

Prescription Monitoring Program Advisory Council State of Louisiana

July 8, 2009

MINUTES

A meeting of the Prescription Monitoring Program (PMP) Advisory Council scheduled to meet on Wednesday, July 8, 2009 at the office of the Louisiana Board of Pharmacy, 5615 Corporate Blvd., Suite 8-E, Baton Rouge, Louisiana 70808, convened at 1:00 p.m. to consider the following:

A G E N D A

1. Call to Order
2. Quorum Call
3. Call for Additional Agenda Items
4. Consideration of Minutes from Prior Meeting – April 8, 2009
5. Annual Election of Chair and Vice Chair
6. Review of Program Operation
7. Consideration of *Regulatory Proposal 2009-1 ~ Drugs of Concern*
8. Consideration of Request for Access Privileges
 - Out-of-State Law Enforcement Agencies
 - Out-of-State Prescribers and Dispensers
 - In-State Licensed Addiction Counselor
9. Opportunity for Public Comment
10. Calendar Notes
11. Announcements
12. Adjourn

Advisory Council representatives/designees present: Dr. J. Michael Burdine (Medical Society), Louis LaJarza (DEA), Brenda Lands (DHH/OAD), Carl W. Aron (LABP), Alfred L. Gaudet (LSBME), Maj. Val Penouilh (State Police), JJ Williams (DA's Association), Peggy Griener (LABN), Col. Peter Tufaro (Sheriff's Association), MJ Terrebonne (DHH), Dr. James W. Quillin (LA Academy of Medical Psychologists), Sophia L. Thomas (LANP), Major Mittendorf (Louisiana Academy of Physician Assistants), Randal Johnson (LIPA), Ward Blackwell (LA Dental Assoc.), Greg Waddell (Senate Health & Welfare), Mary Staples (NACDS), and Crystal Carter (LPA).

Others present: Malcolm J. Broussard (LABP), Kathleen Gaudet (LABP), Kelley Villeneuve (LABP), Sarah Blakey (LABP), Joe Fontenot (LABP), Barry Branton, Robert Murphy, Alison McCampbell, Kevin Devall (State Police), Alan Clesi (DEA), Linda Spradley (Spradley & Spradley, Inc.), Donny Bourgeois (CVS), Bud Courson (NACDS), Shari Pere (McGlinchey Stafford), Lisa Schuster & Marolon Mangham (LASACT), Roy Brown (Choices of Louisiana).

Consideration of Minutes from April 8, 2009 Meeting

Minutes were approved by consensus of the Council.

Annual Election of Chair and Vice Chair

The only nomination for the office of Chair was Carl Aron, made by Dr. Quillin and seconded by Ms. Griener. Mr. Aron was elected by acclamation and assumed the office immediately.

The only nomination for the office of Vice Chair was Peter Tufaro, made by Mr. Williams and seconded by Mr. Gaudet. Col. Tufaro was elected by acclamation and assumed the office immediately.

Review of Program Operation

Mr. Fontenot presented a review of the program's first six months of operation. He reported that 1,643 prescribers and dispensers had acquired access privileges, and that these prescribers and dispensers had performed 159,771 queries of the program's database. In addition, the program had received 365 administrative requests from law enforcement and regulatory agencies. He noted that the program's database had accumulated 11,590,000 prescription records dispensed in or to Louisiana since June 1, 2008.

Ms. Staples asked about the number of prosecutions resulting from the program's information; however, Mr. Fontenot indicated those numbers were not yet available. Mr. Broussard clarified that approximately 20 arrests had been made on the basis of PMP information, but those cases were still early in the adjudication process.

Mr. Fontenot reported that out of approximately 1,600 pharmacies, only one had failed to report into PMP. Since the matter was still incomplete, he did not reveal the name of the pharmacy; however, he reported the pharmacy owner met with the Board's Violations committee and consented to the payment of a \$3,000 fine + administrative costs, and further, agreed to the automatic suspension of his CDS license if he did not achieve full compliance with the reporting requirements by July 15, 2009. The agreement is docketed for Board approval during their August 2009 meeting.

