

**KANSAS STATE BOARD OF PHARMACY
MINUTES OF THE MEETING**

March 8 & 9, 2005
KU School of Pharmacy
Malott Hall, Room 6056
Lawrence, Kansas 66615

Tuesday, March 8, 2005

MEMBERS PRESENT: Jeff Thompson, RPh., President; Frank Whitchurch, RPh., Vice President; Merlin McFarland, RPh.; Max Heidrick, RPh.; Howard Paul, Public Member.

ABSENT: JoAnne Gilstrap, RPh. was not present.

STAFF PRESENT: Debra Billingsley, Executive Secretary; Jim Kinderknecht, RPh., Pharmacy Inspector; LaTonyua Rice, RPh, Pharmacy Inspector; Melissa Martin, Compliance Officer; Reyne Kenton, Compliance Officer, Randy Forbes, General Counsel, Camille Nohe, Assistant Attorney General and Karen Hollon, Administrative Officer.

OTHERS PRESENT: See attached listing.

MEETING CALLED TO ORDER: Jeff Thompson called the meeting to order at 9:15 a.m.

Jeff thanked Dean Audus for hosting the meeting at KU School of Pharmacy. The Dean welcomed the Board to the school.

APPROVAL OF AGENDA AND MINUTES: A motion was made and seconded to approve the agenda (McFarland/Paul). Motion carried (4-0). A motion was made and seconded to approve the November 30/December 1, 2004 minutes (McFarland/Paul). Motion carried (4-0).

LEGISLATIVE UPDATE:

Debra Billingsley advised the Board that HB 2156 regarding pharmacy technician disciplinary language passed through the House 125-0. The Senate Public Health and Welfare passed the bill to the full Senate. The Committee chair offered an amendment on the floor that would strike the language in the statute regarding the pharmacist to technician ratio so that it could be determined by regulation rather than by statute.

HB 2225 regarding renal dialysis was passed through the House 125-0. There was opposition to the bill at the Senate level. The Board needs to adopt regulations that provide a license fee for renal dialysis facilities. No further action taken on the bill.

The drug repository bill HB 2077 was heard in the Senate Public Health and Welfare on March 7, 2005. The language in the bill mirrored Nebraska legislation. This bill was received positively but will be worked by the committee to change some of the verbiage.

SB 27 regarding Methamphetamine has not been set for hearing. The Senate sent over language that was similar to the Oklahoma bill. It contains a penalty against the pharmacist if they sell more than 4 packages. We are asking that the penalty be deleted.

The importation bill, HB 2337, was referred to the Federal and State Affairs Committee. It could be brought up later this year or it may carryover to next year. The Board asked Camille Nohe whether the opinion requested by Rep. Mays had been released yet. Camille advised that the draft had been written and was sitting on General Kline's desk waiting for his signature. She could not say what the opinion result was or when it would be signed. The Board asked about the status of the previous cases that had been sent to the civil division for prosecution. The Board recalled that several letters had been written but that the Board had approved no final resolution. Camille advised that she was unaware of the results of the earlier discussions. She did advise that the Board could submit the cases to the Criminal Division if a violation of criminal law had been committed.

RECESS: The Board took a 5-minute recess.

RECONVENE: The Board reconvened at 9:45 a.m.

ADMINISTRATIVE PROCEEDINGS:

MICHAEL LINDER

Michael Linder appeared in person regarding a request that his license be reinstated. Randall Forbes, Attorney at Law, represented the Board. Max Heidrick recused himself because he had been the investigative member regarding the Respondent's earlier revocation. Mr. Linder's license was revoked following a hearing in 2001. In March of 2004 the Respondent asked that the license be reinstated and that request was denied. After hearing witnesses and reviewing exhibits the Board closed the hearing.

RECONVENE:

The Board reconvened the public hearing at 10:58 a.m. The Board reinstated the Respondent's license under the following conditions: That Linder continue in the Committee on Impaired Pharmacy Practice for an additional 5 years; that the Respondent continue his treatment at Horizons for at least 3 years unless good cause is shown and on recommendation of his physician; that the Respondent provide the Board with reports from his physician every 6 months; that the Respondent not work alone for 5 years; and that the Respondent shall not serve as PIC for 5 years. Any violation will result in

revocation with very little possibility of a license being reinstated. Camille Nohe will draft an Order for the Board's signature stating the findings of fact and conclusions of law and the Board's Order.

JOHN PREBLE #1-09834

John Preble appeared in person and with his attorney, Michael Unrein. Randall Forbes represented the Board. A motion was made and seconded to accept the Stipulation and Final Order as presented (Paul/McFarland). Motion carried (4-0).

KPhA ADVISORY PANEL ON PRESCRIPTION DRUG COSTS

Brian Caswell, President of KPhA presented a report on the Advisory Panel's discussions with the Governor and legislators. KPhA opposed the IsaveRx program instituted by the Governor and asked to have an opportunity to discuss policy regarding cost containment of drugs. KPhA would like to provide access to the working poor and uninsured. To increase accessibility they are looking at different options that are legal pursuant to Kansas and federal law. KPhA would like to be proactive in finding solutions and would like to have an opportunity for input to policy makers in the state.

