

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

December 2 & 3, 2003  
AmeriSuites  
6021 SW 6<sup>th</sup> Ave.  
Topeka, Kansas

**Tuesday, December 2, 2003**

**MEMBERS PRESENT:** Mike Hurst, RPh., President; Frank Whitchurch, RPh., Vice President; Merlin McFarland, RPh.; Jeff Thompson, RPh.; JoAnne Gilstrap, RPh.; Howard Paul, Public Member.

**STAFF PRESENT:** Debra Billingsley, Executive Secretary; Jim Kinderknecht, RPh., Pharmacy Inspector; LaTonyua, Rice, Pharm.D., Pharmacy Inspector; Reyne Kenton, Compliance Officer; Melissa Martin, Compliance Officer; and Randy Forbes, General Counsel.

**OTHERS PRESENT:** See attached listing

**MEETING CALLED TO ORDER:** Mr. Hurst called the meeting to order at 9:00 a.m.

**ACCEPTANCE OF THE MINUTES:** A motion was made and seconded to accept the minutes as amended of the September 16-17-, 2003 Board Meeting (McFarland/Thompson). Motion carried.

**AMENDMENT OF OCTOBER 1, 2002 BOARD MEETING MINUTES:** The Board had a discussion regarding a proposed amendment to the minutes of October 2002. The October minutes indicated that Helen Beteet and Paul Hartz from OSCO Pharmacy provided information to the Board regarding an audit at OSCO. Ms. Beteet and Paul Hartz were witnesses only and were not appearing before the Board for any disciplinary matter. A motion was made and seconded to amend the October 2002 Minutes clarifying Beteet and Hartz' role at the meeting. (Whitchurch/Gilstrap). Motion carried 5-0. A letter will be sent to Ms. Beteet and Mr. Hartz advising that the minutes have been amended.

**APPROVAL OF KPhA POLICIES AND PROCEDURES MANUAL:** Jennith Hoover, Associate Director of the Kansas Pharmacist's Association presented a copy of the Policy and Procedure Manual created by KPhA. Current regulations require pharmacies to develop written procedures regarding their respective pharmacy work functions. The Board discussed with Ms. Hoover that the manual presented would be a prototype of information necessary to meet the regulatory requirements. The manual would be a model from which to build a policy specific to the particular area of practice when properly filled out. A motion was made and seconded to recognize KPhA's Policy and Procedure Manual as a useful tool subject to it being completed with regulatory and site specific information. The motion directed that a revised cover sheet be provided to

the Board Executive Secretary with language setting forth that the manual is a model only and must include regulatory and site specific information for it to meet legal requirements. (Paul/McFarland). Motion carried 5-0.

**VACCINATION PROTOCOL:** John Kollhoff and John Warden, both students at the University of Kansas School of Pharmacy, discussed with Board a proposal to amend K.S.A. 65-1635a that would grant pharmacy students the authority to administer immunizations. The students indicated that they would continue working on this proposal and would speak with other health care providers and associations prior to seeking new legislation. A motion was made to support the student's proposal. (Whitchurch/McFarland). Motion carried 5-0. Mike Hurst asked Mr. Kollhoff and Mr. Warden to give their written proposal to the Executive Secretary and to keep the Board apprised of their progress.

**RECESS:** Mr. Hurst recessed at approximately 10:30 am.

**RECOVENE:** The Board meeting reconvened at 10:40 am.

**TRAVIS D. SCOTT REINSTATEMENT REQUEST:** Travis D. Scott appeared before the Board requesting reinstatement of his license. A motion was made and seconded to go into executive session to deliberate for approximately 20 minutes. Those included in the session were the Board, Debra Billingsley and Randy Forbes. At the conclusion of the executive session the meeting is to be continued in open session. (Thompson/Gilstrap). Motion carried 5-0.

**RECONVENE:** The Board meeting reconvened at 11:00 a.m. with all members present as previously stated.

**JERRY L. LOVERN :** Mr. Lovern appeared pro se. The Board had continued this case from the September Board meeting. Additional information was provided to the Board regarding Mr. Lovern's work history as well as his record keeping practices. A motion was made and seconded to go into executive session to deliberate for approximately 15 minutes. Those included in the executive session were the Board, Debra Billingsley, Randy Forbes, LaTonyua Rice, and Jim Kinderknecht. At the conclusion of the executive session the meeting is to continue in open session. (Thompson/Whitchurch). Motion carried (5-0).