Mr. Fontenot stated that dispensing dentists are required to report their eligible transactions to the PMP database, and that the program had experienced several challenges in obtaining a list of dispensers from the Board of Dentistry. Once a list of dispensers was received, 230 official notices were mailed. Only 15 (6%) dispensing dentists are currently in compliance with reporting requirements. On May 15, 2009 and June 19, 2009 the PMP staff referred a list of non-compliant dentists to the Board of Dentistry. Mr. Fontenot requested advice from the council on how to proceed with enforcement of the reporting requirement for this group of dispensers. Dr. Quillin suggested that LABP remind the Board of Dentistry of the requirement for dentists to report to the system. Mr. Fontenot indicated he would follow up with the Board of Dentistry.

Mr. Fontenot noted that two proposals would be presented to the Board of Pharmacy for its consideration during their August 2009 meeting. The proposals are requests for software enhancements. The first request is on behalf of the practitioners who requested that the vendor modify practitioner reports to print patients' prescription data in chronological order. That proposed enhancement would cost approximately \$500.

The second proposal is to allow law enforcement to have direct online access to requested information. Under the proposal, the agent would enter the search criteria

into the system and submit the request to the PMP staff. Patient data would not be available for viewing until an official request was received and approved by the PMP staff. After approval of the request, the information would be released to the agent for viewing. This proposed enhancement would cost approximately \$30,000. The benefit to the enhancement would be improved response time, and further, would eliminate the need for patient data to be encrypted and emailed.

Dr. Burdine asked if the licensing boards have to submit a subpoena to access PMP data. Mr. Fontenot clarified that these boards have direct access to the program, but only to view the prescribing history of their licensees.

Consideration of Regulatory Proposal 2009-1 ~ Drugs of Concern

Proposed regulatory language:

Chapter 29: Prescription Monitoring Program

Subchapter A. General Operations

§2901. Definitions

As used in this Chapter, the following terms shall have the meaning ascribed to them unless the context clearly indicates otherwise:

** * * * **

“Drugs of concern” means drugs other than controlled substances which demonstrates a potential for abuse, including any material, compound mixture, or preparation containing any quantity of the following substances, including its salts, esters, ethers, isomers, and salts of isomers [whenever the existence of such salts, esters, ethers, isomers and salts of isomers is possible within the specific chemical designation]: (1) butalbital when in combination with at least three hundred twenty five milligrams of acetaminophen per dosage unit, and (2) tramadol.

Mr. Aron reminded the members the proposal had been circulated in advance of the meeting, and that copies were available in their meeting packets. He further reminded the members the council had previously discussed the inclusion of drugs of concern in the program database, and that they had agreed to defer until the program was operational.

Mr. Broussard alerted the members to the adoption of HB 399 by the legislature and the signature of the Governor as Act 165, to become effective on August 15, 2009. That law will place carisoprodol (Soma®) products into Schedule IV of the Louisiana Uniform Controlled Substances Law. He reminded the members that drug had been informally considered for inclusion in the list of drugs of concern, and with passage of the new law, explained the absence of carisoprodol from the regulatory proposal. He then reviewed the proposal and its intent. Ms. Staples asked why these two drugs were not included in the bill to add Soma® to Schedule IV. Mr. Broussard noted the author of the bill was aware of additional drugs and chose only to move forward with Soma®. Mr. Williams pointed out that statistics from the State Police Crime Lab indicate approximately 47% of samples from persons killed in traffic accidents reflect the presence of carisoprodol. Mr. Broussard pointed out that the purpose of defining a drug as a “drug of concern” was to collect information on the drug to determine whether it should be added to the list of controlled substances. Ms. Staples expressed her concern with the use of a list of drugs of concern instead of adding the drugs to the list of controlled substances. She

suggested the information would be easier to capture from the pharmacies if the drugs were scheduled by statute instead of listed by rule, especially if the drugs would be arbitrarily added and removed from the list. Mr. Broussard stated that he did not envision the removal of a drug from the list until the decision was made to add it to the statutory schedule of controlled substances. Mr. Aron further added that the current rate of violations involving certain drugs was a clear indication that certain substances should be added to the list of drugs of concern.

