

ARKANSAS STATE BOARD OF PHARMACY
101 East Capitol, Suite 218
Little Rock, AR 72201

The Arkansas State Board of Pharmacy met for a regular scheduled meeting on February 14-15, 2006. The meeting was held at the Board of Pharmacy office, 101 East Capitol, Suite 218, Little Rock, Arkansas.

Tuesday, February 14, 2006

The meeting was called to order by Larry McGinnis, Pharm.D., President. Members present were Buddy Bowden, P.D.; Sharon Capps, R.N.; Bob Dufour, P.D.; Ross Holiman, B.S., H.Ed.; Lenora Newsome, P.D.; Ronnie Norris, P.D; and Benji Post, P.D. Staff members present were Charles Campbell, Pharm.D., Executive Director; John Kirtley, Pharm.D., Assistant Director; Margaret Lincourt, Chief Fiscal Officer; Lana Whitmore, Administrative Assistant; Ron Ewing, P.D.; Rusty McSpadden, P.D.; and Jim Myatt, P.D.

BOARD ACTION:

Mr. Holiman made the motion that the minutes of the October 2005 Board Meeting be approved as presented. Dr. Norris seconded the motion. The vote for the motion was unanimous.

BOARD ACTION:

Dr. Norris made the motion that the agency financial report be approved as presented. Dr. Bowden seconded the motion. The vote for the motion was unanimous.

The Board interviewed candidates for Reciprocity. Each applicant was asked the following questions: 1) "Why are you seeking licensure in Arkansas?" 2) "Have you ever been before a licensing board for disciplinary action?" 3) "Do you, or have you ever had a problem with drugs or alcohol?" 4) "In what other states are you licensed?" 5) "When did you last practice as a pharmacist?" The following candidates were present:

Tom Bader	Rodney Blackburn	Melanie Brooks
Guy Decker	Michael Draeger	Leslie Duncan
Robert Dunn	Lanier Evans	John Flynn
Anna Garcia	Sarah Goeders	James Hinch
Tommy Holbrook	Brad Hopkins	Allan Jeffy
April Kirk	Andrea Knybel	Michelle Macumber
Larry Melton	Cassandra Morris	George Morton
Michael Moti	Brian Richard	Marvin Robinson
Elizabeth Rodgers	Alfred Romay	Catherine Sharp
Jo-Ann Sorokunov	Charles Stachowiak	Ingrid Thomas
Nathan Vo		

Dr. Campbell explained, in detail, the Arkansas continuing education (CE) requirements to the reciprocity applicants. He explained the current CE requirements – which are 30 hours of CE of which 12 hours should be live and related to drug therapy or patient care. Dr. Campbell told the applicants that since they received their

Arkansas license at the beginning of the biennium, they would be responsible for obtaining the Arkansas CE hours to renew their licenses.

BOARD ACTION:

Mr. Holiman made the motion to approve the above applicants for reciprocity licensure in Arkansas. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Ms. Lincourt reminded the applicants to please be sure to notify the Board of changes of employment and changes of address, and to notify the Board staff if they were reciprocating in order to satisfy the requirement for a new out-of-state pharmacy application so that those pending pharmacy applications could be released.

A Public Hearing on Regulations was called to order at 9:30 a.m., as published.

04-02-0011– Central Fill Pharmacy

The proposed changes to this regulation will allow central fill pharmacies to deliver medications either to individuals or to a retail pharmacy in accordance with state and federal law.

Gary Butler, P.D., President of the Arkansas Pharmacists Association appeared before the Board in support of the Regulation change.

BOARD ACTION:

Dr. Dufour made the motion to approve the amendment to Regulation 04-02-0011 as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Dr. Kirtley told the Board that the staff received a renewal application from a pharmacist who was also licensed in Louisiana. Along with the renewal, the pharmacist submitted a statement notifying the staff that action had been taken against his Louisiana license and that he entered into a contract with the Louisiana Pharmacy Support Group. Dr. Kirtley said that the Louisiana Board had reinstated his pharmacist license, and asked the Board if the staff should renew his license as restricted until he could appear before the Board at the June meeting. The Board said that since he was not practicing in Arkansas – they did not want to renew his license until he could appear before the Board. Tom Gay told the Board that according to the Administrative Procedures Act, the Board could wait until June to renew the license and the pharmacist would not have to undergo the reinstatement process.

Ms. Lincourt gave the Board a report regarding online renewals on future plans for office procedures. She told the Board that renewals have been extremely successful, due in part to the early mail-out of renewal applications and the fact the Board absorbed the extra costs of the online renewal. Ms. Lincourt said that over 50% of pharmacists and 50% of pharmacies renewed their licenses online. She said the Board received \$431,000 from online renewals and the cost to the Board was only \$15,800. Ms. Lincourt explained the other online initiatives that the Board Staff is working towards implementing in the future which include online verification, the ability of licensees to change their name, address, and place of employment online, the ability to purchase mailing lists, and the ability for pharmacists to report their continuing education online throughout the year. The Board discussed these possibilities and the comparison to other states.

Ms. Lincourt presented the Board with examples of wallet cards for pharmacists, and told the Board that the Board staff will mail the cards to licensees once the renewal process is completed in April.

Dr. Kirtley discussed disciplinary orders issued by the Board during the October 2005 Board meeting. Dr. Kirtley reminded the Board that they ordered the pharmacy permit of Pharmacy Express to change their software system and submit quarterly audits to the Board staff. Dr. Kirtley said since that time, the ownership of Pharmacy Express has changed, and is under new management. He also said that none of the pharmacists that were brought before the Board on charges are employed at the store now. He said the new owners have updated their software and asked if they are required to send in the audits. The Board discussed this issue and determined that the new owners should appear before the Board at the June Board meeting.

