

**3New Mexico Board of Pharmacy Regular Board Meeting
June 11th & 12th, 2007**

Monday June 11th, 2007

PLACE AND TIME: The meeting was held at the Pharmacy Board Conference room at 5200 Oakland Ave., Albuquerque, NM.

CALL TO ORDER: The meeting was called to order by the Chairman Woodrow Storey, R.Ph., at 9:00a.m.

MEMBERS PRESENT: Woodrow Storey, R.Ph., Chairman
Danny Cross, R.Ph., Vice-Chairman
Amy Buesing, R.Ph., Secretary
Rudy Nolasco, R.Ph., Member
Thomas Ortega, R.Ph., Member (Monday arrived @ 9:19 a.m.)
Allen Carrier, Public Member

MEMBERS ABSENT: Brenda Padilla, R.Ph., Member
Buffie Saavedra, Public Member
Howard Shaver, Public Member

STAFF ATTENDING: Mary Smith, Assistant Attorney General
Francine Chavez, Assistant Attorney General
William Harvey, Executive Director
Debra Wilhite, Administrative Secretary
Jeane Johnson, Inspector
Ben Kesner, Inspector
Larry Loring, Inspector
Mike Lyons, Inspector

APPROVAL OF THE AGENDA:

Mr. Storey took roll call at 9:00 a.m. Present were Mr. Cross, Ms. Buesing, Mr. Nolasco, Mr. Carrier and Woodrow Storey. The Chairman stated that there was a quorum. The Chairman stated that Ms. Padilla, Ms. Saavedra and Mr. Shaver were absent and Mr. Ortega would be late.

The Chairman asked if there were any changes to the agenda.

Mr. Harvey stated that there were two cases being added under case presentation; case #2007-034 for Ben Kesner and case #2006-196 for Mike Lyons and under executive directors report letter "n" for discussion for election of officers.

Motion:

A motion was made by Ms. Buesing, seconded by Mr. Nolasco to approve the agenda as presented. The Board voted unanimously to pass the motion.

APPROVAL OF THE MARCH 11TH & 12TH, 2007 MEETING MINUTES:

The Chairman asked if there were any changes to the minutes for March 19th & 20th, 2007.

Motion:

A motion was made by Ms. Buesing, seconded by Mr. Nolasco to approve the minutes for March 11th & 12th, 2007. The Board voted unanimously to pass the motion.

EXECUTIVE DIRECTOR'S REPORT:

Mr. Harvey informed the board that Ms. Mc Cormick's request for disposal of inventory i.e.; copier and miscellaneous items form needed to be approved and signed by the board. A copy of the form would be attached to the minutes.

Motion:

A motion was made by Mr. Carrier, seconded by Mr. Nolasco to approve the request for disposal of inventory. The Board voted unanimously to pass the motion.

A brief discussion was held with Mr. Harvey and the board regarding the request from Native Plains Pharmacy from Nebraska regarding non- resident licensing in our state. FYI item, no action taken.

Mr. Ortega arrived at 9:19 a.m.

Mr. Harvey introduced the current intern Shelly Sparks and Mr. Dale Tinker introduced his intern Katie Kline. Mr. Harvey stated that Shelly was gathering point of sales logs for two month's to track smurfing of pseudoephedrine.

Mr. Harvey discussed the upcoming board meeting in Ruidoso and informed the board member to notify him as soon as possible who will be in attendance so that the proper paperwork would be submitted in a timely manner. Mr. Harvey stated that twelve rooms are being held for Sunday and Monday night.

Mr. Ben Kesner asked the board to make an addition of case #2007-034 to the agenda under case presentations.

Motion:

A motion was made by Ms. Buesing, seconded by Mr. Nolasco to approve the addition of case #2007-034 to the agenda. The Board voted unanimously to pass the motion.

Mr. Harvey discussed the need for a committee to address special circumstances or emergencies that fall under 16.19.31 NMAC. The Chairman asked that Mr. Harvey prepare something for presentation at the board meeting in Ruidoso.

A brief discussion was held regarding the inability to access the databases within the RLD system, namely L2000.