The council offered no suggestions for modification of the proposal. Mr. Aron indicated the proposal was on the docket for consideration by the Board of Pharmacy at their August 2009 meeting.

Consideration of Request for Access Privileges

- Out-of-State Law Enforcement Agencies
- Out-of-State Prescribers and Dispensers
- In-State Licensed Addiction Counselor

Mr. Aron stated that as our PMP becomes more widely known, the Board receives more and more requests for access to program data.

OOS Law Enforcement – The program has received requests from the Mississippi Bureau of Narcotics and two sheriff's agencies along the Louisiana-Mississippi state border. He further noted that the statute did not prohibit agencies from obtaining prescription information. Col. Tufaro stated that he had received a request from a Mississippi sheriff and referred the matter to the PMP program as he did not feel comfortable being involved in a case of which he had no knowledge. Mr. Williams suggested that the matter be placed on the next agenda to give legal counsel appropriate time to consider the legal ramifications of allowing access. He pointed out that a Mississippi subpoena would have no authority in the State of Louisiana. Mr. Broussard also pointed out that the statute requires the law enforcement agency to have an active investigation in order to access the program. Mr. Aron indicated he would continue this matter to give counsel time to research the issue.

Out of State Prescribers and Dispensers – Mr. Fontenot stated that the program has received several requests for program access from out of state prescribers treating Louisiana residents. He stated that a dispenser is defined as someone licensed in "this state." Mr. Broussard stated that out of state prescribers not licensed in Louisiana could not be sanctioned in the event of wrongdoing. He further stated that they do not fund the program. Col. Tufaro further stated that it was his understanding that the Federal Government wanted PMP programs in place in states that could not afford their own program with the ultimate goal to be a national program. The council did not vote to offer any specific suggestions, and deferred to the Board of Pharmacy.

In-State Addiction Counselor – Mr. Fontenot reported he had received a request from a Licensed Addiction Counselor for access privileges to the program's database. He requested guidance from the council. He noted the PMP law allows prescribers, dispensers, and licensing boards to have direct access to the program. He requested guidance from the council as the Board formally considers the request. Dr. Quillin stated that the statutory restriction prohibits them from access and therefore access should not be allowed. Mr. Broussard asked if there should be a statutory revision to enable access for addiction treatment professionals. Col. Tufaro stated that there is no

governing body to sanction counselors who misuse the program. Mr. Aron stated that he would rather see the program remain as restricted as possible. Patients are still free to obtain their own report or have a treating physician request the report. The council did not vote to offer any specific suggestion, and deferred to the Board of Pharmacy.

Opportunity for Public Comment

Mr. Aron recognized a guest in the audience, Mr. Roy Brown, Licensed Addiction Counselor at Choices of Louisiana for public comment. Mr. Brown described how PMP access would be beneficial in methadone treatment centers when the physician is too busy caring for patients to personally perform the queries.

Calendar Notes

The next meeting is tentatively scheduled for October 14, 2009, starting at 1:00 p.m.

Announcements

Mr. Broussard advised the council that Act 314 of the 2009 Louisiana Legislature placed ephedrine, pseudoephedrine, and phenylpropanolamine in Schedule V of the Louisiana Controlled Substances Law, and further, that all over-the-counter (OTC) or non-prescription sales would be restricted to pharmacies.

Mr. Broussard also advised the council that the Legislature amended the PMP law to add the following provisions for individuals reporting suspected drug abuse under information discovered from PMP data:

§1006. Reporting of prescription monitoring information

- E. The Prescription Monitoring Program's agents, a dispenser, or a prescriber may report suspected violations of this Section or violations of any law to any local, state, or federal law enforcement agency, or the appropriate prosecutorial agency for further investigation or prosecution.
- F. No agent, dispenser, or prescriber who in good faith reports suspected violations as provided for in Subsection E of this Section shall be liable to any person or entity for any claim of damages as a result of the act of reporting the information, and no lawsuits may be predicated thereon.

The Council adjourned at 2:45 p.m.

I certify that the foregoing are true and accurate minutes.

Malcolm J. Broussard
Executive Director
Louisiana Board of Pharmacy

Prepared by: Kelley Villeneuve, Office Manager, Louisiana Board of Pharmacy