Prescription Monitoring Program Task Force
State of Louisiana

November 30, 2005

MINUTES

A meeting of the Prescription Monitoring Program (PMP) Task Force scheduled to meet on Wednesday, November 30, 2005 at the Louisiana Board of Pharmacy Office, located at 5615 Corporate Blvd., Suite 8-E, in Baton Rouge, convened at 10:10 a.m. to consider the following:

AGENDA

1. Call to Order
2. Opportunity for Public Comment
3. Consideration of Minutes from October 26, 2005 Meeting
4. Review of Draft Legislation
5. Calendar Notes
6. Adjourn

Call to Order

Carl W. Aron, Chairman of the Task Force and President for the Louisiana Board of Pharmacy, called the meeting to order.

The other Task Force representatives present were: Malcolm Broussard (Executive Director, Louisiana Board of Pharmacy), Trena Jones (DEA), Alfred Gaudet (Louisiana State Board of Medical Examiners), Dr. Mica Landry (Louisiana Board of Veterinary Medicine), Robert Toups (Louisiana Independent Pharmacists Association), MJ Terrebonne (DHH Medicaid), Dr. Darby Chassion (Louisiana Optometrist Association), Patty Giovingo (Louisiana District Attorneys Association), Barry Ogden (Louisiana Board of Dentistry), Peggy Griener (Louisiana Board of Nursing), Sgt. Roland Jude Mathews (Louisiana State Police), Lt. Glen Hale (Louisiana State Police), Major Pete Tufaro (St. Bernard Sheriff's Dept.), Brenda Lands (DHH-Office of Addictive Disorders), Tres Bernhard (LIPA) and Jim Nickel (Courson Nickel, LLC & NACDS).

Also present: Carlos Finalet (General Counsel, Louisiana Board of Pharmacy) and Kathleen Gaudet (Chief Compliance Officer, Louisiana Board of Pharmacy).

Opportunity for Public Comment

No public comments were submitted.

Minutes from October 26, 2005

The minutes from the Task Force's last meeting were accepted by consensus.

Mr. Aron asked Mr. Broussard to provide an overview of his findings while visiting the PMP programs at the Nevada and Kentucky boards of pharmacy.

Mr. Broussard explained that Kentucky is similar to Louisiana in demographics (approx. 4 million in population and between 1,300 – 1,400 pharmacies). Initially in Kentucky, a third party collected the PMP data and sent the board a disk with the compiled data. Authorized persons at the board office then would query the data as needed generating written reports as requested by authorized persons.

This process proved overly burdensome with a 6 week response time to an inquiry. Kentucky has since revised its program to move away from facsimile inquiries and hardcopy reports to online queries and electronic reports, with between a 15 second and 15 minute response time. This also resulted in a PMP staffing decrease from 10 people to 3 employees.

Kentucky manually reviews approximately 5% of the inquiries. Kentucky receives an average of 1,000 inquiries per day. Kentucky's PMP is funded by both federal grant monies and its state legislature.

The Nevada Board of Pharmacy is very different from Louisiana demographically. The population is substantially smaller and the state has approximately 500 resident pharmacies. Nevada currently allows facsimile inquiries but starting January 1, 2006, it will mandate web-based inquiries. Nevada averages approximately 50 inquiries per day.

In Nevada web-based inquiries can be done in several different combinations to get more robust results. For both solicited and unsolicited reports in Nevada, approximately 80% of the inquiries are from prescribers and 6% are from law enforcement.

Kentucky developed its own electronic program for its PMP. Nevada's program is commercially available and operating in several other states' PMP programs. Nevada's electronic program costs about $200,000 annually.

Impairment issues were raised by several Task Force members. It was observed that boards vary widely in the handling of impaired professionals under their jurisdictions. It was suggested that each board review their current procedures to ensure that any reporting by the Board of Pharmacy to another board relative to the possible impairment of a licensee will not conflict with those internal policies.

Surcharges were also discussed. Mr. Broussard suggested that if the PMP is to operate as a real-time online query tool, a range of $20-$50 is recommended. This fee structure will be placed in the drafted legislation for future consideration by the Legislature.

Mr. Broussard discussed hardware issues. The technology requires 3 separate servers for (1) data storage, (2) web inquiries, and (3) a support server. These separate servers are needed to deter hacking and handle inquiry loads (approx. 25-30 inquiries can be handled simultaneously). Servers range in cost $25,000-$30,000 each.

With regard to staffing, Mr. Broussard suggested an IT specialist would be ideal as would a medical professional, preferably a pharmacist. Additional support staff would also be needed. Salary costs and professional levels will be crucial to determining an appropriate PMP budget.

Review of Draft Legislation

Mr. Broussard explained that current Draft #4 is in legislative bill format with the recommendation that the PMP legislation be placed in Title 40 of the Revised Statutes, specifically, R.S. 40:1000 et seq.

