

## BOARD MEETING MINUTES

Oregon Board of Pharmacy  
800 NE Oregon Street  
Portland, OR 97232  
October 12-13, 2010

### TUESDAY, October 12, 2010

Ann Zweber, Board President, called the meeting to order at 8:30 AM.

The following Board Members were present:

Ann Zweber, President	Lee Howard
Larry Cartier, Vice President	Christine Chute
Dianna Pimlott	Ken Wells
Linda Howrey	

The following staff members were present for all or part of this session:

Gary Schnabel, Executive Director	Annette Gearhart, Compliance Secretary
Karen MacLean, Administrative Director	Gary Miner, Compliance Director
Kim Oster, Compliance Assistant	Paige Clark, Pharmacist Consultant
Chrisy Hennigan, Office Manager	Loretta Glenn, Management Secretary
Joe Ball, Chief Investigator	Meg Aulerich, Inspector
Gregg Hyman, Inspector	Katie Baldwin, Inspector
Michele Cale, Inspector	Tony Burt, Project Manager

Thomas Cowan, Board Counsel

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Introduction and installation of new Public Board Member, Christine Chute

President Ann Zweber introduced new Board Member, Christine Chute and read the installation speech. Board Members and Staff introduced themselves. Christine is looking forward to her time on the Board.

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### **MOTION**

**Motion to approve the agenda was made and unanimously carried (Motion by Cartier, second by Pimlott).**

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Approve Consent Agenda

1. NAPLEX Scores (5/1/10-8/31/10)
2. MPJE Scores (5/1/10-8/31/10)
3. Executive Director Report
4. Pharmacist Consultant Report
5. Project Manager Report
6. License/Registration Ratification (July 31, 2010-October 8, 2010)
7. NABP Memos

8. Approval of Board Meeting Minutes (August 3-4, 2010)

**MOTION**

**Motion to approve Consent Agenda was made and unanimously carried (Motion by Howrey, second by Cartier).**

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**MOTION**

**Motion to enter into contested cases deliberation under ORS 192.690(1) at 8:41 AM was made and unanimously carried (Motion by Howrey, second by Cartier).**

**MOTION**

**Motion to exit contested cases deliberation at 8:56 AM was made and unanimously carried (Motion by Howrey, second by Howard).**

**MOTION**

**Motion to enter Executive Session at 8:57 AM was made and unanimously carried (Motion by Howrey, second by Cartier).**

**MOTION**

**Motion to resume Open Session at 3:00 PM was made and unanimously carried (Motion by Wells, second by Cartier).**

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The Board had some preliminary discussions about the remote dispensing facility request. They reviewed the checklist and wanted to make sure it was thorough. They were particularly interested in quality assurance and how many facilities are being proposed with this request and emphasized the requirement for additional sites to be pre-approved by the Board. Board staff pointed out that there will be a need to amend Division 045 to accommodate a waiver for electronic pharmacist initials on the IV label. There was also discussion about education and training for technicians. The Board will discuss this further on Wednesday.

The Board also had some preliminary discussion about the staff field questions relating to interns, employee identification and drug utilization reviews on refills.

**MOTION**

**Motion to adjourn at 4:40 PM was made and unanimously carried (Motion by Howrey, second by Wells).**

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**WEDNESDAY, October 13, 2010**

Ann Zweber, Board President, called the meeting to order at 8:30 AM.

The following Board Members were present:

Ann Zweber, President  
Larry Cartier, Vice President  
Dianna Pimlott

Linda Howrey  
Christine Chute  
Ken Wells

Absent: Lee Howard

The following staff members were present for all or part of this session:

Gary Schnabel, Executive Director	Annette Gearhart, Compliance Secretary
Karen MacLean, Administrative Director	Gary Miner, Compliance Director
Kim Oster, Compliance Assistant	Paige Clark, Pharmacist Consultant
Chrisy Hennigan, Office Manager	Loretta Glenn, Management Secretary
Joe Ball, Chief Investigator	Meg Aulerich, Inspector
Gregg Hyman, Inspector	Tony Burt, Project Manager
Michele Cale, Inspector	

Thomas Cowan, Board Counsel

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For the benefit of the public in attendance, President Zweber introduced new Public Board Member Christine Chute. Governor Kulongoski appointed Christine effective October 1, 2010. She was confirmed by the Senate on September 23, 2010. Christine is an attorney and recently retired from the Oregon Department of Justice after working for the state for 27 years.

Over the years, Christine has volunteered for the Campaign for Equal Justice, the Polk County Emergency Response Team, Friends of Bush Gardens, the Oregon State Bar's House of Delegates and earlier this year she accompanied a group of medical practitioners to Guatemala to provide free health care; she was the cook.

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Items for Disciplinary Action - please see Motions for Disciplinary Cases at the end of this document.

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## **ISSUES/ACTIVITIES**

Reports:

Board President/Members

President Ann Zweber attended the Health Professional Regulatory Board meeting at the Capitol with Karen MacLean and the NABP District meeting.

Larry Cartier participated in the Professional Practice Roundtable.

Linda Howrey attended the recent Immunization Practices Advisory Team (IPAT) meeting where the focus was on new rules.

Ken Wells attended the NABP Board Member Forum at NABP Headquarters in Chicago. The expenses covered by NABP for one Board member per state. Ken also attended the Professional Practice Roundtable and Pharmacy Coalition meetings.

Dianna Pimlott and Christine Chute had nothing to report.

Board Counsel Tom Cowan reported that his focus recently has been on rules and cases.

