



# Arizona State Board of Pharmacy

*Published to promote compliance of pharmacy and drug law*

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## Board Meeting Schedule 2010

Date	Day(s)	City	Location
January 13-14, 2010 (AZ Law CE Available)	Wednesday and Thursday	Phoenix	Board Meeting Room 1700 W Washington St, 3 <sup>rd</sup> Floor
March 17-18, 2010 (AZ Law CE Available)	Wednesday and Thursday	Phoenix	Board Meeting Room 1700 W Washington St, 3 <sup>rd</sup> Floor
May 12-13, 2010 (AZ Law CE Available)	Wednesday and Thursday	Phoenix	Board Meeting Room 1700 W Washington St, 3 <sup>rd</sup> Floor
July 15, 2010 (AZ Law CE Available)	Thursday	Phoenix	Board Meeting Room 1700 W Washington St, 3 <sup>rd</sup> Floor
September 15-16, 2010 (AZ Law CE Available)	Wednesday and Thursday	Phoenix	Board Meeting Room 1700 W Washington St, 3 <sup>rd</sup> Floor
November 17-18, 2010 (AZ Law CE Available)	Wednesday and Thursday	Phoenix	Board Meeting Room 1700 W Washington St, 3 <sup>rd</sup> Floor

## Subpoenas for Pharmacy Records

“You can take it to the bank” – sometime in your career as a pharmacist you will receive a subpoena for a patient’s pharmacy records. Such a request must be responded to in compliance with Arizona and federal law. Failure to comply with a subpoena may have serious consequences, so a pharmacist who receives a subpoena should **always** contact a licensed attorney for specific advice before responding to the request. It is imperative that you realize that the editor of this *Newsletter* is not an attorney and is providing the following information as a summary for you to consider before you contact an attorney. It is best utilized as a guide to help you to formulate questions for your attorney. Generally, a pharmacist who receives a subpoena seeking pharmacy

records or pharmacy billing or payment records should only produce the records if the subpoena meets at least one of the following requirements:

- ◆ the subpoena is accompanied by a signed authorization from the patient or the patient’s health care decision maker;
- ◆ the subpoena is accompanied by a court or tribunal order that requires the release of the records to the party seeking the records;
- ◆ the subpoena is a grand jury subpoena issued in a criminal investigation;
- ◆ the subpoena is issued by a health profession regulatory board issued as part of a regulatory board investigation (eg, the Arizona Medical Board); or
- ◆ the pharmacist or pharmacy is required by another law to release the records to the party seeking the records.

Generally, if the subpoena meets one of the requirements described above, the pharmacist may provide copies of the records to the requesting party or allow the requesting party to examine the originals. In a court or tribunal proceeding, the pharmacist may comply with the subpoena if he or she files the records under seal. To do so, the pharmacist should place copies of the requested records in an inner envelope and place the inner envelope in an outer envelope along with an affidavit that states that he or she is the authorized custodian of the records and has authority to certify the records and that the copy is a true complete copy, or, if applicable, that the he or she has none of the records described or only part of the records described.

Alternatively, if none of the requirements above are satisfied, the pharmacist may expect to receive advice from an attorney to:

- (i) object to the production of the records,
- (ii) file a motion to quash or modify the subpoena, or,
- (iii) in the case of court or tribunal proceedings, file the records under seal.

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## **Automated Mechanical Storage and Counting Devices**

Contributed by Rich Cieslinski, RPh

Under Arizona law, there are three rules that address the requirements necessary to operate labor saving storage and dispensing devices: R4-23-614, R4-23-615, and R4-23-616, which are published in Article 6, Permits and Distribution of Drugs, which is part of the Arizona Administrative Code, found at [www.azsos.gov/public\\_services/Title\\_04/4-23.htm#Article\\_6](http://www.azsos.gov/public_services/Title_04/4-23.htm#Article_6).

Recently, compliance officers have noted some instances of noncompliance in this area.

The first area is the lack of awareness of the prohibition of the return of a drug back into its original cell, cassette, or stock bottle which has been previously dispensed by a mechanical storage and counting device (eg, Baker Cell, Parata, Yuyama). This activity is not permissible without approval from the Arizona State Board of Pharmacy or its designee (compliance officer or executive director). All methods approved must incorporate the use of technology designed to prevent drug return errors during the process.