Mitzi Richmond, Pharmacy Technician Applicant appeared before the Board to request a waiver from the requirements for being registered as a pharmacy technician in the State of Arkansas. Dr. McGinnis called the meeting to order and turned the proceedings over to the Hearing Officer, Joe Svoboda. Tom Gay, of the Attorney General's Office, represented the Board staff – Ms. Richmond was not represented by counsel.

Ms. Richmond told the Board that she was convicted of a felony in 1988. She forged a prescription for a controlled substance. She was placed on probation for two years. She told the Board that she has not been in any trouble since that time, and that she was very sorry for what she did. Ms. Richmond said she was attending Remington College and that she needed the provisional pharmacy technician registration in order to complete her externship – a requirement for graduating from Remington.

Mr. Gay asked Ms. Richmond why she forged the prescription. She told the Board that the prescription was for Adipex-P and she wanted to lose weight. She again said she was very sorry for her actions. She told the Board that she had paid a lot of money and wanted to be able to complete the program for Remington. She said that her plan was not to practice as a pharmacy technician, but she wanted to be able to put it on her resume and apply for a position as a pharmaceutical representative.

Mr. Gay called on George Gadd, with the Drug Enforcement Agency, to testify. Mr. Gadd said that any person with a felony drug conviction, even if it has been expunged, cannot work in a pharmacy with controlled substances without a waiver from DEA.

BOARD ACTION:

Dr. Post made the motion to deny Mitzi Richmond's request for waiver. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Lakeisha Spratt, Pharmacy Technician Applicant appeared before the Board to request a waiver from the requirements for being registered as a pharmacy technician in the State of Arkansas. Dr. McGinnis called the meeting to order and turned the proceedings over to the Hearing Officer, Joe Svoboda. Tom Gay, of the Attorney General's Office, represented the Board staff – Ms. Spratt was not represented by counsel.

Ms. Spratt told the Board that she regrets the mistakes she has made in the past and said she has learned from her mistakes. She said she would like the Board to grant her a pharmacy technician registration.

Mr. Gay asked the Board to amend the Order and Notice of Hearing to reflect under the Issues of Law, #2 5-35-202 be changed to 5-36-202.

Ms. Spratt told the Board that she disclosed on her application that she had a felony conviction which had been expunged. She said she was unaware that she should disclose any misdemeanors. She told the Board that she has completed all of her courses at Remington College with the exception of the externship. She said she has paid \$12,000 to Remington for the program and would not be allowed to graduate if she does not get her pharmacy technician registration. Ms. Spratt told the Board that she has changed and that going to work as a pharmacy technician meant a lot to her.

BOARD ACTION:

Dr. Norris made the motion that in the matter of Lakeisha Spratt, that Issues of Fact 1, 2, 3, 4, 5, 6, and 7 were true, and Issues of Law 1, 2, 3, and 4 were proven. Therefore, Ms. Spratt's request for waiver is denied. Ms. Capps seconded the motion. The vote for the motion was unanimous.

Edward Oglesby and Brad Moore, appeared before the Board on behalf of **Remington College** to discuss the Pharmacy Technician program offered by Remington College. Dr. Campbell told the Board that there have been a number of concerns the Board staff has regarding Remington. He said he talked to Dan Snyder, Director of Education of Remington, and told him that in order for an applicant to apply for a pharmacy technician registration that they must have a high school diploma and undergo a criminal background check and that he needs to be sure that Remington is not telling students that they have to go through the program at Remington to become a registered pharmacy technician in Arkansas. He said there have also been problems with the applications being turned in to the Board of Pharmacy in a timely manner. Mr. Oglesby told the Board that the students are not being told they have to complete the program in order to receive a technician registration, only that the program would benefit them in a pharmacy setting. He also said that at the beginning of the program each applicant must sign a form which explains that a felony conviction may prevent them from obtaining a pharmacy technician registration. The Board discussed the problems with Remington and the fact that several of their students had been denied a technician registration because of past criminal history. The Board told Remington that they need to develop a working relationship with the Board staff, and that it would be a great benefit if the students were required to obtain a pharmacy technician registration prior to enrollment.

Barbara Williams, Executive Director of East Arkansas Family Health Center, Inc., and **Judy Henry, Pharm.D.**, appeared before the Board to present a Plan of Action for East Arkansas Family Health Centers. Dr. Campbell explained that the East Arkansas Family Health Center in both Lepanto and West Memphis has a retail pharmacy permit granted by the Board over 30 years ago. He stated they treat low income families and receive preferential pricing on medications. Ms. Williams told they Board that there wanted to operate the pharmacy in Lepanto 16 hours per week and the pharmacy in West Memphis 32 hours per week. She explained that because of the location of the clinic in Lepanto they were having a difficult time hiring a full time pharmacist.

BOARD ACTION:

Dr. Dufour made the motion to approve East Arkansas Family Health Center, Lepanto, Arkansas to operate 16 hours per week. Dr. Newsome seconded the motion. The vote for the motion was unanimous.

BOARD ACTION:

Dr. Dufour made the motion to approve East Arkansas Family Health Center, West Memphis, Arkansas to operate 32 hours per week. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Johnny Harris appeared before the Board in answer to a Second Amended Order and Notice of Hearing. Dr. McGinnis called the meeting to order and turned the proceedings over to the Hearing Officer, Jim DePriest. Tom Gay, of the Attorney General's Office, represented the Board staff, and the Respondent was represented by his attorney, Shawn Childs.