Compliance Director Gary Miner reported that the first Charitable Pharmacy had been licensed. Inspectors Gregg Hyman and Joe Ball recently reviewed the MPJE questions including 879 new questions and added 149 new questions to our 1800 question current pool. 67% of the inspections have been completed for 2010. In response to a question from the Board, Gary reported that in spite of being short two inspectors, we're on track for the year. At the OSPA program this fall there were some questions regarding quality assurance programs. Staff plans to prepare some sample forms that will be available on our website for stakeholders to reference. There were an unusually high number of non-responders to the pharmacist CE audit this year. Gary suggested sending these individuals a letter with a 30 day deadline or retake the MPJE in lieu of discipline. The Board supported this idea and suggested sending these certified to ensure receipt.

Administrative Director Karen MacLean reported on attending the Health Professional Regulatory Board (HPRB) meeting in Executive Director Schnabel's absence that was held at the Capitol. This meeting was attended by Executive Directors, representatives from Boards and invited stakeholders by the Governor's office. It was a follow up from a meeting held earlier this year with Representative Val Hoyle and the Governor's Health Policy Advisor Claudia Black. In August HPRB executive directors were asked to establish a number of sub-committees and come up with some streamlining efficiencies for each topic. Gary and Karen participated on several of the sub-committees including: investigations, human resources, budget. The one topic that everyone thought was an excellent idea was to simplify the budget development process and presentation materials for small agencies. The sub-committee and Rep. Hoyle sought input from DAS Budget & Management as well as the Legislative Fiscal Office and Way's and Means leadership to see how feasible this might be. Existing rules and statutes may prevent something from happening for the 2011 session, but there is definite interest in pursuing a change. Representative Mitch Greenlick's Health Committee may consider legislation around some of these efficiency suggestions. He does again intend to seek legislation to add a Pharmacy Technician to the Board according to Claudia Black, Governor's Health Policy Advisor.

Licensing staff are in the process of wrapping up the Certified Pharmacy Technician, Wholesaler and Manufacturer renewal cycle. 88% of Certified Pharmacy Techs renewed. 86% of Wholesalers and Manufacturers renewed. Quite a few switched categories this year.

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#### Board Meeting Dates for 2010

- December 13 -14, 2010                      Portland                      Date changed to Monday/Tuesday due to Emergency Board conflict.

#### Dates for Rulemaking Hearing

- November 16, 2010                      Portland                      Cancelled

Staff recommended cancelling the November 16<sup>th</sup> hearing as this rulemaking is not controversial, nor expected to generate extensive public comment. No motion necessary. If there is enough of an interest requesting a hearing on any of the rules proposed for rulemaking in December, it will be scheduled in the spring and rulemaking will be postponed until April.

Board members asked Karen to identify possible dates for rulemaking hearings during 2011.

#### Board Meeting Dates for 2011

- January 25 - 26, 2011                      Portland

- March 8 - 9, 2011                      Portland              Strategic Planning
- April 5 - 6, 2011                      Portland
- June 7 - 8, 2011                      Portland
- August 9 -10, 2011                      Portland
- October 11 -12, 2011                      Portland
- December 13 - 14, 2011                      Portland

## Board Member/Staff Presentations

Larry Cartier and Pharmacist Consultant Paige Clark reported on the September Professional Practice Roundtable meeting. Larry would like to see more of a two way dialog at these meetings. Paige has been coordinating these meetings and has dates for the next four meetings to add to the calendar.

Ken Wells, Paige Clark and Gary Miner presented on behalf of the Board at the OSPA Fall Convention in September. There was good feedback on the program content. Some commented on the use of acronyms, asking for them to be spelled out in future presentations. Gary Miner conducted a “Pharmacist In Charge” (PIC) Training Class. There was a lot of discussion about quality assurance as mentioned previously.

Administrative Director Karen MacLean and Inspector, Gregg Hyman presented to the incoming first year pharmacy students and new intern’s at Oregon State University and Pacific University since the last Board meeting. They covered professionalism, the importance of understanding what the students can and can not do with an intern license as first year students and the relationship they will have with the Board throughout their Internship. Both schools really appreciated the presentation.

We have not received any new requests for participation at any upcoming programs at this time.

## Committees/Meetings

Executive Director Gary Schnabel continues to attend a number of meetings on behalf of NABP in his capacity as the Chair of the NABP Executive Committee through May 2011. Until then, all of his travel expenses are covered by NABP. He recently participated in the National Council of State Boards of Nursing meeting here in Portland. He attended the NABP Member Interactive Forum with Ken Wells and an Executive Committee meeting in Chicago and the NABP District VI/VII/VIII Meeting in Albuquerque with Ann Zweber. Ann’s expenses were shared with the Oregon State School of Pharmacy.

The NABP Member Interactive Forum was well attended. 46 of the 50 states were represented. Gary commented that it was an interesting group dynamic. Everyone has their own issues and ways of dealing with them, but they are very common from state to state. Ken reported that key topics included: board operations, state funding challenges, long term care, medical marijuana, drug disposal, prescription drug abuse, texting prescriptions, pain clinics in Florida and the lack of patient/doctor relationship, growing trends and how Boards are dealing with them, Pharmacy Benefits Management – who controls them and do they interfere with patient care, internet pharmacies – especially those set up on Indian reservations, couponing in pharmacy – some states are putting a limit on the number of times a prescription can be transferred. Ken pointed out that in Illinois, the Board members conduct investigations. The NABP Government Affairs

Group is seeking input on how they can help with VAWD, rulemaking and the accreditation of pharmacies. Ken commented that Oregon is in the minority in regards to a Prescription Monitoring Program, getting it up and running will help verify data. Ken was grateful to go and thanked the Board for the opportunity to attend.

Gary mentioned that this was the first Forum of this kind. They ran over time for every session and NABP plans to have another Forum next year, but the focus will likely be directed to Compliance Directors.

