New Mexico Board of Pharmacy Regular Board Meeting

May 13 & 14, 2002

Monday, May 13, 2002

PLACE AND TIME: The meeting was held at the Real Estate Commission Conference Room at 1650 University Blvd., Albuquerque, NM.

CALL TO ORDER: The meeting was called to order by the Chairman, S. Patricia McSherry, R.Ph. at 9:12 a.m.

MEMBERS PRESENT: Larry Cato, Member
Jose Carreno, Public Member (arrived at 11:15 a.m.)
Tris McSherry, Member
Dale McCleskey, Member
Gary Reece, Member
Larry Griffin, Member
Amy Kelley, Member
William Ritch, Public Member
Peggy Crouch Public Member

STAFF ATTENDING: Sondra Frank, Assistant Attorney General
Jerry Montoya, Chief Inspector
Janelle Sanchez, Administrative Secretary
Ben Kesner, Inspector
Bill Harvey, Inspector
Larry Loring, Inspector
Sarah Ortiz, Manager IV
Shelley Green, Inspector
William Harvey, Inspector
Ben Kesner, Inspector
Larry Loring, Inspector

AGENDA APPROVAL:
The Chairman stated that an updated agenda has been handed out to all Board members. Mr. Griffin stated that he would like the issue of labeling added to the end of the agenda. The Chairman stated that she would like the issue of non prescription diet pills to be added to the agenda. Mr. Harvey stated that he would like 2 issues added to the agenda and they are, carry over CE clarification and a possible regulation for unprofessional conduct of a facility. Mr. Loring stated that he would like the Board to discuss pharmacy services during a declared emergency.

MOTION:
A motion was made by Mr. Cato, seconded by Ms. Kelley to approve the agenda as amended. The
vote was unanimous. Motion passed.

APPROVAL OF THE MINUTES:

Mr. Reece stated that the minutes were written very well this time around.

MOTION:

A motion was made by Mr. Reece, seconded by Mr. Cato to approve the minutes as written. The
vote was unanimous. Motion passed.

DISCIPLINARY HEARING – PET MED EXPRESS:

The Chairman opened the hearing at 9:17 a.m.

The hearing was recorded by American Reporting, transcripts may be obtained by contacting them at
(505) 842-1200.

LABELING:

Mr. Griffin stated that on many labels the expiration date of the manufacturer and the pharmacy are
very different. The pharmacy should not be allowed to put a later date on the label, the expiration
date should be only the date that the manufacturer puts on the medication. Mr. Montoya stated that
this is misbranding and it is a violation. Further brief discussion was held regarding this issue. The
Chairman stated that she would like the inspectors to enforce this issue a little more and try to get
this issue under control. Mr. Cato stated that he would like the Board to approve computer systems
again and this would get rid of a lot of the problems going on.

CE CARRYOVER CLARIFICATION:

Mr. Harvey stated that he would like the Board to consider changing the 15 hour CE carryover
regulation and require 15 hours per year because it is very hard to track CE with the online renewal
process. Mr. Tinker stated that the statute was changed so that the Board could now go to a 2 year
renewal period. The Chairman stated that she would like the staff to prepare some regulations to
change the renewal period to every 2 years and to include 15 hours of CE per year with no carryover.
She also stated that she would like the Board to be able to look at those regulations at the June 2002
meeting and then notice for hearing in August 2002. Mr. Cato stated that he would like the
regulation to be very clear regarding the 15 hours of CE per year and that there will no longer be the
use of carryover.

NON-PRESCRIPTION DIET PILLS:

The Chairman stated that some non-prescription diet aids are dangerous and the Board needs to take
some sort of action. She also stated that in the past this Board has changed an over the counter drug
to a prescription drug and this may be something the Board should look into trying to accomplish
now. Further brief discussion was held regarding this issue. The Chairman stated that she would
like the Board staff to pursue this issue as a major project for the Board.

DISCIPLINARY HEARING – TERRANCE DITTIRCH, R.Ph.:

The hearing was recorded by American Reporting, transcripts may be obtained by contacting them at
(505) 842-1200.

DISCIPLINARY HEARING – ALAN WEINGARDT, R.Ph.:
The hearing was recorded by American Reporting, transcripts may be obtained by contacting them at (505) 842-1200.

**DISCIPLINARY HEARING – ROSE KAO, R.Ph.:**

The hearing was recorded by American Reporting, transcripts may be obtained by contacting them at (505) 842-1200.

