

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

June 12 & 13, 2007
Hayden Office Building
Conference Room
212 W. 8th
Topeka, KS 66612

Tuesday, June 12, 2007

MEMBERS PRESENT: JoAnne Gilstrap, RPh., Vice President; Dr. Shirley Arck, Pharm.D.; Michael Coast, R.Ph.; Frank Whitchurch, R.Ph.; Karen Braman, R.Ph.,M.S.; and Nancy Kirk, Public Member.

STAFF PRESENT: Debra Billingsley, Executive Secretary; Jim Kinderknecht, RPh., Pharmacy Inspector; Carly Haynes, R.Ph., Pharmacy Inspector; Tom Frazier, R.Ph. Pharmacy Inspector (Arrived at 1:00 p.m.); Melissa Martin, Compliance Officer; Reyne Kenton, Compliance Officer; Randall Forbes, General Counsel, and Karen Hollon, Administrative Officer.

OTHERS PRESENT: See attached listing.

MEETING CALLED TO ORDER: JoAnne Gilstrap called the meeting to order at 9:00 a.m.

INTRODUCTION OF NEW BOARD MEMBERS

The Board welcomed new Board members Frank Whitchurch, R.Ph. and Karen Braman, R.Ph.,M.S. Frank Whitchurch is succeeding Max Heidrick and Karen Braman is succeeding Merlin McFarland on the Board.

APPROVAL OF AGENDA. A motion was made and seconded to approve an amended agenda. (Coast/Whitchurch). The agenda was amended to add discussion regarding Telepharmacy regulations and to continue Donald Gardner Case No. 07-27 to the September meeting. Pamela Stoddart, Case No. 07-25 was deleted based on a request by the Respondent that her request for reinstatement be withdrawn. Motion carried 5-0.

APPROVAL OF MARCH BOARD MINUTES A motion was made and seconded to approve the March 2007 minutes. (Arck/Coast). Motion carried 5-0.

ELECTION OF OFFICERS

A motion was made and seconded to elect Shirley Arck, Pharm.D. as Vice-President of the Board of Pharmacy for 2007/2008. (Coast/Whitchurch). Motion carried 6-0. A motion was made and seconded to elect Mike Coast, R.Ph. as President of the Board of Pharmacy for 2007/2008. (Arck/Whitchurch). Motion carried 6-0.

CIPP SUMMARY REPORT AND BUDGET REVIEW

Jenith Hoover, Associate Executive Director of KPhA provided the annual summary report for FY 2007 for KPhA's Committee on Impaired Pharmacy Practice. The Committee contracts with Heart of America Professional Network (HAPN), a consortium of referral and recovery programs for healthcare professionals. John Childers, LMSW the Executive of Director of HAPN was present and provided additional information. This is the 19th year that CIPP has been in place. The Board reviewed the 2007 budget and referral statistics as well as the proposed budget for 2008. A motion was made and seconded that the contract be approved in its present form but the Board's counsel draft an amendment regarding timeliness of initial evaluations, i.e. ten calendar days. The Board will review the draft at the September meeting. (Whitchurch/Gilstrap). Motion carried 5-0.

RECESS:

The Board recessed until 10:30 a.m.

RECONVENE: President Coast reconvened the meeting at 10:30 a.m.

ADMINISTRATIVE PROCEEDINGS

PETER FORRESTER, R.Ph. Case No. 07-41

The Respondent appeared in person. The Board appeared through its counsel, Randall Forbes. The matter was before the board on a pharmacist license application. The Respondent had been revoked in the state of California and Nevada for insurance fraud. Mr. Forrester provided information to the Board that he had not been able to go before the California Board because he needed the names of two licensed California pharmacists that would certify that he was of good moral character. A motion was made and seconded to adjourn until 10:52 into executive session for the purpose of deliberations.(Gilstrap/Arck). Motion carried 5-0. A motion was made and seconded to deny the application (Arck/Braman). Motion carried 5-0.

JAY PARKER Case No. 07-38

The Respondent appeared in person and through counsel, Darin Conklin of Alderson, Alderson, Weiler, Conklin, Burghart & Crow, LLC. The Board appeared through its counsel Randall Forbes. The matter was before the board on an application for pharmacy technician registration. A motion was made and seconded to go into executive session to deliberate until 11:25 a.m.. (Gilstrap/Arck). Motion carried 5-0. A motion was made and seconded to approve the application for registration as a pharmacy technician. (Arck/Braman). Motion carried 5-0.