Ann and Gary attended the NABP District VI/VII/VIII meeting. It was well attended and Ann said it was the best presentation she's been to at a District meeting. There was a very good presentation on E-prescribing by SureScripts. She'll share materials with other Board Members. There are a lot of hoops to jump through to get approved and be authorized for controlled substance e-prescribing and there are no systems in place today.

Ann also reported: NABP gave a presentation on Pharmacist Assessment for Remediation and Evaluation (PARE), a new competency exam for disciplined licensees asking for reinstatement. In New Mexico, pharmacists have prescribing authority for tobacco cessation programs and contraception. They are working with other health boards to get authority for such items as fluoride. New Mexico currently has a pilot project for competency based Continued Professional Development in lieu of Continuing Education. Ann also found the case law review presentation very interesting and will share the materials.

Dianna Pimlott asked if they ever record the presentations. Gary will check.

Gary Schnabel reported on the Multicultural Outlet Meeting held on 9/7/10 with Board staff. Now that staff has identified some goals, the next step is to re-connect with DHS Office of Multicultural Health for additional assistance.

#### Research Councils

Pharmacist Consultant Paige Clark reviewed the makeup and charge for the new Technician Research Council. After some discussion about recommendations, Gary Schnabel provided history around research councils and why they were created. This goes back to when the Board eliminated the "Rules" and "Policy" Committees back in 2002. A "Research Council" process was established to gather information and report it back to the Board. It was intended that the Board would decide if they had enough information to move forward and make decisions or determine if they needed more information. After some discussion, Board Counsel Tom Cowan pointed out that it's important to remember how the Public Meetings law affects groups such as these including: record keeping and public meeting notice requirements. There was some discussion that the charge was too restrictive Ann asked Karen to put this on the agenda for strategic planning. In the mean time, the Council was authorized to move forward with a minor change to the charge and the understanding that the intent is not to bring forth recommendations or proposed rules for consideration. Refer to revised and approved document in board meeting file.

#### **MOTION**

**Motion to approve charge for Technician Research Council as revised was made and unanimously carried (Motion by Cartier, second by Pimlott).**

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## **GENERAL ADMINISTRATION**

### Discussion Items

#### Staff Policy Questions

Compliance Director Gary Miner presented the following three questions on behalf of the staff.

**1- Is this the correct interpretation of licensure and identification for interns in Tradition Pharmacy-practice Internship (TPI) and School-based Rotational Internship (SRI) internships during their first year? Reference - OAR 855-031-0020**

First, Gary reconfirmed the Board's interpretation that one pharmacist can supervise one intern at a time in a TPI.

Second, In a TPI internship the first academic year, an intern can only perform the duties of a technician and should identify themselves as an intern.

In the SRI internship they will be learning and performing duties of an intern under the supervision of the school which would allow them to use the intern license and identify themselves as an intern.

The intern must be trained and may only perform duties approved by the supervising pharmacist.

Yes, the Board agreed with this interpretation. The Board directed staff to revise current rules in Division 031 to more clearly reflect the Board's intent when the next opportunity presents itself.

Additionally, the Board clarified that "other internship" experience for immunizations or outreaches that are specific to direct patient care be limited to one supervising pharmacist for two interns.

In a case where this is only one pharmacist in a TPI setting, they may only supervise one intern. If a second intern is present, they must not perform the duties of an intern at that time unless a second pharmacist is present to supervise.

**2- What is intended in the rule OAR 855-025-0025, which states "clearly identified as such to the public."?**

Background: In the past the identification of pharmacy personal has been interpreted to include the technician identifying themselves when answering the phone. The August 2010 newsletter was distributed which restated this position. It appears that some licensees have considered this article to be a new interpretation.

Clarification, the Board reaffirmed that this is pursuant to existing rules. Additionally, it is an employer issue and ultimately a good practice. The Board believes that outlets should have some discretion as to how staff identifies themselves and should use whatever practices are prudent to insure callers are not confused as to whether they are speaking with a pharmacist or not.

### 3 - What is required for a DUR performed on a refill?

Background - In the past the components of a DUR have been listed in this rule. It has come to our attention that there is some confusion about what is expected for a DUR on a refill.

After some discussion, it was concluded that at a minimum, the pharmacist should be screening for over and under utilization by reviewing the last refill date. The rule clearly states that a DUR must be performed on a refill, OAR 855-019-0220 (3). The Board also reaffirmed that it's the pharmacist's responsibility to make sure the right drug, right strength, gets to the right person.

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#### OHSU Remote Dispensing Facility Request

Compliance Director Gary Miner reviewed OHSU's final proposal and checklist with the Board. The Board discussed the importance of technician supervision, the need for reporting adverse events, how long recordings must be kept. The Board indicated that three to six months would be prudent to retain recordings of images.

The Board asked OHSU to make a few additional changes to their proposal and checklist regarding:

- Security of the pharmacy area and pharmacy personnel access
- Clarification regarding the sites
- Clearly identifying what duties can/cannot be done by technicians and making sure they are trained properly.
- Update and clarify points in the checklist document and proposal manual.

The Board thanked Mike Brownlee and his team for their work on this proposal. They believe this project provided some good lessons.

#### **MOTION**

**Motion to approve the OHSU Remote Dispensing Facility proposal and checklist with additional amendments to be submitted as requested was made and unanimously carried (Motion by Pimlott, second by Cartier).**

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#### Medication Error Reductions - Voluntary reporting systems & Oregon Patient Safety Commission (OPSC)

President Zweber led this discussion reviewing the recommendations for voluntary reporting systems and how it relates to the OPSC. Ann invited pharmacist Joe Schnabel to the table to discuss a theory that he's shared before about how NASA, the NTSB and the FAA reporting system works. Joe stated he believes it's important for the Board to encourage pharmacists to report to the OPSC and for the OPSC to accept individual reports. They are not currently set up to receive individual reports. This may require a legislative change.