Mr. Childs made the motion that the hearing officer recuse himself from the proceedings because he is an employee of the Attorney General's Office and a co-worker of Mr. Gay. He then asked for a continuance pending the motion of recusal by the hearing officer. After much discussion among Mr. Gay, Mr. Childs, and Mr. DePriest, Mr. Childs withdrew his request for a continuance.

Mr. Gay told the Board members that the Notice and Order of Hearing should be amended to change C-3 to 08-02-0004 (a).

Mr. Gay called Rusty McSpadden, P.D., to testify. Dr. McSpadden testified regarding the licensing history of American Novelties. He said the company was issued a List I Chemical permit in May 2001. Mr. Gay asked Dr. McSpadden about Act 1209. Dr. McSpadden said the Act was issued in order to control meth, but that it did not work. He said Act 1209 required facilities distributing List I Chemicals to be licensed by the Drug Enforcement Agency (DEA), and to obtain a wholesale distributor permit from the Board of Pharmacy. Dr. McSpadden said Act 256 changes products containing pseudoephedrine, other than liquid or gel caps, to be classified as Schedule V and therefore are required to be behind the counter of a pharmacy. Dr. McSpadden discussed the invoices received from Mr. Harris. He discussed the unusual patterns of buying from Mr. Harris' customers that would make a person suspicious. He said the same large amount was being sold week after week, and that if it were being used as a cold remedy then the amount ordered should vary.

Next Mr. Gay called George Gadd, with the Drug Enforcement Agency, to testify. Mr. Gadd testified regarding his employment history with the DEA and various other law enforcement agencies. Mr. Gadd told the Board that he interviewed Mr. Harris in 1999 before issuing him a List I Chemical license. He said they specifically discussed the criteria for a suspicious order, and he gave Mr. Harris a list of indicators.

Mr. Childs asked then questioned Mr. Gadd about DEA procedures and definitions. Mr. Gay rested his case and Mr. Childs asked the Board to make Judgement as a Matter of Law to dismiss the case since the case was not proven. There was some discussion regarding which of the allegations were being challenged by Mr. Childs. Dr. Dufour asked for a clarification. Mr. Childs stated that A5, A6, C1, C2 and C3 were not proven. Dr. Norris moved to deny the request for a Judgement as a Matter of Law. Ms. Capps seconded. The motion to deny the request was unanimous.

Mr. Childs called Mr. Harris as a witness and asked him to describe his business, and experience with List I Chemicals. Mr. Harris provided the information regarding his business and its operations and subsequent inspections by the inspectors. Dr. Dufour asked, and the hearing officer approved his request, to question Mr. Gadd. Mr. Gadd clarified his interpretation of suspicious orders and provided other information about List I Chemical sales.

Mr. Harris provided a number of new exhibits for consideration of the Board. These exhibits were reviewed by the Board and entered into evidence.

Dr. Campbell was sworn in and gave his name and position. Ms. Capps asked Dr. Campbell to recall his interactions with Mr. Harris. Dr. Campbell provided testimony regarding his interactions with Mr. Harris, the methods used to monitor List I Chemical sales, and how investigations were conducted by the inspectors. The evidentiary portion of the hearing closed and Mr. Childs and Mr. Gay gave closing statements. The Board deliberated.

BOARD ACTION:

Dr. Norris made the motion that in the matter of American Novelties, Inc., Allegations A-1, A-2, A-3, A-4, A-5, and A-6 were found to be true, and Charges C-1, C-2, C-3, were proved. Therefore, the motion was to deny the permit and fine the entity \$188,000 payable in one year. Ms. Capps seconded the motion. The motion passed 4 to 3.

Wednesday, February 15, 2006

The meeting was called to order by Larry McGinnis, Pharm.D., President. Members present were Buddy Bowden, P.D.; Sharon Capps, R.N.; Bob Dufour, P.D.; Ross Holiman, B.S., H.Ed.; Lenora Newsome, P.D.; Ronnie Norris, P.D; and Benji Post, P.D. Staff members present were Charles Campbell, Pharm.D., Executive Director; John Kirtley, Pharm.D., Assistant Director; Margaret Lincourt, Chief Fiscal Officer; Lana Whitmore, Administrative Assistant; Ron Ewing, P.D.; Rusty McSpadden, P.D.; and Jim Myatt, P.D.

Dr. Kirtley presented the Board with a Consent Order for **Pharmacist Jerrol Maxwell, PD06145**. The order was signed admitting to the charge that he filled prescriptions with drugs that he compounded both from bulk powders and commercially manufactured tablets. Dr. Maxwell compounded the drug when the drug was commercially available and there was no specific need for any alteration from the commercially available drug product. By signing the order, Dr. Maxwell has agreed to the terms of the order which states, "Respondent Maxwell shall pay a monetary penalty of ten thousand dollars (\$10,000) to the Board to be received within thirty (30) days of the date of this consent order. It is further ordered that Respondent Maxwell shall be on probation for a period of five years from the date of this Consent Order. The terms and conditions of this probation are that Respondent shall fully comply with Arkansas Pharmacy Laws, Ark. Code Ann. § 17-92-101 et seq, Board Regulations, all state, federal and local laws and regulations regarding controlled substances, prescription only (legend) drugs, and pharmacy practice. It is further ordered that Respondent Maxwell's pharmacist license shall be suspended for thirty calendar days beginning March 1, 2006 or other date mutually agreeable to Respondent and the Board's Executive Director."

