

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

September 16 & 17, 2003

AmeriSuites
6021 SW 6th Ave.
Topeka, Kansas

Tuesday, September 16, 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: Jim Kinderknecht, RPh, Acting Executive Secretary & Pharmacy Inspector; Debra Billingsley, Executive Secretary; LaTonyua, Rice, Pharm.D., Pharmacy Inspector; Reyne Kenton, Compliance Officer; Melissa Martin, Compliance Officer; Randy Forbes, Attorney and Karen Hollon, Administrative Officer.

OTHERS PRESENT: See attached listing

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

INTRODUCTIONS: Mike Hurst welcomed JoAnne Gilstrap, R.Ph, and Howard Paul as the new Board Members, Debra Billingsley as the new Executive Secretary, Melissa Martin, the new Compliance Officer, and Marty Snyder, the Board's Assistant Attorney General. Mr. Hurst expressed appreciation to Jim Kinderknecht and staff on running the office.

ACCEPTANCE OF THE MINUTES: A motion was made and seconded to accept the minutes as amended of the June 30 – July 1, 2003 Board Meeting (Thompson/McFarland). Motion carried.

KPhA POLICIES AND PROCEDURES MANUAL: Bob Williams and Jennith Hoover presented a Policies and Procedures Manual. Current regulations require pharmacies to develop written policies and procedures and this manual is intended to assist pharmacists in designing and implementing policies and procedures for their particular operation. The manual will not be available until the first of the year. A motion was made to table any action until the December 2-3, 2003 Board Meeting so that the new board members could have ample time to review the manual. (Thompson/McFarland) Motion carried 5-0.

MARTY M. SNYDER, ASSISTANT ATTORNEY GENERAL: Marty Snyder gave the Board some background regarding her qualifications and work experience. The Board had a general discussion with Ms. Snyder concerning, Kansas Open Meeting requirements and Board policies and procedures regarding disciplinary proceedings.

RECESS: The Board recessed the meeting from 9:55 a.m. until 10:00 a.m.

CANADIAN PHARMACIES UPDATE: The Board had a general discussion regarding drug importation into the United States.

EXECUTIVE SESSION: A motion was made to adjourn into executive session for approximately 25 minutes for the purpose of discussing personnel matters of a non-elected person and for consultation with the Board Attorney that would be deemed privileged in the attorney-client relationship. Those included in the session were the Board, Randy Forbes, Jim Kinderknecht, Debra Billingsley and Karen Hollon. At the conclusion of the executive session the meeting is to be continued in open session. (Thompson/Whitchurch). Motion carried 5-0.

RECONVENE: The Board meeting reconvened at 10:40 a.m. with all members present as previously stated.

VALJEAN VANWINKLE #11027: Valjean VanWinkle appeared with his attorney, James P. Colgan of Colgan Law Firm LLC. Mr. VanWinkle and Mr. Colgan gave information regarding Mr. VanWinkle's felony conviction in Johnson County, Kansas. Mr. Colgan also provided a copy of the respondent's Journal Entry of Judgment dated 8/28/03. Marty Snyder provided the Board with a proposed stipulation that had been drafted by Assistant Attorney General Steve Phillips. A motion was made and seconded to adjourn into executive session for approximately 20 minutes to deliberate. Those included in the session were the Board, Randy Forbes, Jim Kinderknecht and Debra Billingsley. At the conclusion of the executive session the meeting is to be continued in open session. (Thompson/Whitchurch) Motion carried 5-0.

RECONVENE: The Board meeting reconvened at 11:30 a.m. with all members present as previously stated.

MOTION: A motion was made and seconded to amend the proposed stipulation to include that the Respondent would authorize CIPP and any other evaluators, monitors and treaters to provide compliance documentation and records, including all drug analysis reports, to the Board on a quarterly basis throughout the probationary term. (Paul/McFarland). Motion carried 4-1. Jeff Thompson opposed the motion.

RECESS: The Board recessed at 11:55 a.m.

RECONVENE: The Board reconvened at 12:00 p.m. with all members present as previously stated.

JERRY L. LOVERN #8222: Jerry Lovern appeared pro se. Marty Snyder provided a proposed stipulation that had been drafted by Assistant Attorney General Steve Phillips. Mr. Lovern and LaTonyua Rice, Pharmacy Inspector, provided the Board with background information and answered questions. A motion was made and seconded to adjourn into executive session for approximately 20 minutes to deliberate. Those

included in the session were the Board, Jim Kinderknecht, Debra Billingsley, LaTonyua Rice and Randy Forbes. At the conclusion of the executive session the meeting is to be continued in open session. (Thompson/McFarland). Motion carried 5-0.