DR. TRIGG/DOH GUIDELINES FOR EXPEDITED PARTNER TREATMENT:

Dr. LaFarge and Dr. Trigg had a lengthy discussion with the board regarding revision of the Medical Practice Act to allow "Expedited Partner Treatment" for individuals of sexually transmitted diseases. These revisions follow guidelines from the Department of Health. Recommendations made covered areas regarding patient contact information, pharmacy statutes, CDC guidelines and language from the DOH that would address dispensing and any civil liabilities. The board recommended that Dr. La Farge present language to Mr. Harvey to be presented at the August board meeting in Ruidoso.

The Chairman asked for a 10-minute recess at 10:27 a.m.

RECESS:

RECONVENE:

The board reconvened at 10:43 a.m.

ROBERTA MOORE - MIDWIFERY RULE 16.11.3 NMAC:

Mr. Harvey introduced Ms. Moore from the DOH. Ms. Moore presented an extensive overview of the scope of midwives and how the New Mexico Department of Health licenses and regulates midwives for the state, both certifies nurse-midwives and licensed (direct-entry) midwives. The licensed midwives specialize in attending out-of-hospital births. Ms. Moore's request is that in the interests of public health and safety that they should be able to give their patients a certain pharmaceuticals. The midwives training includes the indications, contraindications, effects and proper administration and can show required curriculae that demonstrates that they can administer these drugs. Ms. Moore proposed that the language should also include the authority to carry and administer these drugs in the scope of practice description of the next Licensed Midwifery Rule 16.11.3 NMAC.

The board suggested that Mr. Harvey, Ms. Mary Smith, Assistant Attorney Ann Alexander and Ms. Kathy Kunkle work with Ms. Roberta Moore to provide guidance in developing language necessary to meet the needs of the public and the boards' relative to this subject.

The Chairman asked for the board to recess for lunch at 11:32 a.m.

RECESS FOR LUNCH:

RECONVENE MONDAY JUNE 11th, 2007:

The Board reconvened at 1:00 p.m.

MTP REPORT - CONNIE MERRELL:

The Chairman called for a motion to go into closed session to present the MTP Report at 1:10 p.m.

Motion:

A motion was made by Mr. Ortega, seconded by Ms. Buesing to go into closed session to discuss the MTP report. The Chairman took a roll call vote. The Board voted unanimously to pass the motion.

The Chairman went back into open session and the only issue discussed was the MTP Report.

APPLICATIONS:

Application List:

Clinic:

Ms. Buesing stated that there are 33 applications in this category and all are in order.

Motion:

A motion was made by Ms. Buesing, seconded by Mr. Ortega to approve all 33 applications in this category as presented. The Board voted unanimously to pass the motion. Mr. Cross abstained from voting on NMSU-c Health clinic, Pecos Valley of New Mexico/DBA Southwest Digestive Health Center and Pecos Valley of New Mexico/DBA NM Internal Medicine.

Home Care:

Ms. Buesing stated that there was one application in this category and all is in order.

Motion:

A motion was made by Ms. Buesing, seconded by Mr. Cross to approve the application in this category. The Board voted unanimously to pass the motion.

Limited Controlled Substance:

Ms. Buesing stated that there was one application in this category and all is in order.

Motion:

A motion was made by Ms. Buesing, seconded by Mr. Cross to approve the application in this category. The Board voted unanimously to pass the motion.

Emergency Medical Services:

Ms. Buesing stated that there are 2 applications in this category and all are in order.

Motion:

A motion was made by Ms. Buesing, seconded by Mr. Cross to approve all 2 applications in this category as presented. The Board voted unanimously to pass the motion. Mr. Nolasco abstained from voting on Cabo Lucero Volunteer Fire Department.

Custodial Home:

Ms. Buesing stated that there are 34 applications in this category and all are in order.

Motion:

A motion was made by Ms. Buesing, seconded by Mr. Ortega to approve all 34 applications in this category as presented. The Board voted unanimously to pass the motion.

Hospital:

Ms. Buesing stated that there were 3 applications in this category and all is in order.

