



California State Board of Pharmacy

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BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

DEPARTMENT OF CONSUMER AFFAIRS

GOVERNOR EDMUND G. BROWN JR.

**STATE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
PUBLIC BOARD MEETING
MINUTES**

DATE: March 30, 2017

LOCATION: Department of Consumer Affairs - **Building Two**
1747 North Market Blvd., Room 186
Sacramento, CA 95834

BOARD MEMBERS PRESENT: Amy Gutierrez, PharmD, President
Deborah Veale, RPh, Vice President
Victor Law, RPh, Treasurer
Lavanza Butler, Licensee Member
Ricardo Sanchez, Public Member
Allen Schaad, Licensee Member
Stanley Weisser, Licensee Member
Albert Wong, Licensee Member

BOARD MEMBERS NOT PRESENT: Ryan Brooks, Public Member
Valerie Muñoz, Public Member
Greg Lippe, Public Member

STAFF PRESENT: Virginia Herold, Executive Officer
Anne Sodergren, Assistant Executive Officer
Laura Freedman, DCA Staff Counsel
Joshua Room, Supervising Deputy Attorney General
Laura Hendricks, Staff Analyst

Note: A webcast of this meeting may be found at:

<http://www.pharmacy.ca.gov/about/meetings.shtml>

Thursday, March 30, 2017

Call to Order

9:31 a.m.

I. Call to Order, Establishment of Quorum and General Announcements

President Gutierrez called the meeting to order at 9:31 a.m.

Board members present: Lavanza Butler, Victor Law, Amy Gutierrez, Stanley Weisser, Deborah Veale, Ricardo Sanchez, Allen Schaad and Albert Wong.

II. Public Comments on Items Not on the Agenda/Agenda Items for Future Meetings

Board member Stanley Weisser noted that the board member flights are now being booked at the “wanna get away” rate with Southwest, which makes it more difficult to make changes to flights. President Gutierrez responded that the flights were being booked at that rate to save money. Mr. Weisser asked that the board staff track how often board members needed to change their flights and the cost to change the flights to determine if booking at the cheaper rate does in fact save the board money.

Board member Albert Wong asked the board to agendaize a discussion on how the board receives notice of criminal arrests of its licensees and how board staff reports possible criminal activity to the appropriate law enforcement agency.

III. Discussion and Consideration of the Proposed Regulation to Amend Title 16 CCR Section 1760, Related to Disciplinary Guidelines

President Gutierrez explained that this regulation updates the board’s disciplinary guidelines that are incorporated by reference in CCR section 1760. The updated disciplinary guidelines incorporate changes to pharmacy law that occurred since the last revision of the guidelines in 2007 and implement the Uniform Standards developed in response to SB 1441 (Ridley-Thomas, Chapter 5448, Statutes of 2008).

President Gutierrez reported that the board was advised during the January 2017 Board Meeting that OAL disapproved the board’s rulemaking on the basis that the board did not meet the clarity and necessity standard in some of the terms and conditions language. OAL’s disapproval also indicated that the board did not follow the required APA procedures. She explained that during the February 2017 Board Meeting, the board approved amendments to the language and authorized release for another 15-day comment period.

Anne Sodergren, the board’s assistant executive officer, reported that after conferring with the OAL reviewing attorney, board staff released the revised language and a supplemental Initial Statement of Reasons for the required 15-day comment period. She stated that the comment period ended on May 29, 2017, and no comments were received. Ms. Sodergren concluded that she would be preparing the rulemaking and working with OAL to ensure all of their concerns were addressed.

There were no comments from the board or from the public.

IV. Legislation Impacting the Practice of Pharmacy or the Board’s Jurisdiction: Pharmacy Benefit Managers: AB 315 (Wood)

Board Member Deborah Veale recused herself from this agenda item and left the meeting room.

President Gutierrez reported that a proposal has been introduced to regulate pharmacy benefit managers (PBMs). Assemblymember Wood, chair of the Assembly Health Committee, is the author of this bill. She explained that as introduced, the bill would place the regulation of PBMs with the Board of Pharmacy.

President Gutierrez stated that as the bill moves through the Legislature, various amendments to AB 315 will likely occur. She indicated that the board needs to determine if it is interested in becoming an active part of the discussion.

Albert Wong stated that PBMs affect the practice of pharmacy and the board should be involved in the oversight.

Stanley Weisser stated that he would like to see the board involved in the oversight of PBMs and it directly affects the consumers of California. He also added that obtaining contracts with PBMs can be difficult for small pharmacies, which makes it hard for patients to obtain medications, especially in rural areas.

Victor Law stated that for years patients have been hurt by PBMs and he would like to see the board involved in the regulation of PBMs. Ms. Butler agreed with the comments made by Mr. Law and Mr. Weisser.

Allen Schaad explained that because of the contracts with PBMs, pharmacists are often prohibited from telling consumers that cheaper options might be available for their medications which is totally unfair to consumers. However, Mr. Schaad stated that the board does not have the financial sophistication necessary to investigate PBMs. He added that the oversight of PBMs should be with the Department of Insurance.