Ms. Wikle presented a Motion to Continue to the Board. Brief discussion was held regarding this issue.

**MOTION:**

A motion was made by Mr. Ritch, seconded by Mr. Cato to accept the Motion to Continue and set the hearing for June 2002. The vote was unanimous. Motion passed.

**EXECUTIVE DIRECTOR’S REPORT:**

Mr. Montoya stated that the Board presented Nambe gifts to Dr. Saenz for his service to the Board during their employment with UNM.

**APPLICATION APPROVAL:**

**Clinic Applications:**

Ms. Kelley presented the clinic applications to the Board. She stated that there are 12 applications in this category and all are in order.

**MOTION:**

A motion was made by Ms. Kelley, seconded by Mr. Reece to accept the clinic applications as presented. The vote was unanimous. Motion passed.

**Animal Control Clinic:**

Ms. Kelley stated that there is one application in this category and it is in order.

**MOTION:**

A motion was made by Ms. Kelley, seconded by Mr. Ritch to approve the application for Animal Control Clinic as presented. The vote was unanimous. Motion passed.

**Emergency Medical Service:**

Ms. Kelley stated that there is one application in this category and it is in order.

**MOTION:**

A motion was made by Ms. Kelley, seconded by Mr. McCleskey to approve the application for Emergency Medical Service as presented. The vote was unanimous. Motion passed.

**Home Care Service:**

Ms. Kelley stated that there is one application in this category and it is in order.

**MOTION:**
A motion was made by Ms. Kelley, seconded by Mr. Reece to approve the Home Care Service
application as presented. The vote was unanimous. Motion passed.

Custodial:

Ms. Kelley stated that there are 20 applications in this category and all are in order.

MOTION:

A motion was made by Ms. Kelley, seconded by Mr. Reece to approve all 20 applications in this
category as presented. The vote was unanimous. Motion passed. Mr. Cato abstained from voting on
#5 and #20.

Pharmacy Applications:

Ms. Kelley stated that there are 5 applications in this category and all are in order.

MOTION:

A motion was made by Ms. Kelley, seconded by Mr. Griffin to approve all applications in this
category as presented. The vote was unanimous. Motion passed. Mr. Cato abstained from voting on
#3, #4, and #5.

Non Resident Pharmacy Applications:

Ms. Kelley stated that there are 16 applications in this category and all are in order.

MOTION:

A motion was made by Ms. Kelley, seconded by Mr. Ritch to approve all applications in this
category as presented. The vote was unanimous. Motion passed.

Wholesale Drug Distributor Applications:

Ms. Kelley stated that there are 20 applications in this category and all are in order.

MOTION:

A motion was made by Ms. Kelley, seconded by Ms. Crouch to approve all applications in this
category as presented. The vote was unanimous. Motion passed. Mr. Cato abstained from voting on
#17.

MOTION:

A motion was made by Ms. Kelley, seconded by Mr. Reece, to attach the application list to the
minutes. The vote was unanimous. Motion passed.

Pharmacist Clinician Applications:

Mr. Griffin presented application for Cynthia Smith, all aspects of training completed.

MOTION:

A motion was made by Mr. Griffin, seconded by Mr. Carreno to approve the application for Cynthia
Smith. The vote was unanimous. Motion passed.
Mr. Griffin presented an application from Edward Cole, all aspects of training completed.

**MOTION:**

A motion was made by Mr. Griffin, seconded by Mr. Ritch to approve the application of Edward Cole. The vote was unanimous. Motion passed.

Mr. Griffin presented an application for new prescription protocols from Patricia Jenkins.

**MOTION:**

A motion was made by Mr. Griffin, seconded by Mr. Carreno to approve the application for Patricia Jenkins. The vote was unanimous. Motion passed.

Mr. Griffin presented an application for new prescription protocols from Danae Break.

**MOTION:**

A motion was made by Mr. Griffin, seconded by Ms. Crouch to approve the application for Danae Break. The vote was unanimous. Motion passed.

**MOTION:**

A motion was made by Mr. Griffin, seconded by Mr. Carreno to add the minutes of the Pharmacist Clinician meeting to the minutes. The vote was unanimous. Motion passed.

**DISCIPLINARY HEARING – JOHN COLE, R.Ph. #3421:**

The hearing was recorded by American Reporting, transcripts may be obtained by contacting them at (505) 842-1200.