**RECONVENE:** The Board meeting reconvened at 11:45 am with all members present as previously stated. A motion was made to fine Jerry Lovern \$5,000 with \$500 to be paid within ten days. The remaining \$4,500 will be suspended if no other violations committed within the next three years. The Board would further place Mr. Lovern on three years probation and require the Respondent to take the Pharmacist-in-Charge Examination within 30 days of issuance of the Final Agency Order. (Gilstrap/Whitchurch). Motion carried 5-0.

**LOUIE A. FERRO, Jr:** The Board reviewed a journal entry of conviction regarding Louis A. Ferro, Jr. A motion was made and seconded to summarily revoke Mr. Ferro's license (McFarland/Thompson). Motion carried 5-0.

**CANADIAN PHARMACIES:** The Board continued their discussion regarding the importation of drugs into the United States. In August the Attorney General's office sent letters to three businesses regarding compliance with Kansas law and their use of the name "Rx" or "drugs". Marty Snyder advised the Board that the Attorney General's Office probably would not have the resources or staffing to handle a case of this magnitude for prosecution.

**RECESS:** The Board recessed at 12:15 p.m.

**RECONVENE:** The Board reconvened at 1:05 p.m. with all members present as previously stated.

**SCRIPT PRO PHARMACY AUTOMATIVE PRESENTATION:** Rob Johnson, Tracy Thomas, Joe McCormick and Dave Reigel from ScriptPro gave a power point presentation on telepharmacy. The Board discussed regulatory changes that would be necessary to implement telepharmacy in Kansas.

**CANADIAN PHARMACIES:** (Continued) A motion was made and seconded to direct Randy Forbes to research the legality of foreign importation of drugs into Kansas. (Paul/Thompson). Motion carried 5-0.

**SHARED ORDER FILLING AND PROCESSING:** Frank Whitchurch advised the Board as to the status of the shared order filling regulations. K.A.R. 68-7-20 has been redrafted and is now ready for public hearing and having been approved by Camille Nohe in the Attorney General's office. The Board discussed that the filling pharmacy needs to be registered in Kansas. The shared pharmacy needs to be registered in Kansas as either a resident or non-resident pharmacy and the pharmacist at the shared filling pharmacy needs to be licensed in Kansas. The Board will aim at having their public hearing at the March meeting. A motion was made and seconded to proceed with a public hearing on the shared order filling and processing regulations.(Paul/Whitchurch)Motion carried 5-0.

**COMPOUNDING:** Jeff Thompson updated the Board on the Compounding Task Force's progress regarding a compounding regulation. USP has not come out with the final guidelines for sterile compounding but it should be published sometime this spring. There was discussion regarding a definition for "immediate" and for the term "manufacturing". Mr. Thompson will be attending the ASHP Meeting and FDA will be there also. The proposed regulations will continue to be reviewed by legal.

**DISTRIBUTION OF MEDICAL DEVICES:** Jim Kinderknecht discussed that on the devices it states "Federal Law prohibits the sale with out the order of a physician." This seems to contradict the legal definition for "drug" and "device". Most distributors distribute to other distributors, but there is one distributor who wants to sell to an end

user. The Board requested that staff do some research to determine how other states are licensing distributors.

**INTERPRETATION OF K.A.R. 68-9-2 INVOLVING WHO CAN FILL A PYXIS MACHINE:** The Board discussed the meaning of K.A.R. 68-9-2. Mike Hurst volunteered to research this issue and he requested that Deborah Stern of Kansas Hospital Association assist.

**TRANSFER OF REFILLABLE PRESCRIPTIONS BETWEEN PHARMACIES K.A.R. 68-7-19 AND K.A.R.68-2-20:** The Board discussed an apparent conflict between K.A.R. 68-7-19 and K.A.R. 68-2-20 related to whether an intern or a student can transfer prescriptions. A motion was made and seconded to strike out paragraph 7 of K.S.A. 68-2-20 and to add language reflecting that only a pharmacist can do a final check (Whitchurch/McFarland). Motion carried 5-0.

**PHARMACY TECHNICIANS:** The Board discussed the Pharmacy technician proposed regulations. The previous recommendation was that the registration fee and renewal fee for technicians be \$25. The Division of the Budget suggested the fee be lowered because of the amount of money currently in the Pharmacy Fee Fund. A motion was made and seconded to lower the registration and renewal fee to \$10 payable every two years. (Thompson/Paul). Motion carried 5-0. Ms. Billingsley also discussed adding to the regulations not only that the technicians need to pass with no less than 75%, but that the pharmacist needs to pick 20 questions from questions already approved by the Board. A motion was made and seconded to have the technician's score on the examination reported on their application rather than having the Pharmacist-in-Charge notify the Board office in writing (Whitchurch/McFarland). Motion carried 5-0. Merlin McFarland said that Fort Hayes State University plans to have a 2-year program for an Associates degree as a pharmacy technician. A motion was made and seconded to allow the Executive Secretary to approve technicians examinations submitted and to approve the application (Thompson/McFarland). Motion carried 5-0.