Board Counsel Tom Cowan pointed out that the Board already allows for self-reporting and supports early recognition and accountability.

Other Board members pointed out that there are other methods of reporting such as ISMP and MedWatch and we should encourage licensees to report.

The Board questioned whether or not this is reflected in the Annual PIC Report. Compliance Director Gary Miner indicated that it is included and we can make a new focus on the planned quality assurance forms that are being worked on for the website.

There was some discussion about seeing if reporting entities giving a receipt for submitting an error report. Apparently ISMP does give a receipt and OPSC allows for a screen print.

There was some discussion about including an article in the newsletter highlighting that the Board values when people report and to work with the OPSC to get receipt documentation available.

No decisions were made, Ann asked that we continue the discussion and wrap it up in December.

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#### Cease & Desist Legislative Concept

As directed, Executive Director Gary Schnabel reviewed the cease and desist legislative concept with Board Counsel Tom Cowan. Upon further review, Gary recommends withdrawing this legislative concept.

#### **MOTION**

**Motion to withdraw Legislative Concept #546 was made and unanimously carried (Motion by Chute, second by Cartier).**

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#### MPJE/NAPLEX Exams

Administrative Director Karen MacLean presented information regarding the number of individuals signing up for exams after multiple failures on the MPJE and NAPLEX exams that NABP has recently advised the Board about. The Board currently follows NAPB guidelines on testing requirements and the waiting period between tries, but there is an increase in the number of individuals who are failing exams more than three times. Executive Director Gary Schnabel asked for research on this topic and Pharmacy Intern Tien Khieu was asked to research how this is handled in other states.

Tien found that about half of the states require some kind of additional waiting period after a second or third failure, including up to a year before trying again. Others require additional proof of education or experience.

Staff asked the Board whether or not it wants to consider limiting the number of times exams can be taken before additional experience, education or waiting is required? Staff recommends establishing a 1 year waiting period after the third failure.

The Board discussed this issue and determined that a one year waiting period after the third failure is appropriate. Draft rules will be prepared for the Board's review in April 2011.

#### **MOTION**

**Motion to require a one year waiting period of time between exam retakes after the third failure was made and unanimously carried (Motion by Cartier, second by Pimlott).**

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## Request for Diagnosis on Prescription Label –

Executive Director Gary Schnabel reported to the Board on a letter he received from a citizen requesting the Board to consider having a requirement to have a prescription label state the intended use or reason a drug is prescribed.

This is the second time this individual has made the same request in the last two years. The Board has discussed this before and concluded that it would be more helpful for the prescriber to explain this to the patient or caregiver. Alternatively, if the prescriber includes that information on the prescription, it may be included on the label. The Board pointed out that there are also privacy reasons for not including a diagnosis on a prescription label and periodically, a drug is prescribed for something other than its intended purpose. A pharmacist can not assume what a drug is for without instruction from a prescriber.

The Board asked Gary to bring this topic to the attention of the other Health Professional Regulatory Board executive directors who have boards with prescriptive authority.

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## FPGEC Waiver Request

Compliance Director Gary Miner presented a foreign pharmacist waiver request. This particular applicant has failed to take and pass the required exams on several occasions within the required timeframe.

### **MOTION**

**Motion to deny FPGEC waiver request was made and unanimously carried (Motion by Cartier, second by Howrey).**

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## Synthetic Cannabis

Executive Director Gary Schnabel and Compliance Director Gary Miner presented information on this topic. The Board office has received information from legislators and law enforcement regarding concerns about synthetic cannabis a.k.a. “Spice” or “K2”. Pharmacy Intern Tien Khieu conducted research and presented information to staff on this topic and how it’s being handled in other states. In addition, Gary Schnabel obtained recent information from the Idaho Board of Pharmacy, where it was recently outlawed.

Manufacturers of synthetic cannabis market the products as incense, not intended for human consumption; however, they are being used as such. These synthetic drugs have a similar action to the primary chemicals in marijuana; however they are many times more potent. They are being sold to young people over the internet and in smoke shops with no controls, and although marketed as incense "not for human consumption", they are being misused as recreational drugs. There are no manufacturing standards for these chemicals, there is no current medical use, and there is documented evidence of serious medical consequences.

The Board believes that immediate action is necessary in Oregon to protect the health and wellbeing of our citizens. By adding the synthetic cannabinoid chemicals to Schedule 1 of the Oregon list of controlled substances (pursuant to ORS 475.035), the Board gives law enforcement the authority needed to prosecute the sale and possession of these substances under the Oregon Uniform Controlled Substances Act.

Staff presented draft rule language for the Board to consider a temporary rule. We've been advised that Oregon legislators may or may not pursue legislation in 2011. A press release was reviewed that will go out on Thursday, October 14<sup>th</sup>. The rule will be effective 10/15/10.

## **MOTION**

**Motion to adopt amendments to OAR 855-080-0021 as a Temporary Rule effective 10/15/10 was made and unanimously carried (Motion by Howrey, second by Cartier).**

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Recognition of outgoing Public Board Member Bernie Foster

President Ann Zweber recognized outgoing Board Member Bernie Foster by presenting him with a plaque and gavel engraved in recognition of his eight years of service and dedication to the Board. Bernie has served as a public member on the Board since November 2002. His term officially expired June 30, 2010; however he graciously continued to serve at the pleasure of the Governor.