Dr. Kirtley informed the Board that Dr. Maxwell has requested that the Board consider amending the consent order so that the 30 day suspension would be waived and instead he would pay an additional \$2,000 fine. The Board denied this request.

BOARD ACTION:

Dr. Newsome made the motion to accept the Consent Order for Jerrol Maxwell, PD06145 as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Dr. Kirtley presented the Board with a Consent Order for **St. Vincent-North Rehab Hospital, HP01119 and Dana Jordan, Pharmacy Technician PT81841**. The order was signed admitting to the charge that St. Vincent-North Rehab Hospital operated its hospital pharmacy without a pharmacist in charge and that Ms. Jordan performed technician functions without a supervising pharmacist being present. By signing the order, St. Vincent North Rehab Hospital has agreed to the terms of the order which states, "Respondent St. Vincent North Rehab Hospital shall be on probation for a period of three years from the date of this Consent Order. The terms and conditions of this probation are that Respondent shall fully comply with Arkansas Pharmacy Laws, Ark. Code Ann. § 17-92-101 et seq, Board Regulations, all state, federal and local laws and regulations regarding controlled substances, prescription only (legend) drugs, and pharmacy practice. Furthermore, Respondent shall deliver to the Board's Executive Director, within forty-five days of this Consent Order, a statement of its policies and procedures, acceptable to the Executive Director, applicable when a pharmacist leaves employment at Respondent's facility including, but not limited to the tasks that a technician can and cannot perform in the absence of a pharmacist. It is further ordered that St. Vincent North Rehab Hospital shall pay a monetary penalty of one thousand dollars (\$1,000) to the Board to be received within thirty (30) days from this Consent Order. It is further ordered that Respondent Jordan shall pay a monetary penalty of five hundred (\$500) to the Board within 30 days of the Consent Order; provided, however, payment of said penalty shall be suspended on the condition that, within thirty (30) days of this Consent Order, she deliver a plan of action that is acceptable to the Board's Executive Director identifying the tasks that a technician can perform and those that she cannot perform in the absence of a pharmacist. It is further ordered that Respondent Jordan shall be on probation for a period of six months from the date of this Consent Order."

BOARD ACTION:

Mr. Holiman made the motion to accept the Consent Order for St. Vincent North Rehab Hospital HP01119 and Dana Jordan, Pharmacy Technician PT81841 as presented. Dr. Newsome seconded the motion. The vote for the motion was unanimous.

Dr. Kirtley presented the Board with a Consent Order for **Dolgencorp, Inc. dba Dollar General, LC00204 and LC00205**. The order was signed admitting to the charge that after the effective date of Act 256 of 2005, the respondent shipped products containing pseudoephedrine into Arkansas without a license to distribute prescription drugs. By signing the order, Dollar General has agreed to the terms of the order which states, "Respondent shall pay a monetary penalty of five thousand dollars (\$5,000) for each permit, a total of ten thousand (\$10,000) to the Board to be received within thirty (30) days from this Consent Order. It is further ordered that Respondent's List I Chemical wholesaler permits identified above shall each be on probation for a period of three years from the date of this Consent Order. The terms and conditions of this probation are that Respondent shall fully comply with Arkansas and federal laws and regulations regarding List I Chemicals, controlled substances, and prescription drugs in regard to the sale and delivery of such products to its Arkansas retail locations and also with application Arkansas and federal law and regulations regarding List I Chemicals in its operations for which it holds the Arkansas List I Chemical wholesale permits."

BOARD ACTION:

Dr. Norris made the motion to accept the Consent Order for Dollar General as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Dr. Kirtley presented the Board with an Agreed Temporary Order for **Lornail McClure, PD06665**. Dr. McClure signed the order, and by signing the order, has agreed to the terms of the order which states, "Lornail

McClure shall not practice pharmacy under ACA § 17-92-101 et seq and shall not be present in a pharmacy in the State of Arkansas until ordered by the Board. It is further ordered that a hearing on the Allegations and Charges set forth in the Order and Notice of Hearing herein may be scheduled at the discretion of the Board or upon Respondent's request and notice of which shall be served upon Respondent."

BOARD ACTION:

Dr. Dufour made the motion to accept the Consent Order for Lornail McClure, PD06665 as presented. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Dr. Kirtley presented the Board with an Agreed Temporary Order for **Tamera Sue Mitchell, Pharmacy Technician PT84596**. Ms. Mitchell has agreed to the terms of the order which states, "Tamera Sue Mitchell shall not work as a pharmacy technician under ACA § 17-92-801 (Repl. 2002) or Board Regulation 03-00-0001 et seq, and shall not be present in a pharmacy in the State of Arkansas until ordered by the Board. It is further ordered that a hearing on the Allegations and Charges set for in the Order and Notice of Hearing herein may be scheduled at the discretion of the Board or upon Respondent's request and notice of which shall be served upon Respondent."

BOARD ACTION:

Dr. Dufour made the motion to accept the Consent Order for Pharmacy Technician Tamera Sue Mitchell, PT84596 as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Dr. Kirtley presented the Board with a Consent Order for **St. Bernard's Medical Center, HP00262, Cinda Bates, PD09772, and Brian Meier, Pharmacy Technician PT85220**. The order was signed admitting to the charge that Mr. Meier failed to renew his pharmacy technician registration and Dr. Bates allowed him to continue to work as a pharmacy technician at St. Bernard's Medical Center without a technician registration. By signing the order, Respondents St. Bernard's Medical Center, Cinda Bates and Brian Meier have agreed to the terms of the order which states, "Respondent Meier shall be on probation for a period of one year from the date of this Consent Order. The conditions of said probation are that Meier shall comply with applicable federal and state laws and regulations when performing as a pharmacy technician. It is further ordered that Respondent Bates shall pay a monetary penalty of five hundred dollars (\$500.00) to the Board before March 15, 2006. It is further ordered that St. Bernard's Medical Center shall pay a monetary penalty of one thousand dollars (\$1,000.00) to the Board before March 15, 2006."