**RECESS FOR LUNCH:**

**RECONVENE:**

**DISCIPLINARY HEARING – JOHN BRESSENHAM, R.Ph. #6217:**

The hearing was recorded by American Reporting, transcripts may be obtained by contacting them at (505) 842-1200.

**EXECUTIVE DIRECTOR’S REPORT CONT’D:**

Mr. Harvey stated that he would like the Board to think about adopting regulations regarding the discipline of facilities for unprofessional conduct. He discussed this issue further with the Board. The Chairman asked Mr. Harvey to prepare some draft regulations for the Board to look over.

Mr. Loring discussed the issue of emergency pharmacy services with the Board. He stated that several Boards’ are adopting regulations that will suspend certain regulations during an established emergency. Further brief discussion was held regarding this issue. The Chairman stated that she would like Mr. Loring to bring the Board some samples of the regulations that other Boards have adopted.

Discussion was held regarding the Pre-NCA Settlement Agreement and the letter of reprimand. Mr. Carreno stated that he does not like the fact that this letter stays in the licensee’s file, he would rather have the letter have a time limit on it, or for the letter not to go in the file at all. Discussion was held
regarding a letter of information. The Board instructed Ms. Frank to look into this issue and bring 
back an example with procedures to the Board.

Discussion was held regarding this issue of the Board using a hearing officer for some matters. Mr. 
Montoya handed out a sample agreement between a Board and a Hearing Officer. The Chairman 
stated that she would like a little more information regarding this matter before the Board has a trial 
run of this issue.

**DISCIPLINARY HEARING – JOHN ENRIQUEZ, R.Ph. #5245:**

The hearing was recorded by American Reporting, transcripts may be obtained by contacting them at 
(505) 842-1200.

Ms. Wikle presented a Motion to Continue the Hearing until the next meeting.

**MOTION:**

A motion was made by Mr. Ritch, seconded by Carreno to accept the motion to vacate until the 
criminal case has been resolved and licensee agrees to give his license to practice to the Board. The 
vote was unanimous. Motion passed.

**DISCIPLINARY HEARING – WALLACE MARTIN SMITH, R.Ph. #4000:**

The hearing was recorded by American Reporting, transcripts may be obtained by contacting them at 
(505) 842-1200.

**RECESS:**

**RECONVENE, TUESDAY, MAY 14, 2002:**

**MOTION:**

A motion was made by Mr. Carreno, seconded by Mr. Reece to go into closed session to discuss case 
presentations. The vote was unanimous. Motion passed.

**MOTION:**

A motion was made by Mr. Ritch, seconded by Mr. Carreno to go back into open session and all that 
was discussed was case presentations. The vote was unanimous. Motion passed.

**MOTION:**

A motion was made by Ms. Kelley, seconded by Mr. Carreno to table case #2001-098, 2001-117, 
2001-129, 2001-133 and 2001-083. The vote was unanimous. Motion passed.

**MOTION:**

A motion was made by Ms. Kelley, seconded by Mr. Reece to leave open case #2001-119. The vote 
was unanimous. Motion passed.

**MOTION:**

A motion was made by Ms. Kelley, seconded by Mr. Ritch to issue an NCA in case #2002-018, 
2002-054, 2002-051, 2001-108 and an Order to Show Cause in case #2001-078. The vote was 
unanimous. Motion passed.
MOTION:


APPLICATION APPROVAL CONT’D:

Mr. Armenta of San Juan Regional Medical Center appeared before the Board requesting a square footage variance. Brief discussion was held regarding this issue. Mr. Montoya stated that he has looked at this room and he does not have a problem with a variance for this group since they have a very limited formulary. Mr. Cato stated that this facility has requested a variance at least 3 or 4 times from this Board and they all have been denied.

MOTION:

A motion was made by Ms. Crouch, seconded by Mr. Carreno to grant a variance to San Juan Regional Medical Center, if there is ever a change in formulary, the clinic must appear before the Board. The vote was Mr. Reece, nay, Ms. Kelley, nay, Mr. Carreno, aye, Mr. McCleskey, nay, Ms. Crouch, aye, Mr. Cato, nay, Mr. Griffin, nay, Mr. Ritch, nay. The motion failed, the variance was denied.

EXECUTIVE DIRECTOR’S REPORT CONT’D:

Mr. Montoya presented to the Board a list of items to be sold at the state auction.