Motion:

A motion was made by Ms. Buesing, seconded by Mr. Ortega to approve the 3 applications in this category as presented. The Board voted unanimously to pass the motion.

Pharmacy:

Ms. Buesing stated that there are 11 applications in this category as presented and that the spelling of the pharmacist in charge should be "Fugate" for application #1 and all are in order.

Motion:

A motion was made by Ms. Buesing, seconded by Mr. Ortega to approve all 11 applications in this category as presented. The Board voted unanimously to pass the motion

Non-Resident Pharmacy:

Ms. Buesing stated that there are 9 applications in this category and all are in order.

Motion:

A motion was made by Ms. Buesing, seconded by Mr. Ortega to approve all 9 applications in this category as presented. The Board voted unanimously to pass the motion.

Wholesale/Broker:

Ms. Buesing stated that there are 30 applications in this category and all are in order.

Motion:

A motion was made by Ms. Buesing, seconded by Mr. Ortega to approve all 30 applications in this category as presented. The Board voted unanimously to pass the motion.

Pharmacist Credentialing Committee:

Ms. Buesing presented 2 applications that were discussed by the committee on June 4, 2007. The applicants are Patrick Leung and Jushna M. Vigil.

Motion:

A motion was made by Ms. Buesing, seconded by Mr. Ortega to approve the recommendations by the credentialing committee for the two applicants as presented. The Board voted unanimously to pass the motion.

Ms. Buesing requested that the application lists be attached to the minutes.

The Chairman asked to take a 10-minute recess at 1:50 p.m.

RECESS:

RECONVENE:

The Board reconvened at 2:00 p.m.

COMMITTEE REPORTS:

We are in the process of forming these committee's and welcome your membership and feedback regarding any issues that you feel would be of importance.

Technician Committee; Contact Bill Harvey for committee membership.

Remote Pharmacy Committee; Contact Bill Harvey for committee membership.

Wholesale Distribution Committee; Contact Bill Harvey for committee membership.

Executive Director's Report Cont'd:

Ms. Wilhite presented information regarding frequently asked questions about capitalization, punctuation and formatting regarding writing of regulations and minutes. Ms. Wilhite stated that she used the New Mexico Administrative Code training as a reference, which enables her to stay consistent. FYI, no action was taken.

Mr. Harvey discussed issues regarding the proposed "USP 795/797 Implementation Committee". Please contact Mr. Harvey if you wish to be a member on this committee. FYI, no action taken.

Mr. Harvey stated that the conference room used for the monthly law reviews only has seating for 60 people. During the renewal year for pharmacists, which happens to be every two years, thus 2007 being a renewal year, the attendees exceed the capacity allowed. Several law reviews have been added to accommodate the high number of attendees. Discussion regarding renting a facility at UNM will be on the agenda for the August 2007 board meeting in Ruidoso.

Mr. Harvey received an inquiry via email asking about permissible activities performed by pharmacy technicians that he felt would be a good exercise for the intern, Kendra Barrett to reference the board regulations and respond to the inquiry. FYI, no action taken

Mr. Harvey stated that a NASCSA conference is being held in Albuquerque, August 2007. Any members wishing to attend contact Mr. Harvey via email. FYI, no action taken.

Mr. Loring discussed a proposed change to 16.19.6 NMAC regarding amending the "effective date 2007" to 2008. The board agreed to the proposed change.

Motion:

A motion was made by Ms. Buesing, seconded by Mr. Cross to notice 16.19.6.11.C(2)(d) NMAC for hearing at the August 2007 board meeting. The Board voted unanimously to pass the motion.

The New Mexico Poison Control Center asked the board for approval of a letter of support regarding a grant and their endeavors of which the board Chairman gave a verbal approval. Support from the remaining board members was asked.

Motion:

A motion was made by Mr. Cross, seconded by Ms. Buesing to acknowledge affirmation of the letter of support. The Board voted unanimously to pass the motion.