Bernie was an active public advocate while serving on the Board and directly involved in the pseudoephedrine rule implementation to curb the methamphetamine epidemic.

Bernie travelled to Miami Florida in 2009 to accept the 2008-2009 Fred. T. Mahaffey award that is awarded to state Board's of Pharmacy for contributions to the public health and welfare and furthering the mission of the National Association of Boards of Pharmacy.

This year, Bernie participated in the Mt. Hood Medical Marijuana Summit.

Bernie's professional background, personal connections and political acumen has been an asset to the Board over the last 8 years and we are grateful his dedication and years of service. Bernie will be missed.

Bernie commented that he has enjoyed being on the Board. It's very demanding and he said it's the best kept secret in the State and people don't know the role we play. He said he thinks new Public Member Christine Chute will serve the Board well.

Bernie introduced his guest Lowery Gibson, Marketing Director for The Scanner News that Bernie owns and operates.

Current and past Board members acknowledged Bernie and thanked him for serving along side them over the years, for his desire to understand pharmacy, for bringing a different perspective and for his political insight that has benefited the Board on a number of occasions.

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## **Rules Discussion**

Project Manager, Tony Burt and Compliance Director, Gary Miner facilitated the rules discussion.

Adoption of Rules

- a. Div 019 - Immunizations

Tony reported there was only one comment on the immunizations rule from the Oregon Medical Association. They would like to still see pharmacists report immunizations to primary healthcare providers. The Board reviewed the comment and elected not to incorporate it into the rules.

**MOTION**

**Motion to adopt OAR 855-019 was made and unanimously carried (Motion by Wells, second by Cartier).**

Send Proposed Rules to Rulemaking

- a. Div 021 - Continuing Education

Board staff prepared a draft rule revision as directed by the Board. This draft eliminates the requirement for eleven hours of therapeutics and adds one hour of medication error reduction CE. The Board reviewed the draft and made one revision. They also pointed out, it is their hope that pharmacists will get the continuing education that they need with the therapeutics revision.

- b. Div 041 – No Substitution (E-Prescribing)

Gary explained that the minor revision clarifies e-prescribing requirements.

- c. Div 011 – Health Professional Services Program

Tony explained these rules permanently adopt the existing temporary rules.

**MOTION**

**Motion to send proposed rules for OAR 855-021 as revised, OAR 855-041 and 855-011 to rulemaking was made and unanimously carried (Motion by Cartier, second by Howrey).**

Future Rulemaking & 5 year Rule Review

Staff reviewed the following list of future rulemaking and noted the schedule. The Board agreed with the schedule except for item c. that will be moved up for rulemaking in June of 2011.

Future Rulemaking

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|---|--|
| a. Long Term Care (workgroup)           | <i>Rulemaking 6/11</i>                 |
| b. Manufacturers                        | <i>Rulemaking 6/11</i>                 |
| c. Pharmacist - administration of drugs | <i>Rulemaking <del>4/11</del> 6/11</i> |
| d. Consulting Pharmacies                | <i>Rulemaking 12/11</i>                |
| e. Drug Rooms                           | <i>Rulemaking 12/11</i>                |
| f. Non-Prescription Drug Outlets        | <i>Rulemaking 12/11</i>                |
| g. Retail Drug Outlets                  | <i>Rulemaking 6/12</i>                 |

5 Year Rule Review

Staff

Due

a. Division 025 Pharmacy Technicians Clark completed 9/10

The Board reviewed the five year rule review report on Division 025 for Pharmacy Technician rules.

### **MOTION**

**Motion to accept the Five Year Rule Review Committee Report for OAR 855-025 was made and unanimously carried (Motion by Chute, second by Pimlott).**

The following rules will be reviewed later in 2011.

b. Division 021 Pain CE	Project Mgr	12/11
c. Division 065 Wholesalers	Project Mgr	12/11

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### **Financial/Budget Report**

Administrative Director, Karen MacLean reported the latest on financial expenditure information available to date. We are currently on track for expenditures as anticipated. We have some savings in personnel services due to a pharmacist inspector vacancy; however we do anticipate beginning the recruitment in early November with the hope of having the position filled by January 2011. It was asked if we can prefer a candidate that speaks Spanish and Karen reported that we already plan to prefer candidates with bilingual capabilities if they are qualified.

The few categories that are over expended such as hearings or Attorney General costs were anticipated and we will be seeking additional limitation at the December Emergency Board as directed by the Legislative Ways and Means sub-committee. We will also be seeking additional limitation to cover the cost of the new Health Professionals Service Program that was legislatively adopted and not fully funded.

The 2011-13 Agency Budget Request is moving forward in the review process. Nothing new to report at this time.

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### **Topics for future discussion**

President Ann Zweber reviewed and updated topics for future discussion as follows:

1. Medication Error Reduction
  - o Voluntary reporting systems and OPSC (to be continued in December)
  - o Medication Counseling Requirements (December)
  - o Consumer Counseling Awareness (January)
2. Draft Policies for Probationers (added for December)

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### **2010 Strategic Planning Timeline Progress Update & Topics for March 2011**

Project Manager, Tony Burt reviewed the current timeline and updated the Board on progress within the last quarter. The Technician five year rule review was completed and a new Research Council has been established to look at specific issues. The Medication Error Reduction Council recommendation to add a continuing education requirement has been incorporated into the proposed CE revisions and the remainders of the recommendations are

scheduled for discussion. A new topic regarding prescribing has been added for the interdisciplinary group. The Board has implemented online renewals for individuals to further effective / efficient processes. Stakeholders were very pleased with this implementation. Staff continues to work on the multicultural outreach initiative.