Mr. Montoya presented the case status update to the Board.

Mr. Montoya presented correspondence received from Mr. Harry Pitcher. He stated that Mr. Pitcher’s license has been suspended pending completion of many things ordered by the Board. He is trying to get licensed as an intern and has not completed any of the stipulations ordered by the Board. Mr. Montoya stated that he would like direction from the Board on how exactly to handle this issue. Brief discussion was held. The Chairman stated that she would like Mr. Montoya to write a letter to Mr. Pitcher telling him exactly what needs to be done before he can apply for any type of license with the Board.

REGULATION HEARING – 16.19.5.8 NMAC – OCCUPATIONA AND PROFESSIONAL LICENSING – PHARMACISTS – INTERNSHIP TRAINING PROGRAM, SUMMARY OF OBJECTIONS:

The Chairman called the hearing to order. She stated that the proposed changes to the regulations are as follows:

16.19.5.8 SUMMARY OF OBJECTIVES:

A. Internship training, using academic training as a foundation, is to provide a learning experience in real life situations that will result in a complete professional, who is competent to practice pharmacy, and render professional services on his own, without supervision, at the time of licensure. The objectives shall be:

1. A practically, accurately and safely trained intern.
2. An ethically trained intern.
3. A legally trained intern. Standards of Practice and Internship Program constitute the basic implementation of the approved internship program.
B. Instructional Materials, Affidavits, Evaluation Forms and Reports:
   (1) Forms shall be made available by the Board:
       (a) Application for Registration of Intern;
       (b) Employers Affidavit for Internship;
       (c) Employers Affidavit for Externship/Clinical;
       (d) Annual Preceptors Evaluation of Intern;
       (e) Annual Intern Evaluation of Preceptor;
       (f) Certification as Approved Preceptor by the Board Standards of Practice
   (2) Reports and project assignments as may be required to accompany forms under the approved program.
   (3) This regulation relating to the internship program shall be furnished to the intern.

All other laws and regulations or manuals shall be available at a nominal fee or at reimbursement cost to the Board.

C. Requirements for Approved Training: Areas will include retail and hospital pharmacies, radiopharmacies, state and county institutions, federal installations, agencies and clinics, and Board approved researchers, drug manufacturers who participate in the approved NPI programs.
   (1) General Requirements include:
       (a) Current license or permit.
       (b) No deficiencies relevant to the observance of all federal, state and municipal laws and regulations governing any phase of activity in which the facility is engaged.
       (c) Required References: 1. One current professional reference book of choice.
   (2) A preceptor will be in direct supervision of all repackaging, labeling and dispensing of drugs for distribution in field offices by state and county health offices.

D. Requirements for Preceptor: Each Preceptor shall:
   (1) Be certified as a preceptor by the Board or be an approved preceptor for intern training in another state, by that state Board of Pharmacy.
   (2) Have been actively engaged in the practice of pharmacy for one year.
   (3) Be engaged in full-time practice of pharmacy.
   (4) Not have been convicted of violation of any laws or regulations relating to pharmacy.
   (5) Submit all required forms, affidavits, and evaluations to the Board on or before the due date.
   (6) Be aware and responsible for following regulations governing legal and ethical professional conduct as outlined in the Standards of Practice and train the intern in this area.
   (7) Notify the Board of any change of address or employment in writing, within ten (10) days. Change of employment shall serve to suspend certification as preceptor in the former place of employment where the individual was training an intern.
   (8) Not be permitted to leave the intern alone to assume the responsibility of a pharmacist.

E. Requirements for Intern:
   (1) Application shall be made to the Board on the required application form provided by the Board prior to the beginning of internship. An applicant for registration as a pharmacist intern shall have satisfactorily completed not less than 30 semester hours or the equivalent thereof, in a college of pharmacy curriculum accredited by the ACPE and meet other requirements established by regulations of the Board.
   (2) The intern shall wear the standard identification tag, approved and issued by the Board during any pharmacy area employment. A nominal fee is applicable. The intern will be responsible for imprinting his/her name on the identification tag.
   (3) The intern shall make such reports and certifications as required under the approved program.
   (4) The intern is responsible for the knowledge and observation of the extent of his legal liability and legal restrictions applicable under the federal, state and municipal laws and regulations.
   (5) The intern shall be responsible for ascertaining proper certification for himself, completion of all assignments, submittal of all forms, and reports under the approved program. After all assignments have been completed the preceptor will certify the affidavit and verify the completion
of all requirements. Internship will not be evaluated or certified by the Board until all forms are
turned in to the Board office in the form of certified affidavits.