JEAN APPELHANZ, R.Ph. Case No. 07-31

The Respondent did not appear but was represented by counsel, Darin Conklin, of Alderson, Alderson, Weiler, Conklin, Burghart, & Crow, LLC. The Board appeared through its counsel Randall Forbes. The matter was before the Board on a Petition to Revoke, Suspend, or Otherwise Discipline the license of Jean Appelhanz, R.Ph. The parties provided the Board with proposed discipline in the form of a Stipulation which provided that the Respondent would surrender her license in lieu of a disciplinary proceeding but that it would be reported as a revocation to the data banks. The Respondent would not be permitted to request reinstatement for a period of five years. A motion was made and seconded to accept the Stipulation. (Arck/Braman). Motion carried 4-0.

NOEL MCBRIDE CASE NO. 06-45

The Respondent did not appear. No formal action taken by the Board.

RECESS: A motion was made and seconded to recess for lunch until 1:00 p.m. (Gilstrap/Whitchurch). Motion carried 5-0.

RECONVENE: President Coast reconvened the meeting at 1:00 p.m.

ROBERT SIMS Case No. 07-47

The Respondent appeared in person. The Board was represented by its attorney, Randall Forbes. John Childers, LMSW, appeared on behalf of the Respondent as a representative of HAPN. The matter was before the Board on an application for reinstatement of a pharmacist license. A motion was made and seconded to adjourn until 1:25 p.m. into executive session for the purpose of reviewing confidential information. (Kirk/Whitchurch). Motion carried 5-0. A motion was made and seconded to adjourn until 1:50 p.m. in executive session for the purpose of deliberations. (Gilstrap/Arck). Motion carried 5-0. A motion was made and seconded to reinstate the Respondent after he takes and passes the NAPLEX and MPJE. He is to enter into a Stipulation with the Board requiring CIPP compliance for 5 years. If he changes jobs he is to notify the Board within 5 days of the change. (Arck/Gilstrap). Motion carried 5-0.

KELLSTROM PHARMACY Case No. 07-14

The Respondent did not appear. The Board was represented by its attorney, Randall Forbes. The Board was provided with a Stipulation and Final Agency Order. The proposed discipline was a fine in the amount of \$200 for permitting a pharmacy technician to counsel a patient on a prescription; \$100 for employees having no nametags; and \$500 for a technician ratio violation. A motion was made and seconded to accept the Stipulation and Final Agency Order (Whitchurch/Braman). Motion carried 4-0.

TARGET PHARMACY Case No. 06-16

The Respondent did not appear. The Board was represented by its attorney, Randall Forbes. The Board was provided with a Stipulation and Final Agency Order. The

proposed discipline was a fine in the amount of \$500 for having a drop off box and \$500 for incomplete incident reports. A motion was made and seconded to accept the Stipulation and Final Agency Order. (Arck/Whitchurch). Motion carried 4-0.

WALGREENS PHARMACY Case No. 07-02

The Respondent did not appear. The Board was represented by its attorney, Randall Forbes. The Board was provided with a Stipulation and Final Agency Order. The proposed discipline was a fine in the amount of \$500 for violating the technician ratio and \$100 for employees having no nametags. A motion was made and seconded to accept the Stipulation and Final Agency Order. (Arck/Whitchurch). Motion carried 4-0.

WALGREENS PHARMACY Case No. 07-13

The Respondent did not appear. The Board was represented by its attorney, Randall Forbes. The Board was provided with a Stipulation and Final Agency Order. The proposed discipline was a fine in the amount of \$500 for having incomplete incident reports. A motion was made and seconded to accept the Stipulation and Final Agency Order. (Arck/Whitchurch). Motion carried 4-0.

WALGREENS PHARMACY Case No. 06-63

The Respondent did not appear. The Board was represented by its attorney, Randall Forbes. The Board was provided with a Stipulation and Final Agency Order. The proposed discipline was a fine in the amount of \$1000 for failing to register a technician and permitting her to work at numerous locations. A motion was made and seconded to accept the Stipulation and Final Agency Order. (Braman/Whitchurch). Motion carried 4-0.