RECONVENE: The Board meeting reconvened at 12:50 p.m. with all members present as previously stated. The Board failed to make any motion regarding acceptance of the stipulation and final agency order. Marty Snyder advised the Board that they could modify the stipulation, file a disciplinary petition or dismiss the charges. The Board directed Marty Snyder to file a petition.

MARY CARDER, Ph.D., HEART OF AMERICA PROFESSIONAL NETWORK: Dr. Carder explained to the new members what Heart of America Professional Network, Inc. (HAPN) does and its relationship with the CIPP program. The Board had a general discussion with Dr. Carder.

INVESTIGATION REPORT: Frank Whitchurch explained some of the investigative process to the two new Board Members. Mr. Whitchurch provided a handout of a summary of previous investigations. The Board had a general discussion regarding procedure and what information they would like to know about future investigations.

RECESS: The Board recessed at approximately 2:04 p.m.

RECONVENE: The Board meeting reconvened at 2:19 p.m.

SEPARATE ENTRANCE: Merlin McFarland discussed with the Board two licenses issued to one location that has a closed-door pharmacy and also has a retail pharmacy. The question was whether a pharmacy technician could work at the closed-door pharmacy without supervision while the pharmacist was working at the adjacent retail pharmacy. The Board determined that the pharmacy technician could not work alone in a closed-door pharmacy situation as described. The issue of security was also discussed.

PHARMACY TECHNICIANS: The Board had a lengthy discussion regarding implementation of a regulation regarding requirements for pharmacy technician registration. A motion was made and seconded for the pharmacist-in-charge to pick 20 of the 68 questions, that were written by the Board inspectors, as the pharmacy technician exam. (Paul/Thompson). Motion carried 4-1. Joanne Gilstrap opposed the motion. A motion was made and seconded that the technician would need to pass with a 75% rate. (Whitchurch/Paul). Motion carried 5-0. A motion was made and seconded for the technician registration application fee be \$25 (Gilstrap/Paul). Motion carried 5-0. A motion was made and seconded for the technician registration biennial fee be \$25 (Whitchurch/Thompson) Motion carried 5-0. Regulations will be prepared with the above stated requirements.

VIDEO CAMERAS IN PHARMACIES: Discussion continued from the June/July Board Meeting. Merlin McFarland will inform the pharmacist in Western Kansas that

video cameras cannot be substituted for a pharmacist. The office will also send a letter to the pharmacists.

PRESENTATION TO MAX HEIDRICK: A special presentation was made to Max Heidrick for his service and leadership to the profession of pharmacy. Max served as a Board member from May 2000 to July 2003 and was President in 2002/2003.

ADJOURNMENT: The Board adjourned the meeting at 4:55 p.m.

Wednesday, September 17, 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: Jim Kinderknecht, Acting Executive Secretary & Pharmacy Inspector; Debra Billingsley, Executive Secretary; 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: Mike 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 June/July Meeting. Howard Paul abstained regarding issuance of any registration or license to Walgreens Pharmacy because of a conflict. (Thompson/McFarland). Motion carried 4-0. A motion was made and seconded to approve the pharmacist licenses issued by the Board since the June/July Meeting (Paul/Thompson). Motion carried 5-0.

SHARED ORDER FILLING AND PROCESSING: Frank Whitchurch discussed with the Board the issue of shared order filling and shared order processing. This was a discussion that was continued from the December 2002 Board Meeting. Regulations were prepared and sent to Camille Nohe, Assistant Attorney General. Ms. Nohe made some changes and returned the regulation to the Board for further modification. An attempt will be made to have a public hearing for these regulations in December should the modifications be approved by the Dept of Administration and the Attorney General's Office.

TELEPHARMACY TECHNOLOGY: Frank Whitchurch brought magazine articles for the Board Members to review regarding telepharmacy technology. Mr. Whitchurch stated telepharmacy is happening in several states and suggested that the Board needs to look into this issue and be proactive. Ms. Billingsley will survey other states and see what they have instituted. Mr. Hurst suggested both Mr. Whitchurch and Mr. McFarland

work on it and have a demonstration scheduled the second day of the December Board Meeting if possible.

SCAN VERIFY NDC NUMBERS: Frank Whitchurch discussed with the Board requiring pharmacists to scan or verify NDC numbers to decrease the number of misfill errors. The Board decided to suggest using this procedure to the pharmacists who are brought before the Board for having misfills. The Board also suggested putting it in the next newsletter.