(6) Employment and the internship training period are not to be interpreted as being
the same. An intern may work in excess of his computed time. A maximum of 48 hours per week,
however, shall be considered computed time for the purpose of completing the internship
requirement of 1500 hours.

(7) The intern shall submit, annually, at the time of registration renewal, all completed
required forms for the prior year or period of computed time.

(8) Any or all of the training period may be obtained after graduation.

(9) The intern shall notify the Board of any change of address, employment or
preceptor, in writing, within ten (10) days of such change.

(10) The intern certificate of registration and renewal shall be displayed in the training
area where the intern is employed.

(11) The registration shall be renewable under the following conditions:
(a) the intern has received a degree from an ACPE accredited college of
pharmacy, but has not completed the required intern hours to take the state Board examination; or the
intern has not completed the required number of hours and is enrolled as a pharmacy student;
(b) a candidate who has failed the NAPLEX Exam and/or the state Board
Jurisprudence examination may renew intern registration to be valid until the next scheduled
examination date; provided the renewal does not exceed the period allowed under 16.19.2 NMAC; or
(c) by prior approval or by direction of the Board.

(12) The intern registration must be renewed annually on/or before the last day of
September. Annual renewal fee is $10.00.

F. Revocation of Suspension of Certification or Certificate: A certification or
certificate may be revoked or suspended upon violation of a statute or regulation; the failure to
comply with the approved program or internship; or suspension of an intern from university or
college attendance; and after due notice is filed pursuant to the Uniform Licensing Act.

G. Out-of-State Training:
(1) New Mexico registered interns wishing to earn intern hours out of state must
comply with the regulation relating to internship and the approved program, or the equivalent
thereof; certification of the preceptor shall be made to the Board by the Board of Pharmacy in the
reciprocal state.

(2) Out of state registered interns or students wishing to earn internship hours in New
Mexico must comply with the regulations relating to internship and the approved program of this
state and shall register with the Board.

(3) Computed time, under equivalent approved programs, submitted to the Board by
out-of-state applicants for licensure, will be evaluated.

Brief discussion was held. Mr. Griffin stated that the intent is agreeable to him in some ways, but not
in others. He would like the wording to be changed so that it is not so broad. Mr. Montoya
suggested changing the wording to “unless this provision is waived by the Board on an individual
basis” instead of deleting the sentence.

Further brief discussion was held.

MOTION:

A motion was made by Mr. Carreno, seconded by Mr. Griffin to accept the changes made to
16.19.5.8 NMAC, the wording being “unless this provision is waived by the Board on an individual
basis”. The vote was unanimous. Motion passed.

The Chairman closed the hearing.

MOTION:
A motion was made by Mr. Carreno, seconded by Mr. McCleskey to go into closed session to discuss personnel issues. The vote was unanimous. Motion passed.

**MOTION:**

A motion was made by Mr. Griffin, seconded by Mr. Reece to go back into open session and all that was discussed was personnel issues. The vote was unanimous. Motion passed.

Mr. Ritch stated that he does not feel that the office staff, namely the Board secretary’s signature is not appropriate or professional to be on a letter from the Board of Pharmacy. He stated that the secretary has no authority to sign documents such as cover letters and that it is not appropriate for Mr. Montoya to delegate the authority for that signature to Ms. Sanchez. Also, he does not like the fact the Board secretary signed a cover letter to the Board members in their packets. Mr. Carreno stated that he agrees with Mr. Ritch and the Board should have restrictions regarding who in the office can sign letterhead. Mr. Montoya stated that it is in the State Personnel Board job description for the Administrative Secretary to prepare printed correspondence and sign off on it. This is routine correspondence that has been happening for the past 4 years, and why is there a problem all of the sudden. Mr. Griffin stated that he concurs that the Board has delegated to the Executive Director. Mr. Montoya stated that if it were a legal issue he would not have a problem with it, but a cover letter stating a phone number for someone to call for guidance is not very significant, but the whole process will be changed.

**MOTION:**

A motion was made by Mr. Ritch, seconded by Mr. Carreno to adjourn. The vote was unanimous. Motion passed.

The meeting adjourned.