INVESTIGATIVE REPORT

Presented by JoAnne Gilstrap, Vice President /Investigative Member

The Board reviewed closed cases.

REVIEW OF GUIDELINES FOR NUCLEAR PHARMACY TECHNICIAN TRAINING

A request was made by CardinalHealth to approve a nuclear training program for pharmacy technician certification in order to permit nuclear pharmacies to have a 3 to 1 ratio because PTCB does not address the nuclear setting. The Board has interpreted the regulation to require either passage of the PTCB or a test that has been approved as an equivalent examination to the PTCB in order to have a 3 to 1 ratio. The Board stated that it would be difficult to approve an education program for a certain type of pharmacy practice based on whatever type of setting they are in because the technician could move to a different setting and still be considered certified. All technicians receive site specific training related to basic levels of functionality just to register but the PTCB tests a basic body of knowledge that is more in-depth in order for the technician to be certified. The Board took no action regarding this matter.

DISCUSSION REGARDING TRANSFERS OF PRESCRIPTIONS BY PHARMACY INTERNS/STUDENTS

The Board of Pharmacy proposed a modification of the regulation KAR 68-2-19 to authorize students and interns be involved in the transfer process. It was approved by the Dept. of Administration but the Attorney General objected to the regulation for various reasons such as having no legal authorization. Federal law appears to not permit a student or intern to transfer controlled substances. The Board has been trying to make this regulation consistent with the statute and KAR 68-2-20 which permits a pharmacy student or intern to do anything a pharmacist can do other than the final check. The Board currently permits interns to transfer prescriptions but they would like the regulations to be consistent. The Board directed the Attorney for the Board to continue working with the Attorney General to get the regulation amended.

RECESS: The Board took a ten minute recess until 3:15 p.m.

RECONVENE: President Coast called the meeting back to order at 3:15 p.m.

DISCUSSION REGARDING K.A.R. 68-7-14 Prescription Labels

The Board reviewed a draft of an amendment to KAR 68-7-14. A request was made that the Board redraft the regulation so that it does not use an acronym that is not commonly used in the medical field. Frank Whitchurch noted that there is a bigger issue of prescribing authority that also needs to be addressed. The Board directed the attorney to redraft the regulation so that if a PA or ARNP are on the prescription but a physician is not that there is no requirement that the supervising physician's name be on the label. The Board attorney suggested that this might invite people to leave it off, however, if the prescription does not have the physician name it will no longer be required.

DISCUSSION REGARDING EMERGENCY PREPAREDNESS

Karen Braman and Rich Bieber provided the Board with information regarding the tornado at Greensburg, Kansas. Both individuals provided assistance to the pharmacy owner in searching and retrieving inventory. The Board discussed what role the Board should play in an emergency situation and whether they should have an emergency policy in place. The Board reviewed a copy of the NABP model policy regarding emergency preparedness. The State of Kansas is currently evaluating the Greensburg response and staff will check with the Governor's office regarding the evaluation and report back to the Board in September.

SPECIAL PRESENTATION TO MAX HEIDRICK, R.Ph. and MERLIN MCFARLAND, R.Ph. FOR APPRECIATION OF UNSELFISH SERVICE TO THE PROFESSION OF PHARMACY

A special presentation was made to Max Heidrick, R.Ph. for his service and leadership to the profession of pharmacy. Max served as a member of the Board from 2000 until 2003 and was reappointed in 2004 until 2007. The Board acknowledged his volunteer service.

ADJOURNMENT A motion was made and seconded to adjourn the meeting until 9:00 a.m. Wednesday, June 13, 2007. (Arck/Gilstrap). Motion carried 5-0.

Wednesday, June 13, 2007

MEMBERS PRESENT: Michael Coast, R.Ph., President; Shirley Arck, Pharm.D., Vice-President; JoAnne Gilstrap, R.Ph.; Frank Whitchurch, R.Ph., Karen Braman, R.Ph., M.S.; and Nancy Kirk, Public Member.

