. Ms. Campbell stated that Ms. Hunter would then be required to complete 30 hours of CE that would address her deficiencies.

Mr. Dutcher asked what would happen if she failed the PSAM. Mr. Peugnet stated that they could add wording that would allow her to take the PSAM exam three times and if she failed then her license would be revoked.

Mr. McAllister stated that he would like to explain the PSAM assessment. Mr. McAllister stated that the PSAM is not a pass-fail test. Mr. McAllister stated that the PSAM identifies areas where there are deficiencies. Mr. McAllister stated that there is no point in taking the test more than one time because it is used for competency learning.

Mr. Dutcher stated that he feels that the PSAM would not give a valid point of reference.

Mr. McAllister stated that the NAPLEX exam would give a better reference point.

Mr. Peugnet stated that the PSAM assessment would indicate the areas of deficiency in Ms. Hunter's practice. Mr. Peugnet stated that the PSAM would give the Board some indication of Ms. Hunter's clinical competence.

Mr. Wand stated that Ms. Hunter has already passed the NAPLEX exam and the NAPLEX exam shows that the applicant has met the minimum competency level. Mr. Wand stated that the PSAM would indicate Ms. Hunter's areas of weakness.

Ms. Campbell stated that the CE courses must be approved by the Board staff after receiving a copy of Ms. Hunter's PSAM evaluation report.

Dr. Smidt stated that he feels that 30 hours of CE can be completed in a week or two. Dr. Smidt stated that if there are massive deficiencies then 30 hours of CE is not sufficient.

Dr. Smidt stated that there may not be knowledge deficiencies but judgment deficiencies. Dr. Smidt stated that many of the issues have been problems in judgment. Dr. Smidt stated that the PSAM and additional CE units do not address judgment deficiencies.

Mr. Peugnet stated that the purpose of the stay of revocation is to take action if there is a judgment lapse. Mr. Peugnet stated that the revocation would become effective if there is a problem.

Dr. Smidt stated that there is a problem and the purpose of the Board is to prevent a problem and not wait for the next error. Dr. Smidt stated that he needs to know that Ms. Hunter is competent to practice.

Ms. Campbell stated that in Paragraph 5 of the consent order Ms. Hunter would be required to work under the direct supervision of a pharmacist. Ms. Campbell stated that the supervisor would be required to send reports to the Board. Ms. Campbell stated that if the Board receives an unsatisfactory report then the Board could take action against Ms. Hunter.

Mr. Van Hassel stated that the Board had originally voted for revocation and is not sure if this consent agreement meets the wishes of the Board. Mr. Van Hassel stated that the original consent agreement for revocation was not accepted by Ms. Hunter and her counsel.

Mr. McAllister stated that this is the second time Ms. Hunter has appeared before the Board. Mr. McAllister stated that Ms. Hunter had a previous consent order for probation and the Board wanted to see improvement and he does believe that there has been improvement.

Dr. Berry stated that the Board has seen poor judgment calls and misfills when Ms. Hunter is working under supervision. Dr. Berry stated that the Board's job is to protect the public.

On motion by Dr. Berry and Mr. McAllister, the Board unanimously agreed to not approve the proposed Consent Order and move to Hearing based on the Findings of Fact listed in the Consent Agreement. {A.R.S. § 32-1927 (A) (1) and A.R.S. § 32.1901.01 (B) (2)} The Hearing will be held before the Board. A roll call vote was taken. (Dr. Smidt – aye, Ms. Honeyestewa – aye, Mr. Haiber – aye, Dr. Sypherd – aye, Mr. McAllister – aye, Mr. Dutcher – aye, Dr. Berry – aye, and Mr. Van Hassel – aye)

AGENDA ITEM 18 – Review of Low Cost Consent Settlement Proposal for 07-0049-PHR

Adam Palmer, Legal Counsel for Low Cost Pharmacy was present.

Ms. Campbell stated that this case involves the failure to report to the Board disciplinary action that was taken against the Pharmacy in Missouri. Ms. Campbell stated that the case is scheduled for Hearing at OAH.

Mr. Palmer stated that he submitted a proposal to the Board to resolve the current pending matter of Low Cost's failure to notify the Board of Missouri's action. Mr. Palmer stated that there was no formal Board Order in Missouri. Mr. Palmer stated that they voluntarily gave up their license after a change in law. Mr. Palmer stated that Low Cost's business model could not meet the law. Mr. Palmer stated that the Missouri Board acknowledges that they immediately ceased doing business in Missouri acting responsibly and Low Cost could no longer meet the business model in light of the new law that was created during the course of three year litigation with the Missouri Pharmacy Board. Mr. Palmer stated that there was no Board action with Missouri and they voluntarily gave up their license. Mr. Palmer stated that they chose to do it in an administrative proceeding and there was independent litigation in court involving the same claim. Mr. Palmer stated that there was no admission of any fault by Low Cost Pharmacy. Mr. Palmer stated that they had received a Consent Agreement for revocation from Arizona and feel that is excessive and they would agree to pay a fine of \$1,000.

Mr. Van Hassel stated that the Missouri newsletter stated that the Pharmacy License for Low Cost Pharmacy was revoked and he asked Mr. Palmer if that was correct. Mr. Palmer replied that it is misleading. Mr. Palmer stated that agreement was decided after a civil court case. Mr. Palmer stated that they decided that they could not meet the changes in law. Mr. Palmer stated that they entered into an agreement whereby they would dismiss the law suit and nobody pays penalties or fees. Mr. Palmer stated that they agreed to comply with the law and that was the dismissal of the civil case. Mr. Palmer stated that they tried to give up their license in the civil case. Mr. Palmer stated that they

were advised by the Board that they could not mix civil cases and administrative cases. Mr. Palmer stated that following their civil case the only way to give up their license was to go through the administrative proceeding. Mr. Palmer stated that after three years of litigation, the Board filed an administrative proceeding. Mr. Palmer stated that they decided to give up their license in the administrative proceeding. Mr. Palmer stated that the Board wanted them to agree to revocation which they would not agree to and the Board revoked their license.