Subsection C – Definitions
The Task Force directed the following terms be defined in the PMP legislation: 'administer', 'dispense', and 'distribute'. La. R.S. 37:1164 of the Louisiana Practice Act will be the source of these definitions.

The definition of *dispenser* was modified as follows:

> *Dispenser* means a person authorized by this state to dispense or distribute to the ultimate user any substance monitored by the program, but shall not include any of the following:
> (a) a pharmacy permitted by the board as a hospital pharmacy that dispenses or distributes any substance monitored by the program for the purposes of inpatient hospital care~~, or that dispenses or distributes no more than a 48-hour supply of such substances to patients at the time of discharge from such facility~~;
> (b) ~~an authorized practitioner who dispenses or distributes no more than a 48-hour supply of such substances to his patients~~;
> (c) a practitioner or other authorized person who administers such substances upon the lawful order of an authorized practitioner; or
> (d) a wholesale distributor of such substances that is credentialed by the Louisiana State Board of Wholesale Drug Distributors.

The definition of *drugs of concern* was modified to clarify that drugs of concern will be identified by Board rule.

Subsection D – Establishment of PMP
Per Senator Gautreaux's request, the Public Bid Law is expressly identified as controlling of any contract(s) executed to provide the electronic system for the PMP.

Subsection E – Advisory Counsel
The following paragraph was added as Subpart E(2):

> *The members of the Advisory Council shall serve at the pleasure of the appointing authority, eleven of whom shall constitute a quorum for the transaction of all business. The members shall elect a chairman and vice chairman whose duties shall be established by the Advisory Council. The Advisory Council shall fix a time and place for regular meetings of the Advisory Counsel and shall meet at least quarterly. The Advisory Council shall establish policies and procedures necessary to carry out its duties.*

Subsection F – Reporting of Prescription Monitoring Information

The diagnostic code was removed from Subsection F(1)(c)'s prescription element requirements.

Subsection F(1)(e)(i), *serial/prescription number assigned to the dispenser*, was redirected for placement as Subsection F(c)(v).

Mr. Bernhard, general counsel for LIPA, requested a safe harbor provision be added to Subsection F(4) to hold immune from liability anyone who accidentally but in good faith reports patient prescription information that is not the subject of the PMP. The Task Force agreed to the concept by consensus.

Subsection G – Access to Prescription Monitoring Information

The Task Force agreed to the concept of restricting access to PMP records for litigation purposes. However, the members requested clarity that this restriction would in no way hinder law enforcement investigations and administrative disciplinary investigations. The following will be added to Subpart G(1):

> *Prescription monitoring information shall not be available for civil subpoena nor shall such information be disclosed, discoverable, or compelled to be produced in any civil proceeding nor shall such records be deemed admissible as evidence in any civil proceeding for any reason. Notwithstanding this provision, law enforcement and administrative agencies may utilize prescription monitoring information in the course of any investigation and subsequent criminal and administrative proceedings.*

Subpart G(5)(e) regarding the judiciary and Subpart G(8) regarding self-authentication were both removed by the Task Force.

Subsection H – Education & Treatment

Subsection H(2) was amended to require that the board and the advisory council implement the relevant educational program(s) for the treatment of addiction to substances monitored by the PMP.

Subsection H(3) was amended as follows:

(a) ~~Work with associations for~~ Refer potential or alleged impaired professionals to their appropriate regulatory agency to ensure intervention, treatment, and ongoing monitoring and follow-up; and

~~(b) Ensure that individual patients who are identified and who have become addicted to substances monitored by the prescription monitoring program receive addiction treatment.~~

Subsection I – Unlawful Acts & Penalties

Subsection (I)(1) was modified as follows to remove criminal references:

> A dispenser who ~~knowingly~~ fails to submit prescription monitoring information to the board as required by this Act shall be referred to the appropriate regulatory agency for administrative sanctions as deemed

appropriate by that agency. ~~Multiple offenders shall, upon conviction, be imprisoned, with or without hard labor, for not more than five years, and in addition, may be fined not more than five thousand dollars.~~

However, Major Pete Tufaro (St. Bernard Sheriff's Dept.) requested his objection to this modification be noted for the record.

Subsections (I)(2) and (I)(3) were modified to add language for referral to the appropriate regulatory agency in addition to possible criminal sanctions therein.

No other changes were made to the current draft of the PMP proposed legislation.

Review of Project Timeline

Mr. Broussard reminded the Task Force that the deadline for the submission of the implementation grant request is December 15, 2005. He will submit the necessary documentation per that deadline.

Calendar Notes

The Task Force will tentatively meet in late January 2006.

Adjournment: The Task Force adjourned at approximately 2:30 p.m.

I certify that the foregoing are true and accurate minutes of a meeting of the Prescription Monitoring Task Force for the State of Louisiana, held on the above noted date.

Malcolm J. Broussard
Executive Director
Louisiana Board of Pharmacy

Prepared by: Carlos M. Finalet, III, General Counsel, Louisiana Board of Pharmacy