STAFF PRESENT: Debra Billingsley, Executive Secretary; Jim Kinderknecht, R.Ph., Pharmacy Inspector; Carly Haynes, R.Ph. Pharmacy Inspector; Tom Frazier, R.Ph., Pharmacy Inspector; Reyne Kenton, Compliance Officer; Melissa Martin, Compliance Officer, Randall Forbes, General Counsel, and Karen Hollon, Administrative Assistant.

OTHERS PRESENT: See Attached Listing.

MEETING CALLED TO ORDER:

President Coast called the meeting to order at 9:00 a.m.

ADJOURNMENT: President Coast adjourned the meeting for public hearing at 9:00 a.m.

PUBLIC HEARING FOR PROPOSED REGULATIONS

K.A.R. 68-7-11. Medical Care Facility Pharmacy

The Board office received a letter from the Joint Committee on Administrative Rules and Regulations. No other correspondence was received by the Board and there were no comments from the public.

MEETING CALLED TO ORDER

President Coast, R.Ph. called the meeting back in to regular session. A motion was made and seconded to adopt regulation K.A.R. 68-7-11 regarding Medical Care Facility Pharmacies (Arck/Kirk). Motion carried 5-0. A roll call vote was taken as follows: JoAnne Gilstrap, R.Ph. – Yes; Shirley Arck, Pharm.D. – Yes; Frank Whitchurch, R.Ph. – Yes; Karen Braman, R.Ph., B.S. – Yes; Nancy Kirk- Yes; Mike Coast – Yes. Regulation passed unanimously. The regulation will become effective 15 days after being published in the *Kansas Register*.

ADJOURNMENT: President Coast adjourned the meeting for public hearing.

PUBLIC HEARING FOR PROPOSED REGULATIONS

K.A.R. 68-7-12 Responsibility of pharmacist in charge in other than a medical care facility

The Board staff provided the Board with a letter from the Joint Committee on Administrative Rules and Regulations. There was no other communication sent to the Board office and there were no comments from the public.

MEETING CALLED TO ORDER.

President Coast, R.Ph. called the meeting back into regular session.

A motion was made and seconded to adopt K.A.R. 68-7-12 regarding Responsibility of pharmacist in charge in other than a medical care facility (Arck/Gilstrap). Motion carried 5-0. A roll call vote was taken as follows: JoAnne Gilstrap, R.Ph. – Yes; Shirley Arck, Pharm.D. – Yes; Frank Whitchurch, R.Ph. – Yes; Karen Braman, R.Ph.,B.S. – Yes; Nancy Kirk – Yes; Mike Coast –Yes. Regulation passed unanimously. The regulation will become effective 15 days after being published in the *Kansas Register*.

DISCUSSION REGARDING SHARED SERVICE REGULATION

The Board reviewed the shared service regulation in order to provide guidance to interested parties. Individual pharmacists can contract with a pharmacy or be employed by a pharmacy in order to provide shared service consulting from an outside location. The pharmacy that they are employed with or contracting with is responsible for their actions and may be held responsible for violations along with the licensed pharmacist. The individual pharmacist may not hire anyone to work for him or with him such as a pharmacy technician. Any business conducting shared services (not an individual) must be licensed as a pharmacy with the Board. Consulting businesses that are not licensed as a pharmacy may not provide shared services. The Board determined that the regulation should be amended to require nonresident pharmacies have a PIC that is licensed in Kansas. The Board's counsel was directed to draft an amendment that states this new provision. The Board will not review business plans or contracts for individuals or pharmacies for compliance.

DISCUSSION REGARDING NABP SPRING MEETING

COMPOUNDING The Board reviewed the compounding regulations. The Board directed the General Counsel to change reference date of the USP 797 to 2007 rather than 2005. Staff advised the Board that the FDA was reviewing our regulations and that they might have suggestions although it would be up to the Board whether to accept them. The Board staff will provide inspection training to the inspectors who were not present at the NABP spring meeting.

PEDIGREE The Board would like to have legislation drafted regarding Pedigree for the September meeting. The Board will ask Max Heidrick to assist with this project along with Mike Coast and Karen Braman.

CQI PROGRAMS

Frank Whitchurch provided a handout regarding different programs from NABP regarding human error. Frank advised the Board that they used CQI at Prescription Solutions and that it is beneficial in reducing errors. Frank suggested that the Board require implementation for all pharmacies but that as a first step that pharmacy records should be protected legally from discovery. Nancy Kirk agreed to assist Frank Whitchurch and that they would meet with legal counsel to discuss implementation of a CQI program in Kansas.