ADMINISTRATIVE PROCEEDINGS:

RACHEL LECHTENBERG, #1-12515

Rachel Lechtenberg appeared in person. Randall Forbes, Attorney at Law represented the Board. A motion was made and seconded to accept the Stipulation and Final Order as presented (Paul/McFarland). Motion carried (4-0).

KPhA UPDATE:

John Kiefhaber, Executive Director of KPhA reported on some activities that the association has been involved in. They recently issued a legal statement in response to the Attorney General's request for comments regarding importation. The Association legal counsel determined that the IsaveRX program is illegal and KPhA supported the Board of Pharmacy position.

The Association has been active in the legislative process this session. The Meth bill is still being reviewed and amendments are being discussed. The drug repository bill was opposed last year but the Association was neutral this year based on changes that were made. The bill was reduced to cancer drugs only.

KPhA is discussing mandatory membership. This would include providing additional service components and extended benefits to all members. They would like to provide more education to their members and be a resource to them.

The Tripartite members, Ken Audus, Deb Billingsley and John Kiefhaber, have been meeting and they will become more formalized in the future. Howard Paul asked John to address the Association's position regarding an increase in board fees. John said they had not discussed this issue.

RECESS: The Board took a break for lunch until 1:15 p.m.

DRUG PEDIGREE WHOLESALE DISTRIBUTION

Charisse Johnson, Pharm D., MS the Professional Affairs Manager of the NABP provided a power point presentation regarding drug pedigrees and the NABP's new VAWD program. To help protect the public from the threat of counterfeit drugs infiltrating the United States' drug supply, the VAWD program will accredit wholesale distributors whose policies and operations meet the VAWD criteria and comply with state and federal laws.

TABLET SPLITTING ISSUE:

Kent Richardson, RPh discussed the strategy of splitting those prescription medications that can be easily divided. Only certain medications lend themselves to division because medications have many subtle features that control their function. Time released medications, for example, must remain intact. Richardson explained the efficacy of pills that had been split and provided test results. This presentation was informational only and the board took no position on the issue.

BRYAN SIMPSON, #1-13293

Bryan Simpson did not appear. Counsel, Randall Forbes, Attorney at Law represented the Board. A motion was made and seconded to approve the Stipulation and Final Order as presented (Paul/McFarland). Motion carried (4-0).

ELECTRONIC PRESCRIBING:

The Board discussed amending K.A.R. 68-2-22 as it relates to electronic prescription transmissions. The Board directed Randy Forbes to draft a regulation that would revise section (b)(1) to state, “ (b)All prescription drug orders communicated by way of electronic transmissions shall fulfill these requirements: (1) Be transmitted to a pharmacist in a licensed pharmacy of the patient's choice, exactly as transmitted by the prescriber.” The Board directed that this change be forwarded to the Department of Administration forthwith so that the change could move forward.

BUDGET:

Thus far, the legislature has approved the Governor's recommendation that the Board's spending authority for 2005 be cut to 588,830. The recommendation included a supplemental amount of 111,000 for the purpose of purchasing regulatory software. The legislature has also cut the FY06 spending authority to 589,017 and FY07 to 599,209. There was no consideration given for a car allowance. The Board's expenses are greater than the amount brought in from fees and the legislature recommended that the Board increase fees to meet their expenditures. The executive secretary recommended an increase of \$200,000 to provide for expenses as well as a cushion. The Board rejected increasing fees at this time. Jeff Thompson will work with Debra to determine whether a fee increase is warranted.

Discussion was also made to implement a fee for renal dialysis pharmacies and to adopt regulations charging said fee. A motion was made and seconded to adopt an initial fee of \$140 and a renewal fee of \$125 (Whitchurch/McFarland) Motion carried (4-0). Randy Forbes was directed to draft a fee regulation and to submit it to the Department of Administration.

KANSAS PHARMACY FOUNDATION UPDATE:

Harold Godwin R.Ph, MS, FASHP, provided information regarding the Foundation's mission statement. The Foundation has paid off their mortgage and is considering raising funds to support the profession of pharmacy and support public health. The executive board has been working on a strategic plan and goals for the future. Harold discussed educational needs of pharmacy technicians and whether the Board had a vision for technicians. The Board encouraged Harold to continue providing input in this area.

Harold also advised the Board that the School of Pharmacy is reviewing the requirement of criminal backgrounds on students. Part of the purpose is to make sure that students don't go through school and apply to the board only to find out they can't get licensed after paying years of tuition.

INVESTIGATIVE REPORTS:

Frank Whitchurch, Vice-President and Investigative member provided the Board with information regarding investigations that are closed.