The second area is lack of complete documentation of the required training of employees involved in the maintenance, calibration, and use of the mechanical storage and counting devices.

The third area is lack of complete documentation of the maintenance and calibration which has been performed as required. The maintenance and calibration must be performed as recommended by the manufacturer of the device(s). A lack of documentation of the quality assurance and accuracy validation testing required for all mechanical storage and counting devices may mean that it was not actually performed. Equipment requiring such documentation includes countertop scales used to count out oral drugs.

Many pharmacies have policies and procedures detailing the above requirements and some even have online forms designed for staff to record the required documentation. It has been noted that sometimes they are not routinely utilized by the pharmacy staff or staff is unaware of them. Dispensing the right medication in the correct quantity is a critical part of pharmacy practice. Maintaining the equipment that dispenses the medication should be as well.

### **Disciplinary Actions**

Notice: Before making a prescription-dispensing or other decision pursuant to information in this issue, you are encouraged to verify the current condition of a license with the appropriate licensing agency (Board).

#### **Pharmacists**

**Ahlmer, Pamela (S014709)** – 60 day suspension – served, followed by two-year probation; \$1,000 fine within 60 days, Multistate Pharmacy Jurisprudence Examination® (MPJE®) taken within 90 days; 200 hours community service. Effective December 7, 2009.

**Biegun, Michael (S010662)** – Probation terminated. Effective November 19, 2009.

**Carranza, Robert (S015967)** – \$1,000 fine within 90 days; eight continuing education (CE) hours within six months. Effective November 19, 2009.

**Dahlk, Paul (S007308)** – Six month suspension followed by four-and-a-half years probation; five-year Pharmacists Assisting Pharmacists of Arizona (PAPA) contract; 400 hours community service. Effective November 27, 2009.

**Hogan, Elizabeth (S015072)** – Upon the renewal payment: five-year probation; five-year PAPA contract; 400 hours community service; 30 CE hours within 30 days. Effective December 7, 2009.

**Lindgren, Timothy (S016775)** – \$500 fine within 60 days. Effective November 19, 2009.

**Osabu-Kle, Mercy (S014523)** – \$500 fine within 90 days; eight CE hours within six months. Effective November 19, 2009.

**Pasaylo, Ana (S016865)** – \$500 fine within 60 days; eight CE hours within six months. Effective November 19, 2009.

**Pulver, Howard (S015422)** – Six-month suspension; MPJE taken within six months. Effective November 19, 2009.

**Salkowski, Sally (S012837)** – \$1,000 fine within 90 days; eight CE hours within six months. Effective November 19, 2009.

**Weefar, Gabriel (S016257)** – \$2,000 fine within 60 days; eight CE hours within eight months. Effective November 19, 2009.

**Wilcox, Robert (S012472)** – Five years probation; five-year PAPA contract; 400 hours community service. Effective November 19, 2009.

#### **Interns**

**Gariba, Dorsha (I007378)** – Revoked. Void/disallows of 470 intern hours on file with Board. Effective November 19, 2009.

#### **Technicians**

**Garcia, Denise (T000247)** – Revoked. Effective November 19, 2009.

**Neriz, Cecilio (T014756)** – Revoked. Effective November 19, 2009.

**Shaw, Rebecca (T00424)** [Marki] – Suspension terminated. Probation imposed. Effective November 19, 2009.

**Zambo, Karen (T014988)** – Revoked. Effective November 19, 2009.

#### **Pharmacies**

**Heartland Home Infusion (Y004935)** [Hinsdale, IL] – \$1,000 fine within 60 days. Effective November 20, 2009.

**Korman Healthcare Pharmacy (Y003805)** [Formerly Phoenix Long Term Care Pharmacy] – \$44,800 fine,

payable in 36 monthly payments of \$1,000 and a final payment of \$8,800. Effective November 20, 2009.