BOARD ACTION:

Dr. Dufour made the motion to accept the Consent Order for St. Bernard's Medical Center, HP00262, Cinda Bates, PD09772, and Brian Meier, Pharmacy Technician PT85220 as presented. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Dr. Kirtley presented the Board with a Consent Order for **North Arkansas Regional Medical Center, HP01109, Thomas Ross PD05925, and Delores Shields, Pharmacy Technician PT89356**. The order was signed admitting to the charge that Ms. Shields failed to renew her pharmacy technician registration and Dr. Ross allowed him to continue to work as a pharmacy technician at North Arkansas Regional Medical Center without a technician registration. By signing the order, Respondent North Arkansas Regional Medical Center, Thomas Ross, and Delores Shields have agreed to the terms of the order which states, "Respondent Shields

shall be on probation for a period of one year from the date of this Consent Order. The conditions of said probation are that Shields shall comply with applicable federal and state laws and regulations when performing as a pharmacy technician. It is further ordered that Respondent Ross shall pay a monetary penalty of five hundred dollars (\$500.00) to the Board before March 15, 2006. It is further ordered that North Arkansas Regional Medical Center shall pay a monetary penalty of one thousand dollars (\$1,000.00) to the Board before March 15, 2006.”

BOARD ACTION:

Dr. Newsome made the motion to accept the Consent Order for North Arkansas Regional Medical Center, HP01109, Thomas Ross PD05925, and Delores Shields, Pharmacy Technician PT89356 as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Dr. Kirtley presented the Board with an Agreed Temporary Order for **Johnny L. Porter, PD06940**. Dr. Porter has agreed to the terms of the order which states, “Respondent Johnny L. Porter shall not practice as a pharmacist and shall not be physically present in a prescription drug department in any pharmacy in the State of Arkansas until ordered by the Board. It is further ordered that a hearing on the Allegations and Charges set for in the Order and Notice of Hearing herein may be scheduled at the discretion of the Board or upon Respondent’s request and notice of which shall be served upon Respondent.”

BOARD ACTION:

Dr. Dufour made the motion to accept the Consent Order for **Johnny L. Porter, PD06940** as presented. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Dr. Kirtley presented the Board with a Consent Order for **Pharmacare Direct #1638, OS01624**. The order was signed admitting to the charge that a notice, which included a coupon that violated Arkansas law, was distributed. By signing the order, Pharmacare Direct has agreed to the terms of the order which states, “Respondent shall pay a monetary penalty of one thousand dollars (\$1,000) to the Board to be received within ten (10) business days after the date of the Board’s approval of this Consent Order. Should Respondent fail to pay said penalty within this time period, Respondent’s pharmacy permit shall then be suspended until the penalty is received by the Board.”

BOARD ACTION:

Dr. Newsome made the motion to accept the Consent Order for Pharmacare Direct #1638, OS01624 as presented. Dr. Bowden seconded the motion. The vote for the motion was unanimous.

Dr. McGinnis asked Kim Light, Ph.D., to appear before the Board. Dr. McGinnis, along with the other Board members and staff honored Dr. Light by presenting him with a Proclamation and an Honorary Pharmacist Certificate of Licensure. Dr. McGinnis thanked Dr. Light for all of the work he does for the Pharmacy Support Group.

Dr. Kirtley discussed issues regarding NAPLEX, interns, graduate interns, preceptors, and alternate preceptors. Stephanie Gardner, Pharm.D., Dean of the College of Pharmacy, and Cindy Stowe, Pharm.D., also discussed these issues. Dr. Kirtley told the Board that NABP raised the minimal standards on NAPLEX which caused more applicants to fail the exam on their first attempt, both nationally and in Arkansas. Dr. Kirtley said currently graduate interns are allowed to work in a pharmacy by themselves so long as they are in telephone

contact with a pharmacist. He said there have been liability issues raised concerning this practice. Dr. Campbell said there are two committees currently appointed – one committee is concerning preceptors and alternates, and the other is for interns. Dr. Campbell said since both issues are related that one combined committee should be formed to review all the issues. Dr. Gardner told the Board that the College of Pharmacy has arranged for every senior pharmacy student to take the Pre-NAPLEX examination in order for the students to know which areas they made need to focus on. Dr. McGinnis instructed Dr. Kirtley to form a committee to address these issues with Dr. Kirtley as the chairman, Dr. Norris as the Board member on the committee with Dr. Newsome as the first alternate and Dr. Post as the second alternate.

Terry Perkins, P.D., #9715 appeared before the Board with a representative of the Arkansas Pharmacy Support Group, to request his Agreed Order be converted to a Consent Order. Mike Frost, P.D., from the Support Group spoke on behalf of Dr. Perkins. He said Dr. Perkins went to Talbots from January 2005 until April 2005, and he began attending Support Group meetings in June 2005. Dr. Frost said Dr. Perkins has attended nine meetings and has been drug tested eighteen times – all with negative results. Dr. Perkins told the Board that he had been drinking heavily and was using methamphetamine. He said he was working at Kroger Pharmacy at the time, and began taking prescription drugs from the pharmacy. Dr. Perkins told the Board that he met with Dr. Campbell and he directed him to the Support Group. Kim Light, Ph.D., also spoke on behalf of Dr. Perkins. Dr. Light told the Board that Dr. Perkins has changed and that it was encouraging to see that he has a new attitude and a new outlook on life.