**INVESTIGATION REPORT:** Frank Whitchurch discussed with the Board the cases closed since the last Board Meeting. Mr. Whitchurch said he is trying to improve the process. Mike Hurst suggested using the episode of pills falling on the floor as a future newsletter item. It was also suggested that the ISMP self-assessment test would be a good tool for pharmacists that have made a lot of errors.

**ADJOURNMENT:** The Board adjourned the meeting at 4:35 p.m.

### **Wednesday, December 3, 2003**

**MEMBERS PRESENT:** Mike Hurst, RPh., President; Frank Whitchurch, RPh., Vice President; Merlin McFarland, RPh.; Jeff Thompson, RPh.; JoAnne Gilstrap, RPh.; Howard Paul, Public Member.

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

**OTHERS PRESENT:** See attached listing

**MEETING RECONVENED AND CALLED TO ORDER:** Mr. Hurst called the meeting to order at 8:00 a.m.

**APPROVAL OF NEW LICENSES AND REGISTRATIONS:** A motion was made and seconded to approve the pharmacy registrations issued by the Board since the September Meeting (Paul/McFarland). Motion carried 5-0. A motion was made and seconded to approve the pharmacist licenses issued by the Board since the September Meeting (Paul/McFarland). Motion carried 5-0.

### **BOARD REPORTS**

Frank Whitchurch reported that he spends 10-20 hours a month working on the investigations and that he was meeting monthly with Board staff.

Jeff Thompson reported that a group from Southeast Kansas were encouraging all pharmacists to write their State Representatives and Senators urging them to enforce importation laws.

Jeff also discussed the number of experiential hours necessary for pharmacy school. The law book doesn't have anything that expressly states that the student must pass the class.

Howard Paul made a motion to encumber \$500,000 of Pharmacy fee funds for the purpose of pursuing a lawsuit against violators of State law as it relates to importation of foreign drugs into Kansas. Since the Attorney General's Office has indicated that they do not have the resources or manpower to prosecute these types of cases the Board should encumber the funds to hire outside counsel. Mr. Paul further motioned that \$100,000 of the fee fund should be encumbered to coordinate with the Governor's study of health care that is being conducted by the Health Planning

The motion further stated that \$100,000 should be encumbered from the Pharmacy fee fund to pursue providing continuing education related to the study of pharmacy and health care for Kansas's pharmacists and to provide educational opportunities to the public. (Paul/McFarland) Motion carried 5-0.

Mike Hurst reported a media blitz done in Wichita concerning a pharmacy's ability to catch prescriptions that are contraindicated and whether the pharmacist appropriately counseled the patient. Both Mike Hurst and Merlin McFarland were contacted by the media regarding this particular story.

### **STAFF REPORTS**

Reyne Kenton reported that the inspectors had met in Salina with the Topeka staff and that it was helpful to have those types of meetings.

LaTonyua Rice, Pharm.D, reported that she had received a call regarding software used by pharmacies and whether it appropriately recorded the expiration date. KDHE is working with a software vendor to change the problems that have been occurring.

LaTonyua also requested that the Board require an inventory accounting whenever there is a change request made of a PIC. This would alleviate a lot of problems.

Jim Kinderknecht, R.Ph., reported that he was pleased that the Board was trying to provide some CE's for pharmacists. He thought it would be beneficial and successful to go to other areas of the state and provide 6-8 hours of free CE.

Jim also reported that he had observed that the pharmacy to intern ratio had been deleted from our law book when the \$25 fee was deleted. The Board may need to put that back in as it may be a problem in the future. Frank Whitchurch made a motion to add the ratio language to K.A.R. 68-1-3a that a pharmacist can supervise no more than 2 interns/students. (Whitchurch/Gilstrap). Motion carried 5-0.

Debra Billingsley reported that the Board of Pharmacy was taking ownership of their vehicles since the Dept of Administration had gotten rid of their motor pool. We do not know how this will affect us fiscally.

**HEALTHCARE COMPUTER CORPORATION PRESENTATION:** Glen Newman and Elaine Stroud presented a power point presentation on telepharmacy services. The Board discussed regulatory changes that would be necessary to implement telepharmacy in Kansas.

**ADJOURNMENT:** The Board adjourned the Board meeting at 10:45 a.m.