The following are topics for consideration at the March 2011 Strategic Planning Session:

- Medication Error Reduction
  - Workflow/Workforce Issues / Pharmacy Design
  - Ongoing options to improve patient safety and reduce errors
- Internet Pharmacies
- Dispensaries
- Preceptor Ratio / Duties
- Homeopathic Drugs
- Definition of various groups; Research Councils, Work Groups, Advisory Committees.

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## **OPEN FORUM –**

President Zweber invited comments from public. Alan Dulwick, representing Kaiser, asked the Board if the requirement for “documentation of counseling,” is something that the Board actually uses, finds valuable or is it just an exercise? Ann asked staff how this is working. Inspector Gregg Hyman commented that they find it very useful during investigations where counseling occurring has been in question. This requirement holds people accountable and it takes the guess work out of the question. They either did or did not counsel.

Member Linda Howrey commented that she finds it valuable.

Compliance Director, Gary Miner reported that Compliance plans to review past cases before and after the rule was implemented to see how if there has been improvement.

No action necessary at this time.

Jackson Leong representing Payless and the Oregon Society of Consultant Pharmacists asked whether pharmacists are taking on more responsibilities for duties such as calculations for physicians that are not reimbursable. He asked, “What is the responsibility of the pharmacist.” Can they say, “I can’t do that today?”

One Board member suggested that they charge for that service, another said the Board would err on the side of patient safety, and that if something is broken, this should be dealt with by the associations or pharmacy coalition. They further stated that like minded practitioners can discuss this and rally support.

Jackson also asked about when manufacturers recall prescriptions such as Procrit that had glass shards in the product, and who has to pay for the replacement cost, the pharmacy or the manufacturer?

Pharmacist Mike Millard from Pacific University commented that he tells students you have no obligation to help a physician, but you do have an obligation to address a DUR if it is wrong.

## Adjourn

### MOTION

Motion to adjourn at 3:10 PM was made and unanimously carried (Motion by Cartier, second by Wells).

Minutes accepted by:

A handwritten signature in black ink that reads "Gary A. Schnabel". The signature is written in a cursive style with a large initial 'G' and 'S'.

Gary A Schnabel, R.Ph. R.N.  
Executive Director

**Oregon Board of Pharmacy**  
**800 NE Oregon Street**  
**Portland, OR 97232**  
**Ann Zweber, R.Ph., Presiding**

Tuesday, October 12, 2010 @ 8:30 AM, Conference Room 1A  
Wednesday, October 13, 2010 @ 8:30 AM, Conference Room 1A

An Executive Session of the Board to discuss Compliance was held on October 12, 2010 at 800 NE Oregon Street Conference Room 1A in Portland. Board reconvened on October 13, 2010 in open session to vote on compliance cases.

Board Members present for all or part of compliance session:

Ann Zweber, R.Ph., President  
Larry Cartier, R.Ph., Vice President  
Christine Chute, Public Member  
Lee Howard, Public Member - Deliberations  
Linda Howrey, R.Ph.  
Dianna Pimlott, R.Ph.  
Kenneth Wells, R.Ph.

Absent:  
Lee Howard, Public Member - motions

Staff present for all or part of compliance session:

Gary Schnabel, R.Ph., R.N., Executive Director  
Gary Miner, R.Ph., Compliance Director  
Joe Ball, R.Ph., Chief Investigator  
Meg Aulerich, R.Ph., Board Inspector  
Katie Baldwin, R.Ph., Board Inspector  
Michele Cale, R.Ph., Board Inspector  
Gregg Hyman, R.Ph., Board Inspector  
Annette Gearhart, Compliance Secretary  
Kim Oster, Compliance Assistant

Karen MacLean, Administrative Director  
Paige Clark, R.Ph., Consultant Pharmacist  
Loretta Glenn, Administrative Secretary  
Thomas Cowan, Senior AAG

**CONSIDERATION OF CONTESTED CASES:**

**Motion to enter into contested case deliberation under ORS 192.690(1). (Motion by: Linda Howrey; Seconded by: Larry Cartier. 8:40 a.m.)**

**Case 2009-0343 Motion for denial of reconsideration of Final Order**

Motion by: Linda Howrey; seconded by: Larry Cartier. Motion was accepted with Christine Chute abstaining due to potential conflict of interest.

**Case 2009-0155 Motion for denial of reconsideration of Final Order.**

Motion by: Kenneth Wells; seconded by: Linda Howrey. Motion was accepted with Christine Chute abstaining due to potential conflict of interest.

**Case 2009-0633 Motion to deny revoked technician's request for reconsideration.**

Motion by: Larry Cartier; seconded by: Kenneth Wells. Motion was accepted with Christine Chute abstaining due to potential conflict of interest.

**Motion to exit contested case deliberation Motion was unanimously accepted. (Motion by: Linda Howrey; Seconded by: Lee Howard). 8:56 a.m.**

**Case 2009-0298**            **Motion to impose \$10,000 civil penalty per violation against outlet.**  
**Case 2010-0475**            **Motion to impose \$1,000 civil penalty per violation against individual.**  
Motion by: Christine Chute; seconded by: Kenneth Wells. Motion was unanimously accepted.

**Case 2010-0403**            **Motion to impose \$1,000 civil penalty per violation, and revoke technician license.**  
Motion by: Linda Howrey; seconded by: Kenneth Wells. Motion was unanimously accepted.

**Case 2010-0381**            **Motion to impose \$1,000 civil penalty per violation and revoke pharmacist license.**  
Motion by: Linda Howrey; seconded by: Dianna Pimlott. Motion was unanimously accepted.

**Case 2010-0406**            **Motion to accept Stipulated Consent Order to surrender technician license.**  
Motion by: Linda Howrey; seconded by: Dianna Pimlott. Motion was unanimously accepted.