BOARD ACTION:

Mr. Dufour made the motion to accept the conversion from an Agreed Order to a Consent Order for Terry Perkins, P.D., #9715 as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Ashley Linder appeared before the Board with a representative of the Arkansas Pharmacy Support Group, to request her Agreed Order be converted to a Consent Order. Kim Light, Ph.D., from the Support Group spoke on behalf of Ms. Linder. He said Ms. Linder was enrolled in pharmacy school, but was dismissed from the College of Pharmacy for failing to attend classes. He said Ms. Linder contacted the Support Group in early 2005. He said she went to a 30-day treatment program in Louisiana and then completed an outpatient program at Bridgeway. Dr. Light said she signed a contract with the Support Group in September 2005, and has attended five meetings and undergone nine drug screens. Dr. Light said the College of Pharmacy allowed her to re-enroll in January 2006, pending the issuance of an intern license. He said the Support Group advocates for her transition from an Agreed Order to a Consent Order. Dr. Light also said that upon receiving her pharmacist license, Ms. Linder must re-sign a five year contract with the Support Group.

BOARD ACTION:

Mr. Dufour made the motion to accept the conversion from an Agreed Order to a Consent Order for Ashley Linder as presented. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Melissa Mertin, P.D., #8421 appeared before the Board with a representative of the Arkansas Pharmacy Support Group, as requested by the Board at the October 2005 Board meeting. Dr. Dufour recused himself from this proceeding. Kim Light, Ph.D., from the Support Group spoke on behalf of Dr. Mertin. He said Dr. Mertin met with the Support Group and they sent her for an evaluation as directed by Board. He said Dr. Mertin was not diagnosed in any addiction category. Dr. Campbell explained to the Board that in the Consent

Order for Dr. Mertin, the Board ordered the pharmacist in charge of any pharmacy in which Dr. Mertin is employed, to send in quarterly audits to the Board office. Dr. Campbell said he talked to a prospective employer of Dr. Mertin, and the pharmacist expressed concerns regarding the audit requirements. Dr. Campbell asked the Board if they would change the quarterly audit to a quarterly inventory. The Board discussed this issue.

BOARD ACTION:

Mr. Holiman made the motion to amend the Consent Order for Melissa Mertin, P.D., #8421, to require a quarterly inventory of all Scheduled drugs, in addition to Tramadol, to be sent to the Board of Pharmacy office during Dr. Mertin's probation period. Dr. Norris seconded the motion. The vote for the motion was unanimous.

BOARD ACTION:

Mr. Holiman made the motion to lift the suspension on Melissa Mertin's pharmacist license, and to keep the two-year probation period in place. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Jim McMahan, P.D., #6936 appeared before the Board with a representative of the Arkansas Pharmacy Support Group, as requested by the Board at the October 2005 Board meeting. Kim Light, Ph.D., from the Support Group spoke on behalf of Dr. McMahan. He said Dr. McMahan met with the Support Group and they sent him for an evaluation as directed by Board. He said Dr. McMahan did receive an addiction diagnosis. He said he completed an outpatient program and signed a contract with the Support Group. Dr. Light said the Support Group advocates to lift the suspension on Dr. McMahan's pharmacist license, but they have not advocated for him to go back to work in a pharmacy.

BOARD ACTION:

Dr. Dufour made the motion to remove the suspension from pharmacist license of Jim McMahan, and to amend the Consent Order to reflect that he must comply with the conditions of the Pharmacy Support Group. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Hal White, P.D., #7749 appeared before the Board to request that his suspended license be reinstated. Dr. White told the Board that he has completed all the requirements the Board ordered on him in February 2004. He told the Board that he has been teaching at Remington College during his suspension. Dr. White said he is waiting to get his conviction expunged before he communicates with DEA regarding a waiver.

BOARD ACTION:

Dr. Dufour made the motion to remove the suspension from Hal White's pharmacist license, and he is on a three-year probation as previously ordered. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Larry McGinnis, Pharm.D., with White County Medical Center South, appeared before the Board to request approval for an off-site order entry project between White County Medical Center South and White County Medical Center North. Dr. McGinnis told the Board that White County Medical Center South is a rehab hospital and is open 60 hours per week, seven days a week. He also said that the system allows for full

accountability and the pilot project that was approved by the Board staff in December 2005 has been very successful.

Carroll Barham, P.D., with Northwest Medical Center of Benton County, appeared before the Board to request approval for an off-site order entry project between Northwest Medical Center of Benton County and Northwest medical Center of Washington County. Dr. Barham explained that Northwest Medical Center of Washington County has 24-hour coverage. He said the system improves patient care, and that the pilot project approved by the Board staff in December 2005 has been very successful.

Dr. Ron Ewing spoke on behalf of both White County Medical Center South and Northwest Medical Center of Benton County. He said he believes both projects are successful and that the off-site order entry system is the answer to patient safety.

BOARD ACTION:

Mr. Holiman made the motion to approve the off-site order entry project for White County Medical Center South and Northwest Medical Center of Benton County. Dr. Bowden seconded the motion. The vote for the motion was unanimous.