TAILOR-MADE PHARMACY: Jim Kinderknecht updated the Board that Texas was conducting a joint investigation with the FDA regarding allegations against Tailor-Made Pharmacy. It was reported that Tailor-Made may have closed their pharmacy.

BOARD REPORTS

Jeff Thompson discussed with the Board that Department of Health and Environment did an inspection and stated that nurses in the emergency room should not be writing anything at all on prescription labels pursuant to pharmacy laws. They required that the label only say "Take as Directed." Mr. Kinderknecht will contact KDHE and inform them that it is permissible for a nurse to give adequate directions on a prescription label in an emergency room setting and that KDHE has been misinformed. Mr. Thompson reported that the compounding regulations are moving forward.

Howard Paul had no report.

Merlin McFarland had no report.

JoAnne Gilstrap inquired as to whether the Board ever required a pharmacist to retake the PIC exam or to take continuing education pertaining to legal requirements as part of their stipulation with the Board. Mr. Hurst stated that a previous pharmacist that was brought before the Board had to do continuing education and that this should be considered as an additional remedy to violations.

Frank Whitchurch suggested the Board staff set up some type of system that would permit follow-up as to whether disciplined pharmacists have completed any requirements made regarding their discipline. Mr. Whitchurch also suggested scanning disciplinary information and sending it to him using Macintosh format.

Mike Hurst encouraged the inspectors to be more assertive and make sure their feelings are expressed during the board meeting regarding investigations. Mr. Hurst asked Jim Kinderknecht to work with Assistant Attorney General, Marty Snyder, to talk about what to look for during investigations and what to concentrate on. He also suggested having Ms. Snyder communicate directly with the inspectors.

Mr. Hurst also discussed an issue regarding a pharmacist removing drugs from a licensed facility and taking the drugs to another licensed facility for prepackaging. The reason being that the originating facility had no method to do the prepackaging. The

prepackaged drugs would then be returned to the originating facility to be dispensed from a pyxis machine. Jim Kinderknecht stated that this was more of a FDA issue but that the pharmacist would have to be in compliance with Kansas prepackaging regulations. Mr. Hurst complimented Mr. Kinderknecht and staff on a job well done between executive secretaries.

Debra Billingsley discussed with the Board amending their earlier motion regarding implementing a pharmacy technician regulation that states that the pharmacy technician shall pass an examination prior to registration which tests minimum knowledge in areas of orientation to Kansas pharmacy law, etc. The law exam shall consist of at least 20 questions approved by the Board using the above stated criteria and shall receive a passing score of 75 percent. The Board could then post on their web site a list of suggested approved questions. A motion was made and seconded as set forth above. (Paul/Thompson). Motion carried 5-0.

Randy Forbes recommended that the Board designate a freedom of information officer as required under the Open Records Act. A motion was made and seconded to designate the executive secretary as the agency's designee to carry out the duties of custodian under the Open Records Act.(Thompson/Paul)

Mr. Forbes also recommended that the Board amend K.S.A. 65-1663 to include language that would clarify the Board's authority to limit, suspend, or revoke a pharmacy technician registration as well as deny an application. The Board would then need to take this to the legislature for approval. A motion was made and seconded to amend K.S.A. 65-1663 to include the provision that clarifies the Board's authority to limit, suspend or revoke a pharmacy technician registration. (Whitchurch/Thompson). Motion carried 5-0.

Jim Kinderknecht handed out a report showing that very few pharmacists failed to get renewed. Mr. Kinderknecht discussed with the Board questions regarding the flu mist vaccine and whether it fell under the guidelines of the regulations regarding vaccinations. The Board determined that a pharmacist may administer the flu mist as long as they have completed the certification process required for vaccination administration. Mr. Kinderknecht stated that he appreciated the opportunity in being acting director.

Melissa Martin thanked Jim Kinderknecht and the other inspectors for training.

Latonyua Rice thanked Jim Kinderknecht for being the interim Executive Secretary and was looking forward to working with Debra Billingsley. Dr. Rice stated she went to Washington D.C. to review the Multistate Pharmacy Jurisprudence Examination which was a good experience. A lot of questions need to be updated or changed in the next year. Dr. Rice stated that the inspectors' meeting with Assistant Attorney General, Marty Snyder is a good idea and will assist them in doing their jobs. Dr. Rice stated that Melissa Martin will be an asset to the Board.

Reyne Kenton welcomed the new board member and Debra Billingsley. Ms. Kenton reported that Barton County Community College discontinued their pharmacy technician

classes, but have plans to bring the classes back. She advised the Board that Barton County would like to work closely with the Board of Pharmacy when they establish their curriculum.

ADJOURNMENT: The Board adjourned at 9:45 a.m.