Mr. Harvey discussed the proposed amendments to 16.19.20 NMAC Controlled Substances that will be addressed at the August 2007 board meeting and possibly be noticed for hearing for the October 2007 board meeting as follows;

Amendment of Schedules I, II, III:	Schedule I Stimulants: 16.19.20.65 Add Cathinone and Methcathinone to paragraph E.
	Schedule II Stimulants: 16.19.20.66 C (5)Precursors and (6) Phenylacetone
	Schedule III: 16 NMAC 19.20.67F Add to anabolics and re-letter. Mestanolone Methyltrienolone Norbolethone

NABP CORRESPONDENCE - MEETINGS - NEWS:

Mr. Harvey discussed the District 8 meeting and the attendance of board member. Mr. Harvey asked that board members submit confirmation of attendance early on so that he can obtain approval from RLD. Mr. Harvey asked

that the board members decide what meetings they would like to attend at which time he will obtain approval and make the board members aware of budget requirements.

NABP Elections and resolution information was briefly discussed. FYI, no action taken.

The Chairman asked for a 10-minute recess.

RECESS:

RECONVENE:

The Chairman reconvened at 3:20 p.m.

Executive Director's Report Cont'd:

Mr. Harvey discussed the order regarding Joel Butler case #2001-088 and the non-compliance of this licensee. After Mr. Harvey informed the board of several non-compliance issues the board ordered an NCA.

Motion:

A motion was made by Mr. Cross, seconded by Mr. Ortega to issue an NCA for unprofessional conduct to Mr. Joel Butler citing regulation 16.19.4.9(C)(14 NMAC. The Board voted unanimously to pass the motion.

The Chairman adjourned the meeting at 3:37 p.m.

RECONVENE TUESDAY JUNE 12TH, 2007:

The Chairman reconvened at 9:09 a.m. and took roll call. Present were Mr. Ortega, Mr. Carrier, Mr. Nolasco, Ms. Buesing, Mr. Cross, and Mr. Storey, presiding. The Chairman stated that Ms. Saavedra, Ms. Padilla and Mr. Shaver would be absent.

DISCIPLINARY HEARING FOR CASE #2006-085 (Bean & Associates were present to record the hearing):

The Chairman opened the hearing at 9:10 a.m. and took a roll call for the record. Present were Mr. Ortega, Mr. Carrier, Mr. Nolasco, Ms. Buesing, and Mr. Cross. The Chairman Woodrow Storey stated that he would be presiding over the hearing and that Ms. Saavedra, Ms. Padilla and Mr. Shaver would be absent. Mr. Storey stated that a quorum of the board was present and introduced Ms. Mary Smith as counsel advising the board. Mr. Storey asked that the parties identify themselves.

Francine Chaves, Assistant Attorney General was present for the state and Ms. Gail Prosser, attorney for Mr. Hawash was present. Mr. Ibrahim Hawash was present.

Ms. Chavez and Ms. Prosser presented their responses. A settlement agreement was presented by the state prior to the hearing, but the respondent and his attorney Ms. Prosser did not accept the settlement offer and filed a motion "To Exclude Physical Evidence and Testimony of Witnesses not Disclosed by the State. Therefore, after a brief discussion Mr. Storey denied the motion "To Exclude Physical Evidence and Testimony of Witnesses not Disclosed by the State" and suggested that the Board grant a continuance. The Board was in agreement with the continuance and further stated, by Mr. Storey that a hearing officer be appointed for the next scheduled hearing regarding Mr. Ibrahim Hawash, case #2005-085. All parties were in agreement. The hearing was closed.

Executive Director's Report Cont'd:

The Chairman asked Mr. Harvey what issues could be addressed until the next disciplinary hearing at 11:00 a.m. Mr. Harvey stated that case presentations could be addressed.

Motion:

A motion was made by Mr. Cross, seconded by Ms. Buesing to go into closed session for case presentations. A roll call vote was taken. Mr. Ortega, Mr. Carrier, Mr. Nolasco, Ms. Buesing, and Mr. Cross voted unanimously to pass the motion.

The Board went back into open session at 9.45 a.m. and the only issue discussed were case presentations.