**Case 2010-0407**            **Motion to impose \$1,000 civil penalty per violation, and revoke pharmacist license.**  
Motion by: Linda Howrey; seconded by: Dianna Pimlott. Motion was accepted with Kenneth Wells abstaining due to conflict of interest.

**Case 2010-0413**            **Motion to impose \$1,000 civil penalty per violation and revoke technician license.**  
Motion by: Dianna Pimlott; seconded by: Kenneth Wells. Motion was unanimously accepted.

**Case 2010-0276**            **Motion to revoke technician license and impose \$1,000 civil penalty per violation.**  
**Case 2010-0470**            **Motion to impose \$10,000 civil penalty per violation against outlet.**  
Motion by: Kenneth Wells; seconded by: Dianna Pimlott. Motion was unanimously accepted.

**Case 2010-0418**            **Motion to impose \$1,000 civil penalty per violation, and revoke technician license.**  
Motion by: Larry Cartier; seconded by: Linda Howrey. Motion was unanimously accepted.

**Case 2010-0320**            **Motion to impose \$1,000 civil penalty per violation and revoke technician license.**  
Motion by: Larry Cartier; seconded by: Dianna Pimlott. Motion was accepted with Kenneth Wells abstaining due to conflict of interest.

**Case 2010-0390**            **Motion to deny technician application.**  
Motion by: Linda Howrey; seconded by: Dianna Pimlott. Motion was unanimously accepted.

**Case 2010-0392**            **Motion to deny technician application.**  
Motion by: Linda Howrey; seconded by: Kenneth Wells. Motion was accepted with Larry Cartier opposed.

**Case 2010-0393**            **Motion to deny intern license application.**  
Motion by: Linda Howrey; seconded by: Dianna Pimlott. Motion was accepted with Ann Zweber abstaining due to conflict of interest.

**Case 2010-0328**            **Motion to deny technician license application.**  
Motion by: Dianna Pimlott; seconded by: Kenneth Wells. Motion was unanimously accepted.

**Case 2010-0387**            **Motion to grant reciprocal pharmacist license and place on 5 year probation.**  
Motion by: Linda Howrey; seconded by: Larry Cartier. Motion was unanimously accepted.

**Case 2010-0366**            **Motion to grant technician license.**  
Motion by: Larry Cartier; seconded by: Dianna Pimlott. Motion was unanimously accepted.

**Case 2010-0335**            **Motion to grant technician license.**  
Motion by: Dianna Pimlott; seconded by: Kenneth Wells. Motion was unanimously accepted.

**Case 2010-0310**            **Motion to suspend pharmacist license.**  
Motion by: Christine Chute; seconded by: Kenneth Wells. Motion was accepted with Linda Howrey abstaining due to conflict of interest; and with Larry Cartier opposed.

**Case 2010-0360**            **Motion to impose \$10,000 civil penalty per violation against outlet.**  
Motion by: Larry Cartier; seconded by: Dianna Pimlott. Motion was unanimously accepted.

- Case 2010-0333**            **Motion to impose \$1,000 civil penalty per violation against Pharmacist-in-Charge.**  
Motion by: Christine Chute; seconded by: Kenneth Wells. Motion was unanimously accepted.
- Case 2010-0280**            **Motion to impose \$1,000 civil penalty per violation against pharmacist**  
Motion by: Kenneth Wells; seconded by: Linda Howrey. Motion was unanimously accepted.
- Case 2010-0371**            **Motion to impose \$5,000 civil penalty per violation against pharmacy; and in**  
**Case 2010-0400**            **Motion to suspend technician license and impose \$1,000 civil penalty per violation;**  
**Case 2010-0401**            **Motion to impose \$1,000 civil penalty per violation against Pharmacist-in-Charge.**  
Motion by: Christine Chute; seconded by: Kenneth Wells. Motion was unanimously accepted.
- Case 2010-0244**            **Motion to suspend technician license and impose \$1,000 civil penalty per violation.**  
Motion by: Kenneth Wells; seconded by: Larry Cartier. Motion was unanimously accepted.
- Case 2010-0321**            **Motion to impose \$1,000 civil penalty per violation against pharmacist.**  
Motion by: Dianna Pimlott; seconded by: Christine Chute. Motion was accepted with Ann Zweber abstaining due to conflict of interest.
- Case 2010-0337**            **Motion to impose \$10,000 civil penalty per violation against outlet, and issue Letter of Concern to Pharmacist-in-Charge.**  
Motion by: Linda Howrey; seconded by: Christine Chute. Motion was unanimously accepted.
- Case 2010-0247**            **Motion to impose \$1,000 civil penalty against pharmacist; or earn 3 hours of CE in lieu of discipline; and in**  
**Case 2010-0408**            **Motion to impose \$1,000 civil penalty against pharmacist; or earn 3 hours of CE in lieu of discipline; and in**  
**Case 2010-0411**            **Motion to impose \$1,000 civil penalty against pharmacist; or earn 3 hours of CE in lieu of discipline; and in**  
**Case 2010-0412**            **Motion to impose \$10,000 civil penalty per violation against pharmacy.**  
**Case 2010-0476**            **motion to impose \$500 civil penalty against technician or earn 3 hours of CE in lieu of discipline.**  
Motion by: Kenneth Wells; seconded by: Christine Chute. Motion was unanimously accepted.
- Case 2010-0324**            **Motion to impose \$1,000 Civil Penalty against pharmacist; or earn 3 hours of CE in lieu of discipline.**  
Motion by: Linda Howrey; seconded by: Kenneth Wells. Motion was unanimously accepted.
- Case 2010-0376**            **Motion to impose \$1,000 civil penalty against pharmacist; or earn 3 hours of CE in lieu of discipline.**  
Motion by: Dianna Pimlott; seconded by: Linda Howrey. Motion was unanimously accepted.
- Case 2010-0302**            **Motion to impose \$1,000 Civil Penalty against pharmacist; or earn 3 hours of CE in lieu of discipline.**  
Motion by: Linda Howrey; seconded by: Kenneth Wells. Motion was accepted with Ann Zweber abstaining due to conflict of interest.
- Case 2010-0394**            **Motion to impose \$1,000 civil penalty against pharmacist; or 3 hours of CE in lieu of discipline; and in**  
**Case 2010-0423**            **Motion to impose \$500 civil penalty against technician; or 3 hours of CE in lieu of discipline.**  
Motion by: Kenneth Wells; seconded by: Dianna Pimlott. Motion was accepted with Linda Howrey abstaining due to conflict of interest.
- Case 2010-0391**            **Motion to issue reciprocal pharmacist license.**  
Motion by: Larry Cartier; seconded by: Christine Chute. Motion was accepted with Kenneth Wells abstaining due to conflict of interest.
- Case 2010-0399**            **Motion to deny intern application.**  
Motion by: Dianna Pimlott; seconded by: Kenneth Wells. Motion was unanimously accepted.