TELEPHARMACY

The Board reviewed the draft for telepharmacy. They discussed the mileage radius and assigned Joanne Gilstrap, Frank Whitchurch, Merlin McFarland, and Mike Coast to amend the current draft for telepharmacy.

LEGISLATIVE UPDATE

The Board discussed HB 2578 regarding donated drugs. This bill will most likely be coming up again and the Board needs to review it Shirley will review the statute with Deb to determine whether the Board will be supporting any changes. The Board discussed nursing home consulting regulations. We have had a lot of requests from the Dept. of Aging for specifics on how drugs should be secured, etc. The Board recommended that we draft regulations that provide guidance to the nursing homes as it relates to drugs and consulting pharmacists. Frank Whitchurch had been working previously on pharmacy classifications. He will continue to work on that project. K.A.R. 68-20-23 Limitation on Controlled Substances has been sent for review but has not been returned to the Board for public hearing.

BOARD MEMBER REPORTS

JoAnne Gilstrap, R.Ph. requested information regarding on-line renewals. She suggested that the Board staff provide hard copies if the applicant has difficulty with the computer or no access to a computer. The Board suggested we give an incentive for filing on-line. The Board staff will work with the Board attorney to determine whether any regulations should be amended. The Board discussed the continuing education issue and whether the applicants should list all CE or let the staff request it at the time of audit. It was determined that the applicant should list all of their CE when they renew as it is not that time consuming. The Board also reviewed whether to permit Category I medical education because our regulation does not currently accept it. The regulation will need to be changed in order to accept the Category I CME.

JoAnne also advised the Board that the DEA had relaxed some rules related to CII drugs. The Board staff will review this issue to determine what changes have been made and whether information should be sent out to the licensees. JoAnne thanked Carly, Reyne, Melissa, Jim and Tom for their hard work on investigations. She appreciated working with them as the Vice-President and acknowledged the time and effort they put into each investigation.

Shirley Arck, Pharm.D. thanked JoAnne for her two years of service as Vice-President and Investigative Member. It takes a lot of personal time and was appreciated by all of the Board and staff. Shirley also advised the Board that she looked at some national statistics compared to CIPP statistics on recovery from drug and alcohol addiction and the CIPP statistics are very good. She thought that they were doing a good job and should be commended.

Frank Whitchurch, R.Ph. discussed whether we should continue leaving the disciplined cases names out of the newsletter. The Board recommended leaving all names out unless revoked or suspended and just putting statistical information as to the type of cases that are being disciplined. The information related to discipline can be found on the Board website and in the minutes of each Board meeting.

Frank advised the Board that the Arkansas newsletter had some good topics. One was in reference to pharmacist using their hands to count pills and that it would be a deficiency if they were caught by board inspectors. Frank also brought up the article that defined a physician patient relationship in an effort to combat internet violations. The Board directed the Board counsel to draft a regulation that would assist with online pharmacy violations.

Karen Braman, R.Ph.,M.S. advised that she was excited to be working with everyone as a member of the Board and that she looked forward to the next three years.

EXECUTIVE DIRECTOR REPORT

The Executive Director advised the Board that she was working with K-State on a drug disposal issue. Ms. Billingsley requested an opinion from the Board regarding whether a pharmacy could close over noon and have a technician outside the pharmacy area taking new prescriptions from patients. The Board stated that this would be a violation.

The following meeting dates for Board meeting were scheduled as follows: December 11 & 12, 2007; March 4 & 5, 2008 in Lawrence, Kansas; and June 10 & 11, 2008.

The Kansas Board will be hosting the NABP District VI Meeting on October 24-26. Frank Whitchurch advised that he would be able to help set up some continuing education for the meeting.

APPROVAL OF NEW LICENSES AND REGISTRATIONS

A motion was made and seconded to approve the new pharmacist's licenses and pharmacy registrations. (Gilstrap/Whitchurch) Motion carried 5-0.

EXECUTIVE SESSION – PERSONNEL

A motion was made and seconded to adjourn until 12:35 into executive session for personnel.

RECONVENE. President reconvened the meeting.

ADJOURN.