Malcolm Berry, from **Berry Cold Ice, Inc.**, appeared before the Board to request an Arkansas Supplier of Medical Equipment, Legend Devices, and/or Medical Gas permit. Dr. Kirtley explained applicant's business model falls outside of those administratively approved by the Office and that is why he asked Mr. Berry to appear before the Board. Mr. Berry has asked for a waiver from the requirement of a minimum of \$500,000 liability insurance. Mr. Berry explained to the Board that his company is located in Missouri and he would like to service patients in Arkansas. He said they supply nebulizers to physicians for pediatric patients. The Board discussed concerns regarding freedom of choice. Dr. Campbell said there is a provision in the Arkansas DME Regulation which allows a company to sell up to five percent of their yearly sales to an office for emergencies. He said this company is proposing to sell one hundred percent of annual sells to physician offices.

BOARD ACTION:

Dr. Dufour made the motion to refer the policy of Berry Cold Ice, Inc., to the DME Advisory Committee for an interpretation and to talk to Arkansas Medicaid regarding the Medicaid requirements. The Board will make its decision at the June 2006 Board meeting. Dr. Newsome seconded the motion. The vote for the motion was unanimous.

Jeff Kuhlman, from **Pharmacy Solutions, Inc.**, appeared before the Board as directed in the October 2005 Board meeting. Dr. Kirtley reminded the Board that they asked for a representative from Pharmacy Solutions, Inc., to come before the Board to explain the company's prescription drug software system after two separate hearings in which both pharmacies complained that they were having trouble with their computer software. Mr. Kuhlman told the Board that his software system is used by 70 stores, 40 of which are located in Arkansas. He said he heard about the problems with the two pharmacies in question. He said that there were different ways to obtain information on the system, but neither of the pharmacists called to ask him how to do it. Mr. Kuhlman also said that he was working on an update to the system, but he believes his customers will not like it because it will take a while to run the program. The Board told Mr. Kuhlman that any system in a pharmacy has to run accurate reports and the information should be readily retrievable.

BOARD ACTION:

Dr. Dufour made the motion that out of the 40 pharmacies Pharmacy Solutions, Inc., supports in Arkansas, the Board inspectors should select a random number to inspect and determine whether or not the system is reliable and accurate and then report back to the Board at the June meeting. If it is determined that the system is not reliable, the Board staff should notify the pharmacies in Arkansas that use the system. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

BOARD ACTION:

Mr. Holiman made the motion to approve expense reimbursement for each Board member for performing official board duties at the rate established for state employees by travel regulations. In addition, a stipend of \$85.00 per day shall be paid to the members of the Board for attendance at Board meetings and informal conferences. The Board also requests that the reimbursement for hotel expenses be allowed to exceed the in-state rate. Meetings will include:

- NABP Annual Meeting
- MALTA-GON Meeting
- Arkansas Pharmacists Association Annual Meeting
- District VI – NAPB
- NABP Fall Conference
- Midwest Conference
- Utah School of Drug Abuse
- Board of Pharmacy Meetings – three regular and any called meeting
- Board of Pharmacy Interim Meetings – as needed
- Board Committee Meetings
- State Controlled Substance Authority Meeting
- Conference on State Government
- Executive Officer’s Conference – NABP

Ms. Capps seconded the motion. The vote for the motion was unanimous.

Dr. Kirtley presented the Board with a list of meetings for the upcoming year. He asked the Board members to select their preferences for travel in the next year.

BOARD ACTION:

Ms. Capps made the motion to nominate Larry McGinnis, Pharm.D., as the delegate for the 2006 NABP annual meeting. Dr. Norris seconded the motion. The vote for the motion was unanimous.

BOARD ACTION:

Mr. Holiman made the motion to nominate Sharon Capps, RN, as the alternate for the 2006 NABP annual meeting. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Len Gray, with **Pediatric Nutrition Providers of Arkansas dba Access Pharmacy**, and Cynthia Martindale appeared before the Board to request the pharmacy be allowed to operate less than 40 hours per week. Mr. Gray told the Board that he wanted to be open 20 hours per week. He said the pharmacy would be open five

days a week for four hours per day, with 24-hour on call service. The Board explained to Mr. Gray that a pharmacist must be in the facility during the hours of operation specified.

BOARD ACTION:

Dr. Norris made the motion to approve Access Pharmacy's request to be open 20 hours per week. Dr. Newsome seconded the motion. The vote for the motion was unanimous.

Dr. Kirtley told the Board that he placed a list of past actions of the Board in their Board books. He told them that Jason Green, a pharmacy student on senior rotations, compiled the list. He said the list would be available for future Board meetings.

Rick Hudson, P.D., with Hudson Pharmacy, appeared before the Board to request approval of a multi-dose bubble card system for assisted living patients. Dr. Hudson explained that he was a consultant for an assisted living facility in Van Buren Arkansas. He said he believes the multi-dose bubble card will improve patient care and reduce medication errors. Elizabeth Blankenship, BSN, President of the Arkansas Assisted Living Association, also spoke to the Board in favor of the multi-dose bubble card system. She explained the differences between level I and level II assisted living facilities. She said licensed personnel can administer medications to patients in level II facilities. Ms. Blankenship told the Board that in most cases family members fill the patients weekly pill box. She said in many instances a family member may decide that the patient did not need a certain pill and not put it in the pill box. She said it is difficult for the staff to administer medication when they are not sure that every pill the patient should be taking is in the pill box. Ms. Blankenship said the multi-dose system would ensure correct dosing and medications by dispensing from the pharmacy. The Board discussed evaluating the system by allowing a pilot project for one facility. The Board decided to form a committee to propose specific criteria required for the pilot project and to determine the information that should be reported in compliance with the pilot project. Bob Dufour, P.D., will chair the committee. Members of the committee should include Rick Hudson, P.D., Elizabeth Blankenship, BSN, Stephanie Gardner, Pharm.D., and John Tipton, P.D., along with any others that may be appropriate for this committee.

