



# **Board of Pharmacy**

**Office of Professional Regulation, Vermont Secretary of State**

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## **Approved Minutes**

**Wednesday, March 27, 2019 at 9:00 a.m.**

### **1. Call to Order**

The meeting was called to order at 8:59 a.m., by Ms. Stephanie Ibey, RPh, Chair

Members Present: Ms. Stephanie Ibey, RPh, Chair; Mr. Robert Carpenter, RPh, Vice Chair; Mr. James Arisman, Esq., public member; Mr. Corey Duteau, RPh; Mr. Michael Carroll, RPh; Ms. Judith Wernecke, Secretary, public member, and Mr. William Chatoff, RPh

OPR Personnel Present: Carrie Phillips, Executive Officer; Aprille Morrison, Licensing Administrator I; Lora Marchand, Assistant Director of OPR, and Gabriel Gilman, General Counsel

Guests: Joe Lavino, Amber Schreiner, Kathleen Wobby, Cheri L'Esperance, Chad Dufour, Luca Pompei and Myra Ladaga

### **2. Approval of minutes from February 27, 2019 meeting**

The Chair called for approval of the Minutes of the February 27, 2019 meeting. Being there were no changes the minutes were approved as written.

### **3. Discipline**

- a. Stipulation and Consent Order In Re: Clyde Miller, docket #'s 2019-20 and 2019-21
  - i. Mr. Carroll moved the Board enter into deliberative session at 9:41 am. Mr. Carpenter seconded the motion. Motion passed. Deliberative session ended at 9:48 am. Mr. Carpenter moved to accept the stipulation and consent order as presented. Mr. Duteau seconded the motion. Motion passed.

### **4. Topics for Discussion**

- a. Explanation of Preliminary Denial Process
  - i. Elizabeth St. James, Chief Prosecutor, met with the Board to discuss the initial application process regarding preliminary denials based on conduct and qualifications.
- b. Executive Officer Report.
  - i. Ms. Phillips informed members present of the activities, applications and correspondence she has been engaged in since the February 27<sup>th</sup> Board of Pharmacy meeting.
- c. CII Policy Proposed Draft
  - i. Mr. Carroll moved to approve the draft guidance document presented on allowable changes to a CII prescription and that OPR post the approved policy on the website. Mr. Carpenter seconded the motion. Motion passed.

- d. Manufacturer and Wholesale Application Content
  - i. The Board requested the discussion of changes to the instruction pages for the wholesale drug outlet application be tabled until the April 24<sup>th</sup> meeting.
- e. Review proposed resolutions, NABP 115<sup>th</sup> Annual meeting, May 16-18, 2019.
  - i. The Board reviewed the proposed resolutions that will be discussed and voted on at the NABP 115<sup>th</sup> Annual meeting.
- f. Inspection Issues
  - i. Derek Everett, Inspector, requested guidance from the Board on a couple issues he is seeing in the retail facility inspections he has been performing.
    - 1. Issues with electronic or paper logs regarding annual update of patient allergy and health information in patient profiles.
      - a. Mr. Carroll moved that in response to investigator efforts to review patient profiles to ensure updates have been made, if the facility is not in compliance with Administrative Rule 10.26, which the BOP interprets as expressly requiring a pharmacy to maintain a record of the date and nature of such updates, then they are in default. Mr. Arisman seconded the motion. Motion passed. Mr. Carpenter, Mr. Duteau and Ms. Ibey recused from voting.
    - 2. Issues with lack of physical barriers to prevent unauthorized access to confidential patient pharmacy records in storage. Mr. Everett gave examples of facilities that do not have a physical barrier to prohibit non-licensed individuals from accessing such pharmacy records.
      - a. BOP interprets the term “no access” in Rule 10.15 to mean physically restricted access to prevent access to such records by any person who has no need to use them to perform their job, i.e. non-pharmacy licensed/registered employees. Mr. Chatoff moved that Inspector Everett may enforce the requirements of Administrative Rules 9.7 and 10.15 to require facilities to have a physical barrier for such patient records. Mr. Carroll seconded the motion. Motion passed. Mr. Carpenter, Mr. Duteau and Ms. Ibey recused from voting.
- g. Correspondence
  - i. Corey Duteau request from client concerning use of ePill dispenser.
    - 1. The Board determined this is not something a pharmacy can legally do without proper labelling and the device being patient specific.
  - ii. CMS IPI Model – forced “whitebagging”
    - 1. BOP and OPR staff discussed the level to which the definition of dispensing may restrict or control “whitebagging”, with respect to labeling and appropriate form of the dispensed product, however,

no motion followed. The topic will be kept in mind during Rule revision work.

- iii. Change of Stock Ownership at Grandparent level – non-resident entity
  - 1. A new application is not required when the change of ownership is above the direct ownership level. Proper notification including, but not limited to, a letter of explanation and copy of official change documentation is required to be uploaded into the online license account.
- iv. Automated Medication Distribution Systems (AMDS)
  - 1. BOP does not grant waivers or variances from the rules and regulations pertaining to AMDS'. No motion followed the discussion, the consensus of BOP is to take this matter under advisement for future rule revisions
- v. CBD-based products – nonRx, no medical claims, topical, over-the-counter skin creams sold in pharmacies
  - 1. The BOP takes no position on these products and finds no regulatory prohibition on the sale of OTC topical CBD-containing products that do not make health claims.
- h. Legislative Update
  - i. As passed but he House, H.104, Sec. 15, instructs OPR to evaluate the costs and benefits of incorporating prescribing authority into the scope of practice of licensed pharmacists. A work group will be created to study this topic.
  - ii. Other pharmacy-related legislation
    - 1. Carrie informed members present of the proposed bills for this legislative session and the status of those bills
- i. Effective Governance and Board-Agency Communication
  - i. Mr. Gilman spoke to the Board about the current application review process as well as the Board's authority to delegate application reviews. Ms. Phillips will send the Board the minutes from 2012 where that authority was delegated to the Office and Executive Officer.

## 5. Public Comment

- a. Luca Pompei asked the board about a pharmacist changing a prescription from a 30 day supply to a 90 day supply. The Board determined that this practice was allowable providing the pharmacist contacted the prescribing physician and documented the changes. Joe Lavino went back to October 2017 minutes where a discussion was had and the decision of the Board was different. The Board requested this be added as an agenda item for the April meeting.

- 6. **Adjournment:** Mr. Carroll made a motion to adjourn the meeting at 1:48 pm. Mr. Carpenter seconded the motion. Motion passed.

Next Scheduled Meeting – Wednesday, April 24, 2019  
Please check the office [website](#) for updates