Mr. Palmer stated that if the case goes to Hearing he would introduce correspondence indicating that they tried to give up their license. Mr. Palmer stated that there was not a revocation of their license. Mr. Palmer stated technically the license was revoked but in reality there was no revocation and they ceased doing business in Missouri and there was no mechanism to give up their license.

Ms. Campbell stated that Mr. Palmer's comments about what documents would be allowed to be presented at the Hearing is premature. Ms. Campbell stated that the simple fact is that on September 8, 2006, Low Cost Pharmacy entered into a Consent Agreement with the Missouri Board of Pharmacy to have its license immediately revoked. Ms. Campbell stated that the order was a disciplinary order. Ms. Campbell stated that Low Cost failed to report the disciplinary action to the Board. Ms. Campbell stated that the discipline in Missouri and the failure to report the discipline to the Arizona Board constitutes two incidents of professional misconduct under this Board's statutes. Ms. Campbell stated that she feels that the Board could effectively prove the case before the Office of Administrative Hearing.

Mr. Palmer stated that in the Missouri Consent Agreement that the licensee became aware of the change and ceased dispensing prescriptions in Missouri.

Mr. Palmer stated that he feels that a penalty of \$1,000 would be sufficient.

Mr. Dutcher asked for clarification on the matter. Mr. Dutcher stated that since the license was revoked in another state that gives the Board the right to take similar action in our state.

Mr. Dutcher stated that Mr. Palmer stated that they gave up their Missouri license because they could not follow the law. Mr. Dutcher stated that in his mind this is an admission that they were breaking the law. Mr. Palmer did not reply.

Ms. Campbell stated that if a permittee is disciplined in another jurisdiction that would subject the permittee to discipline in this jurisdiction.

Mr. Wand stated that when we take action against a permittee that has been disciplined in another state, the Board has taken similar action in this state.

Mr. McAllister stated that he feels that there is no option but to proceed with the Hearing.

Mr. Wand stated that the hearing is scheduled for August 16, 2007.

Mr. Palmer stated that their answer is due in two weeks. Mr. Palmer stated that Mr. Rao is out of the country and is due to return the day before the hearing. Mr. Palmer stated since the Board does not plan to accept his proposal he would be filing a motion to continue the Hearing.

Mr. Dutcher asked if the Board offered a consent agreement to Low Cost. Mr. Wand stated that Low Cost was offered a consent agreement for revocation. Mr. Wand stated that Low Cost refused the Consent Agreement for revocation. Mr. Wand stated that the Board voted to go to Hearing if the Consent was not signed and a Hearing was scheduled.

Ms. Campbell stated that Mr. Palmer proposed an offer of settlement and the Board should take action.

On motion by Mr. McAllister and Dr. Berry, the Board unanimously agreed to deny the settlement offer proposed by Low Cost Pharmacy. A roll call vote was taken. (Dr. Smidt – aye, Ms. Honeyestewa –aye, Mr. Haiber – aye, Dr. Sypherd –aye, Mr. McAllister – aye, Mr. Dutcher – aye, Dr. Berry – aye, and Mr. Van Hassel – aye)

Dr. Smidt asked Mr. Palmer if they would voluntarily consider the surrender of their license. Mr. Palmer replied no.

AGENDA ITEM 20 – Update on Low Cost Pharmacy Case #LC2006-000704-001

President Van Hassel asked Assistant Attorney General Elizabeth Campbell to address this item.

Ms. Campbell stated that Mr. Hargraves filed a motion for reconsideration with the Superior Court.

Ms. Campbell stated that the Superior Court did issue a judgment in the Board's favor. Ms. Campbell stated that Low Cost has appealed that decision in the Court of Appeals. Ms. Campbell stated that Mr. Palmer's brief will be due shortly.

AGENDA ITEM 21 – Call to the Public

President Van Hassel 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.

A pharmacist that works a night shift expressed concerns that she is not able to verify the legitimacy of a CII prescription at night.

A pharmacist expressed concerns about the tamper proof prescriptions for Medicaid prescriptions that will be required by a new Federal Law.

AGENDA ITEM 22 – Discussion of Items to placed on Future Meeting Agenda

President Van Hassel opened the discussion by asking the Board Members if there were any topics that the Board Members would like to discuss at a future Board Meeting.

Mr. Wand stated that at the Strategic Planning Meeting the Board had discussed the number of hours a Pharmacist could work. Mr. Wand stated that several states have passed laws concerning workload restrictions.

Mr. Dutcher asked if the Board Office has received calls concerning the working hours. Mr. Wand stated that he does receive concerns about work hours, workload, and lunch breaks.

Mr. Wand stated that he had an Intern research which states have laws concerning workload and work hours.

Mr. Van Hassel stated that he has received calls concerning work hours and this is a real problem.

Dr. Sypherd stated that he feels that management should be represented.

Mr. Dutcher asked Ms. Campbell if someone could speak with the Board without being on the agenda. Ms. Campbell stated that the Board could receive input at the discretion of the Board.

Mr. Dutcher asked if the strategic planning ideas that were not discussed yet could be placed on the September agenda. Mr. Wand stated that those items could be placed on the agenda for September.

AGENDA ITEM 23 – Adjournment

There being no further business to come before the Board, **on motion by Mr. Dutcher and Dr. Berry**, the Board unanimously agreed to adjourn the meeting at 10:35 A.M.