Dr. Campbell discussed Freedom of Choice in choosing a pharmacy provider for Medicare patients and nursing home populations. He said that nursing homes have entered into exclusive agreements with a particular pharmacy and he has been covered up in phone complaints by area pharmacists. Dr. Campbell explained that Regulation 02-04-0002 states that it is unprofessional conduct by a pharmacist to participate in any plan, arrangement, or agreement which eliminates or detrimentally affects a patient's freedom of choice. He said that an Attorney General's opinion was requested by the Arkansas Pharmacists Association in this matter and it was determined that the patient does have freedom of choice. Mark Riley, Pharm.D., with the Arkansas Pharmacists Association, spoke on the issue and stated that because the Attorney General's opinion rules that the patient has freedom of choice, he believes the nursing homes and the pharmacists will accept the opinion. He said that nursing homes need some guidance and he suggested the Board put policies in place which determines what a pharmacy must do in order to take care of patients in nursing homes. Dr. Riley said he believes there are three basic principals: 1) Any willing provider, 2) A nursing home has a right to choose a preferred pharmacy, and 3) Patient's freedom of choice. The Board determined that Dr. McGinnis will appoint a committee, to which he is the chairman, to determine the criteria.

Jason Reiser of Wal-Mart Pharmacy requested an opportunity to discuss the current pharmacist-technician ratio in relation to pseudoephedrine sales. Mr. Reiser asked the Board to allow the cashier to register as a technician

and not be included in the current 2:1 ratio for technicians. He said the current policy of requiring a pharmacist, intern, or technician to make sale of pseudoephedrine product takes away from the preparation of prescriptions. Mr. Reiser said the technician would be required to get the product off of the shelf and hand it to the cashier for the transaction. The law specifies that only a pharmacist, intern, or technician can sell List I Chemicals. The Board discussed this policy and they were concerned about diversion by non-licensed personnel, and the legal requirements for dispensing these drugs. Mr. Reiser withdrew his request.

Jason Reiser of Wal-Mart Pharmacy requested an opportunity to discuss remote processing for retail pharmacies. Mr. Reiser discussed the different steps of the remote processing system. He said the system would be able to track which pharmacist did each action in the transaction. The Board discussed the system and its advantages and disadvantages. The Board determined that a committee should be formed to propose requirements for this system. The Committee should consist of Benji Post, P.D., Chairman, Jason Reiser, Buck Stevens, and a representative from Walgreens, the Health Department, and APA, along with any other person the Board determines would benefit the committee.

Dr. Kirtley told the Board that he has a Consent Order which is signed by two out of the three persons named on the Order. He said the issue is a technician working without a license. He said the pharmacist and a representative from the pharmacy have signed the order, but that he cannot get the technician to sign it. The Board said Dr. Kirtley should create three separate orders; one for each respondent and present those that are signed.

Jason Reiser of Wal-Mart Pharmacy, and Bill Holmes, the inventor of the APM technology, requested an opportunity to discuss the use of vending machines for the pick-up of refills. Mr. Holmes said the APM is allowed in California, Ohio, Utah, and New York – all with different types of regulations. Mr. Reiser said the machine is a locked safe that is adjacent to the pharmacy. He said the patient has to enter a PIN in order to access the machine. The Board discussed the issue at length.

BOARD ACTION:

Ms. Capps made the motion to allow a pilot program, but that it must be in compliance with current regulations regarding store hours and the proximity of the machine to the pharmacy. Mr. Holiman seconded the motion. The Board discussed the issue further and Ms. Capps withdrew her motion.

The Board directed the staff to develop criteria necessary for the pilot project to be presented at the June Board meeting for approval of the pilot program.

Dr. Kirtley presented a request from Methapharm asking the Board to address the use of non-FDA approved methacholine chloride for asthma diagnostic testing in Arkansas. Dr. Ewing said Methapharm is a company which provides one product – methacholine. He said they have submitted a complaint against St. Vincent pharmacy for compounding a commercially available product. Dr. Ewing said that St. Vincent uses a different variation for their compounding practices. He also told the Board that Methapharm does not have a patent. The Board determined that St. Vincent is not in violation of our compounding regulation as related to duplication of commercially available products.

Bob Dufour told the Board, that he has done some research based on a discussion at a past Board meeting regarding the Arkansas Law Exam. He said he was concerned with the legal ramifications the Board may have regarding the law exam. Dr. Dufour said he spoke with a consultant regarding the exam. The consultant said he could make some suggestions if the Board would like, but that he thought it was fine the way the exam is being handled now.

Dr. Campbell discussed institutional pharmacy permits and regulations with the Board. He said most of the state prisons in Arkansas have institutional pharmacy permits. Dr. Campbell said these institutions are more like nursing homes than institutions. He said they have a consultant pharmacist and emergency drug kits. The Board discussed the issue and appointed Buddy Bowden, P.D., as chairman of a committee to revisit the regulations for compliance. Dr. Bowden is to appoint the committee members.

The meeting was adjourned.

Prepared By:

Approved for the Board:

Lana Whitmore

Larry McGinnis, Pharm.D., President