**Case 2007-0182**

**Motion to grant technician’s request.**

Motion by: Christine Chute; seconded by: Larry Cartier. Motion was accepted with Linda Howrey opposed.

**Case 2009-0174**

**Motion to grant pharmacist’s request.**

Motion by: Christine Chute; seconded by: Larry Cartier. Motion was unanimously accepted.

**Case 2008-0285**

**Motion to revoke pharmacist license.**

Motion by: Larry Cartier; seconded by: Kenneth Wells. Motion was unanimously accepted.

**Case 2009-0225 Motion: Grant appearance at April 2011 Board meeting to petition reinstatement of her revoked license.**

Motion by: Christine Chute; seconded by: Larry Cartier. Motion was unanimously accepted.

**Case 2009-0456**

**Motion to accept a signed consent order; withdraw Default Order issued in case upon execution of signed consent order.**

Motion by: Christine Chute; seconded by: Kenneth Wells. Motion was unanimously accepted.

**COMPLIANCE CONSENT AGENDA:**

**Motion to accept the items on the consent agenda as published.**

Motion by: Linda Howrey; seconded by: Larry Cartier. Motion was unanimously accepted.

**LETTERS OF CONCERN:**

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Case: 2010-0365

Issue Letter of Concern to drug outlet; copy letter to Pharmacist-in-Charge.

**DEFICIENCY NOTICES:**

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Cases: 2010-0263, 2010-0279, 2010-0294, 2010-0297, 2010-0323, 2010-0326, 2010-0331, 2010-0339, 2010-0340, 2010-0342, 2010-0345, 2010-0346, 2010-0347, 2010-0348, 2010-0349, 2010-0352, 2010-0353, 2010-0356, 2010-0357, 2010-0358, 2010-0359, 2010-0361, 2010-0367, 2010-0368, 2010-0369, 2010-0372, 2010-0373, 2010-0374, 2010-0375, 2010-0382, 2010-0383, 2010-0395, 2010-0397 and 2010-0421.

**UNABLE TO SUBSTANTIATE:**

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Cases: 2010-0009, 2010-0010, 2010-0178, 2010-0288, 2010-0317 and 2010-0409.

**NO VIOLATION:**

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Cases: 2010-0140, 2010-0212, 2010-0219, 2010-0260, 2010-0315, 2010-0325, 2010-0327, 2010-0334, 2010-0380, 2010-0384, 2010-0388, 2010-0404 and 2010-0427.

**UNREGISTERED OUTLET CASES:**

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By authority delegated to Oregon Board of Pharmacy Staff by the Board notices to impose \$10,000 civil penalty notices have been issued to: (includes unregistered wholesalers, manufacturers and out-of-state pharmacies)

Case: 2010-0180

**“NO PIC SELF INSPECTION” CIVIL PENALTY ORDERS:**

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By authority delegated to Oregon Board of Pharmacy Staff by the Board [grant staff authority to issue discipline in the form of \$1,000 Civil Penalty stay \$700 pending no further violations for three years when PIC Self Inspection Form not completed or not available as required] the following notices with Historical orders have been issued:

Cases: 2010-0197, 2010-0250, 2010-0330, 2010-0370 and 2010-0377.

**“NO CS INVENTORY” CIVIL PENALTY ORDERS:**

By authority delegated to Oregon Board of Pharmacy Staff by the Board [grant staff authority to issue discipline in the form of \$1,000 Civil Penalty stay \$700 pending no further violations for three years when controlled substance inventory not completed or not available as required] the following notices with Historical orders have been issued:

Case: 2010-0341

**DENIAL OF TECHNICIAN APPLICATION ORDERS:**

By authority delegated to Oregon Board of Pharmacy Staff by the Board denial of technician licenses notices have been issued in:

Cases: 2010-0150 and 2010-0309.

**TECHNICIAN LICENSES: PROPOSED DENY / GRANT WITH PROBATION:**

By authority delegated to Oregon Board of Pharmacy Staff by the Board, the following technician licenses have been granted with probation, or have been issued proposed Consent Orders:

Case: 2010-0251

**“SHORT COUNT” Letters of Concern :**

By authority delegated to Oregon Board of Pharmacy Staff by the Board, letters of concern have been issued in the following cases involving allegations of 'short counts' where pharmacist admits to violation:

Cases: 2010-0224 and 2010-0256.