### **Disciplinary Actions – Other Boards**

#### **Board of Dental Examiners of the State of Arizona (DDS – Doctors of Dental Surgery)**

**Rogers, Keith M. (DDS 4750)** – License to practice dentistry placed on probation for five years with set terms and conditions. Dr Rogers' prescribing privileges for Schedule II and III controlled substances are restricted. Effective October 13, 2009.

#### **Arizona Medical Board (MD – Allopathic Physicians)**

**Adya, Navneet (MD 31619)** – *Interim Consent Agreement for Practice Restriction* – Respondent shall not practice clinical medicine or any medicine involving direct patient care, and is prohibited from prescribing any form of treatment including prescription medications, until respondent applies to the Board and receives permission to do so. Effective December 7, 2009.

**Fernandez, Octavio G. (MD 10957)** – *Interim Consent Agreement for Practice Restriction* – Respondent shall not practice clinical medicine or any medicine involving direct patient care, and is prohibited from prescribing any form of treatment including prescription medications, until respondent applies to the Board and receives permission to do so. Effective December 4, 2009.

**Hall, Gary W. (MD 12977)** – License surrendered to the Board. Effective October 7, 2009.

**Howley, John W. (MD 22390)** – *Interim Consent Agreement for Practice Restriction* – Respondent shall not practice clinical medicine or any medicine involving direct patient care, and is prohibited from prescribing any form of treatment including prescription medications, until respondent applies to the Board and receives permission to do so. Effective October 13, 2009.

**Kellermeyer, Tania S. (MD 26360)** – Non-disciplinary – Physician's practice is limited to "outpatient anesthesia" for a minimum of six months with set terms and conditions. Effective August 28, 2009.

**Krishnan, Sanjay (MD 34277)** – Non-disciplinary – *Interim Consent Agreement for Practice Restriction* – Physician's practice is limited in that he shall not practice medicine in the state of Arizona and is prohibited from prescribing any form of treatment including prescription medications until physician applies to the Board and receives permission to do so. Effective December 4, 2009.

**Mann, Stewart (MD 13248)** – Non-disciplinary – Physician's practice is limited in that he shall not practice medicine in the state of Arizona and is prohibited from prescribing any form of treatment including prescription medications until physician applies to the Board and receives permission to do so. Effective September 2, 2009.

**Martinez, Margarita (MD 10110)** – Non-disciplinary – Physician's practice is limited in that she shall not practice

medicine in the state of Arizona and is prohibited from prescribing any form of treatment including prescription medications until physician applies to the Board and receives permission to do so. Effective November 16, 2009.

**McDowell, Timothy (MD 31063)** – License inactivated with cause. Effective August 31, 2009.

**Taitague, Gerald J. (MD 26182)** – *Interim Consent Agreement for Practice Restriction* – Respondent shall not practice clinical medicine or any medicine involving direct patient care, and is prohibited from prescribing any form of treatment including prescription medications, until respondent applies to the Board and receives permission to do so. Effective December 4, 2009.

**Teague, Robert C. (MD 3925)** – License revoked. Effective November 11, 2009.

**Yeh, Albert Szu Yun (MD 32323)** – License surrendered to the Board. Effective October 7, 2009.

**Van De Wyngaerde, David G. (MD 17528)** – *Interim Order for Practice Restriction* – Respondent shall not practice clinical medicine involving direct patient care, and is prohibited from prescribing any form of treatment including prescription medications, until respondent applies to the Board and receives permission to do so. Effective October 29, 2009.

#### **Arizona Regulatory Board of Physician Assistants (PA – Physician Assistants)**

**Esquerra, Jef B. (PA 1971)** – Decree of censure and probation for 15 years with set terms and conditions that include a practice restriction prohibiting respondent from prescribing, administering, or dispensing any controlled substances. Effective November 18, 2009.

**Langley, Jennifer L. (PA 2433)** – Emergency suspension. Effective 35 days after November 18, 2009, unless respondent petitions for rehearing or review.

**Lipuma, William J. (PA 1843)** – License revoked. Effective 35 days after November 18, 2009, unless respondent petitions for rehearing or review.

**Oprea, Nicole F. (PA 2627)** – Decree of censure and probation for three years with set terms and conditions that include a practice restriction prohibiting respondent from prescribing, administering, or dispensing any controlled substances. Effective November 18, 2009.