The Chairman asked for a 5-minute recess.

RECESS:

RECONVENE:

The Board reconvened at 10:55 a.m.

DISCIPLINARY HEARING FOR CASE #2005-097 (Bean & Associates were present to record the hearing):

The Chairman opened the hearing at 11:04 a.m.

Ms. Francine Chavez presented the settlement agreement and stated that Ms. Mahlendorf, case #2005-097 had agreed to the settlement agreement presented and had signed it prior to the hearing.

Motion:

A motion was made by Mr. Cross, seconded by Ms. Buesing to accept the settlement agreement as presented for Laura Mahlendorf case #2005-097. The board voted unanimously to pass the motion.

The Chairman asked for the board to recess for lunch at 11:22 a.m.

RECESS FOR LUNCH:

RECONVENE:

The Board reconvened at 1:11 p.m.

PUBLIC REQUESTS:

Beth Corder; Ms. Corder was unable to attend the board meeting but submitted a proposal requesting to be licensed in the state of New Mexico. Based on her background information and the protocols set forth by the licensing manager, the board agreed that Ms. Corder complete 720 intern hours and take the NAPLEX and MPJE in order for her to apply for licensing as a registered pharmacist.

Benton Dwight; Mr. Dwight has proposed a payment plan that will enable him to pay the fines incurred regarding his disciplinary action, case #2001-088. After a brief discussion the board agreed to accept his request and ask that Mr. Harvey and counsel write up the terms of agreement in a formal manner.

Motion:

A motion was made by Mr. Ortega, seconded by Mr. Cross to accept the terms as presented to be written formally by counsel. The Board voted unanimously to pass the motion.

CMS; All individual and organizations that meet the definition of health care provider as described at 45 CFR 160.103 are eligible to obtain a National Provider Identifier, or NPI. For more information you may access the NPPEs website.

PRN-Systems Connect-Offsite Pharmaceutical Services; Ms. Lisa Harris Baker from Las Vegas Nevada was unable to attend the board meeting. Ms. Baker submitted information regarding off-site pharmaceutical services and asked Mr. Harvey what the New Mexico board of pharmacy's regulations are regarding this issue. The information supplied by Ms. Baker was linked on our website for viewing.

Mr. Harvey indicated that the regulation that applies to this inquiry is stated in 16.19.7 NMAC. Mr. Harvey forwarded that information on to Ms. Baker via email.

Executive Director's Report Cont'd:

Controlled Substances - 16.19.20 NMAC - Proposed Amendment:

Mr. Bill Weast read the proposed language regarding identification requirements of patient and/or patient representatives.

16.19.20.42 PRESCRIPTION REQUIREMENTS:

A. Prescriptions for controlled substances shall be dated and signed as of the date of issue, and shall contain the full name and address of the patient, the name, address and federal registration number of the prescribing practitioner. Prescriptions for controlled substances listed in Schedule II shall be written in ink, indelible pencil, or typewritten and manually signed by the practitioner.

B. A prescription for a Schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy via facsimile equipment, provided the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance, except as noted in 16.19.20.41.C NMAC, 16.19.20.41.D NMAC, and 16.19.20.42.E NMAC. The original prescription shall be maintained in accordance with 16.19.20.31 NMAC.

C. A prescription prepared in accordance with 16.19.20.41.A. NMAC written for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, or subcutaneous infusion may be transmitted by the practitioner or the practitioner's agent to the Parenteral Products Pharmacy by facsimile. The facsimile serves as the original written prescription for purposes of this paragraph and it shall be maintained in accordance with 16.19.20.31 NMAC.

D. A prescription prepared in accordance with 16.19.20.41.A. NMAC written for a Schedule II substance for a resident of a Long Term Care Facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The facsimile serves as the original written prescription for purposes of this sub-section and it shall be maintained in accordance with 16.19.20.31 NMAC.

E. A prescription prepared in accordance with 16.19.20.41.A. NMAC written for a Schedule II narcotic substance for a patient enrolled in a hospice program certified by Medicare under Title XVIII or licensed by the state may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The practitioner or the practitioner's agent will note on the prescription that the patient is a hospice patient. The facsimile serves as the original written prescription for purposes of this sub-section and it shall be maintained in accordance with 16.19.20.31 NMAC.