ADJOURNMENT:

The Board adjourned at 4:20 p.m. The Board will reconvene at 9:00 a.m. on March 9, 2005.

Wednesday, March 9, 2005

MEMBERS PRESENT: Jeff Thompson, R.Ph., President; Frank Whitchurch, R.Ph., Vice-President; Merlin McFarland, R.Ph.; Max Heidrick, R.Ph.; and Howard Paul, Public Member.

ABSENT: JoAnne Gilstrap, R.Ph.

STAFF PRESENT: Debra Billingsley, Executive Secretary; Jim Kinderknecht, R.Ph., Pharmacy Inspector; LaTonya Rice, R.Ph., Pharmacy Inspector; Melissa Martin, Compliance Officer; Reyne Kenton, Compliance Officer; Randall Forbes, General Counsel.

OTHERS PRESENT: See attached listing.

MEETING CALLED TO ORDER:

Jeff Thompson called the meeting to order at 9:00 a.m.

LEGISLATIVE UPDATE:

Debra Billingsley provided additional information regarding federal and state legislation that is pending.

BOARD MEMBER REPORTS:

Merlin McFarland reported that he had been involved in discussions regarding Canadian drugs. He had gone to the House Health and Human Services Committee on February 23, 2005 where testimony was taken as it related to re-importation. Chris Ward of Ward Health Strategies and a former Government House Leader from the Province of Ontario spoke as well as Debra Billingsley and John Kiefhaber. Merlin said that he felt that the Board was well represented and the bill passed out of the Committee favorably.

Jeff Thompson stated that he had been working on the compounding regulations with Randy. They had received the first draft from the Department of Administration recommending various changes in grammar and authority. The Joint Commission has set 2008 as the year for compliance. They do expect pharmacies to have an action plan in place. Jeff predicted that it would 6-9 months before the regulation would be completed and ready for public hearing. Jeff advised that he would like Jim Kinderknecht to think about what type of expectations the inspectors would have regarding compliance with regulations. The clean room would have to be certified and if out of compliance they would be given 90 days to comply.

Jeff also asked that staff put something on the Board website that would provide a list of those persons being audited for CE. He also asked that something be placed on the application so that pharmacists would know what the expectations were regarding their CE compliance.

Frank Whitchurch reported that he, Debra, Jim and Melissa had gone to Walgreens in Kansas City to review their incident reporting system. There was discussion as to whether the Board would approve of this system rather than a paper based system. The Board agreed to permit staff to use the system in Greg Schmack's district for a period of three months and then to report back to the Board whether this would be a feasible alternative.

Frank also gave an update on the telepharmacy task force's most recent meeting. A decision was made to identify issues and to create regulations that do not negatively impact anyone. Telepharmacy can exist to enhance current practices. Frank provided that the technology is available and provides for accountability, however, the committee is mindful that they do not want to impact bricks and mortar pharmacies. Randy Forbes looked at the language regarding pilot programs and he opined that there was no authority for a pilot program in our statutes.

Frank also passed out a copy of Osco's central training manual. It provides for a 40-hour training course and provides a career path for pharmacy technicians. They would like to keep the blue books out of the stores and use training classrooms. The Board reviewed

the training manual and approved the Osco policy regarding training and upkeep of their manual.

Max Hiedrick advised the Board that he thought they should keep up with the budget issue. He reassured the office staff that they would not put the agency in a bind as it related to budget and other legislative matters.

Max discussed the DEA's recent ruling regarding the use of multiple prescriptions and how it was affecting pharmacies. Max encouraged everyone to contact the DEA prior to the March 21 deadline for submission of comments regarding their policy on dispensing controlled substances. Written comments should reference Docket No. DEA-261 and be sent to the Deputy Administrator, DEA, Washington, DC 20537 Attention: DEA Federal Register Representative/CCD.

Max advised that he thought the Tripartite between the school, the Board and the Association was a good idea. It appears that there is a lot of dialogue and an exchange of ideas that will help everyone involved.

Max also discussed whether the Board should consider an interim President should Jeff Thompson not be reappointed for a second term on the Board. Howard Paul made a motion that JoAnne Gilstrap be appointed as interim President in the event there is a reappointment gap leaving the presidency vacant. Merlin McFarland seconded the motion. Motion carried. (4-0).

STAFF REPORTS

Debra Billingsley advised the Board that they would need to consider whether to send anyone to New Orleans for the NABP meeting. Reservations would need to be made prior to April 15 so everyone needs to contact the Board office with this information.

APPROVAL OF 50 YEAR CERTIFICATES:

A motion was made and seconded to approve the 50-year certificates (Heidrick/McFarland). Motion passed (4-0).

APPROVAL OF NEW LICENSES/REGISTRATIONS:

A motion was made and seconded to approve the new pharmacist licenses and pharmacy registrations (Heidrick/McFarland). Motion carried (4-0).

ADJOURNMENT: Jeff Thompson adjourned the Board meeting at 11:00 a.m.