President Gutierrez stated that the board needs to focus on how consumers are affected by PBMs and how difficult they can make it for patients to get their medications.

President Gutierrez asked Ms. Herold if the board would receive any additional staffing or funding to oversee PBMs. Ms. Herold responded that the board would need additional staff. Ms. Herold stated that the board is being considered as the agency to oversee PBMs because of its consumer protection mandate and due to the fact that the board makes all of its deliberations in public meetings – unlike the Department of Insurance.

Joshua Room noted that PBMs have been discussed for years and no other agency has stepped forward to take oversight. He added that even if the board does not end up being the agency that oversees PBMs, it will still need to be involved because of the interaction that occurs between consumers, pharmacies and PBMs.

Mr. Weisser expressed his concern that the board may be trumped by the federal government, similar to the way the federal government took over e-pedigree from the board. Mr. Room responded that many people believe that the federal government stepped in because the Board of Pharmacy brought the issue to forefront. President Gutierrez agreed that it is a positive thing for the federal government to make federal regulations as it shows the board is calling attention to important issues that need national regulation.

Mr. Schaad noted that PBMs are regulated in two other states. In one state they are regulated by the Board of Pharmacy, and in the other they are regulated by the Department of Insurance.

President Gutierrez reported that CVS Health provided a letter to the board in which it stated that AB 315 creates a conflict of interest as the board members would be regulating PBMs while at the same time working with them.

Dr. Ramon Castellblanch, representing the University of California Institute, noted that PBMs are a big and powerful industry. He stated that the profits of two of the largest PBMs have increased tenfold in the last ten years. Dr. Castellblanch stated the PBMs have been involved in lawsuits where they were found to be bribing CalPERS board members. He added that the board would need to hire staff and lawyers with a lot of expertise in contracting.

Jon Roth and Jim Gross, representing CPHA, spoke in support of the bill and stated that the board of pharmacy is the appropriate regulator due to its consumer protection mandate.

Mr. Gross stated that the author of the bill had expressed concern with the impact PBMs have on drug pricing and patient care.

President Gutierrez asked where patients can file complaints against PBMs. Ms. Herold stated that the board is currently limited in the help it can provide to consumers. Mr. Gross explained that the Department of Managed Care and the Department of Insurance currently have no ability to take action directly against PBMs.

Richard Mazzoni, representing the Pharmaceutical Care Management Association (PCMA), stated that PCMA objects to AB 315. Mr. Mazzoni stated that the Board of Pharmacy is not the appropriate agency to regulate PBMs as the board is made up of active members of the pharmacy community, which creates a conflict of interest. He also noted that Mississippi has stated that regulation of PBMs by the board of pharmacy creates a conflict of interest as well as anti-trust and anti-competitive issues. He asked the board to take a neutral or oppose position to the bill.

Maral Farsi, representing CVS Health, stated that the board should not be the agency to regulate PBMs as it potentially could create conflicts of interest. She added that PBMs do not work directly with consumers, they work with the employers, unions and health plans. Ms. Farsi stated that PBMs are regulated by the Department of Insurance and Department of Managed Healthcare, and both agencies take complaints from consumers. She added that many other states require audits of PBMs.

Dennis McAllister, representing Express Scripts, stated that the board of pharmacy is not the appropriate agency to regulate PBMs.

Ms. Freedman explained that the board must consider anti-trust and anti-competitive issues in all its actions. She added that the key for the board is to direct its focus on consumer protection.

Mr. Weisser and Mr. Law noted that the board is made up of both public and professional members.

Motion: Support AB 315. Direct staff to work with the author’s office to make recommendations to modify the bill based on the board’s discussion.

M/S: Weisser/Law

Support: 5 Oppose: 1 Abstain: 1

Board Member	Support	Oppose	Abstain	Not Present
Brooks				X
Butler			X	
Gutierrez	X			
Law	X			
Lippe				X
Munoz				X
Sanchez	X			
Schaad		X		
Veale				X
Weisser	X			
Wong	X			

Note: Ms. Veale recused herself from this agenda item.

The board recessed for a break at 10:30 a.m. and resumed at 10:40 a.m.

V. Petitions for Reinstatement of Licensure or Other Reduction of Penalty

Administrative Law Judge Marilyn Woollard presided over the following petitions for reduction of penalties.

a. Martin Mendizabal; TCH 21295

The board recessed for a break at 11:45 a.m. and resumed at 12:30 p.m.

b. Bolouhari, Ensi Caidence; RPH 74301

c. Gyulbekyan (Mananyan), Marine; INT 35160

d. French, Mary; RPH 35330

e. Nou Chai Thao; TCH 78290

VI. Discussion and Consideration of Compounding Construction Compliance Delays Pursuant to Title 16 California Code of Regulations, Sections 1735 et. seq., and 1751 et. seq.

Board staff announced that due to time constraints this item would be placed on a future meeting agenda for discussion and consideration.

VII. Closed Session

The board recessed into closed session at 4:12 p.m.

Note: Ricardo Sanchez left the meeting at 4:12 p.m.

VIII. Reconvene Open Session

The board reconvened to open session at 5:05 p.m.

President Gutierrez adjourned the meeting at 5:06 p.m.