F. A pharmacist may dispense directly a controlled substance listed in Schedule III or IV, which is a prescription drug as determined under the New Mexico Drugs and Cosmetics Act, only pursuant to either a written prescription signed by a practitioner or a facsimile of a written, signed prescription transmitted by the practitioner or the practitioner's agent to the pharmacy or pursuant to an oral prescription made by an individual practitioner and promptly reduced to written form by the pharmacist containing all information required for a prescription except the signature of the practitioner.

G. A pharmacist, pharmacist intern, or pharmacy technician, must verify the identity of the patient or the patient's representative before a new prescription for a controlled substance listed in Schedule II, III, or IV, is delivered. Acceptable identification means a state issued driver's license,

including photo, or other government issued photo identification. The identification number of the government issued identification and the name imprinted on that identification must be recorded in a manner to be determined by a written policy developed by the pharmacist-in-charge. Exceptions are, a new controlled substance prescription filled for a patient known to the pharmacist or pharmacist intern, whose identification has already been documented in a manner determined by a written policy developed by the pharmacist-in-charge; a controlled substance prescription filled by a mail order pharmacy that does not have a “pickup” service; or a controlled substance prescription filled for and delivered to a patient residing in a licensed nursing home.

[16.19.20.42 NMAC - Rp 16 NMAC 19.20(1), 07-15-02]

After a brief discussion with the board and Mr. Weast, the board agreed that the rule could be noticed for hearing at the October 2007 board meeting. Mr. Dale Tinker was in the audience and expressed that he agreed with the ID requirement and stated that it was a positive change. (161920BW03-20-07)

Motion:

A motion was made by Mr. Cross, seconded by Mr. Ortega to notice 16.19.20.42 NMAC for hearing at the October, 2007 board meeting. The Board voted unanimously to pass the motion.

Mr. Harvey briefly discussed the upcoming election of officers and asked that the board members provide him a list of suggestions.

Executive Director’s Report Cont’d:

The Chairman asked for a motion to go into executive session for case presentations at 1:50 p.m.

Motion:

A motion was made by Mr. Cross, seconded by Ms. Buesing to go into closed session for case presentation. A roll call vote was taken. Mr. Ortega, Mr. Carrier, Mr. Nolasco, Ms. Buesing, and Mr. Cross voted unanimously to pass the motion.

The board went back into open session and the only issue discussed was case presentations.

Case Presentations:

Motion:

A motion was made by Mr. Cross, seconded by Mr. Nolasco to go into closed session for case presentations. The Chairman took a roll call vote. Mr. Ortega, Mr. Carrier, Mr. Nolasco, Ms. Buesing, Mr. Cross and the Chairman Mr. Storey all voted unanimously to pass the motion.

The Chairman went back into open session and the only issues discussed were case presentations.

Motion:

A motion was made by Ms. Buesing, seconded by Mr. Ortega to proceed as follows; 2007-014, 2007-024, 2007-034, 2006-005, 2006-123, 2006-201, 2007-049, 2006-126, 2007-010, 2007-020, 2007-052, 2006-188, 2006-195, 2007-005, 2007-011, 2006-192, 2006-202, 2007-007, 2007-023, 2007-037, all closed; 2007-054 closed and refer to the Dental Board; 2007-018, 2006-006, 2006-184, 2007-032, 2007-055, all to be issued NCA’s; 2006-158 issue an NCA to the technician and the pharmacist in charge; 2007-017 issue a surrender of license and a pre-NCA; 2007-015, 2007-058, 2007-028, 2006-196 leave open; 2005-110 rescind the NCA. The Board voted unanimously to pass the motion.

Assistant Attorney Mary Smith suggested that the board adopt an “Open Meetings” resolution to be discussed at the August 2007 board meeting.

The board meeting was adjourned at 2:57 p.m.

Approved on August 27th, 2007 @9:25 a.m.