

Kansas State Board of Pharmacy
Minutes of the February 3, 2009
Board Meeting

Landon State Office Building
900 SW Jackson, Room 106
Topeka, KS, 66612

Tuesday, February 3, 2009

Meeting Called to Order – President JoAnne Gilstrap called the meeting to order at 9:02am.

Members Present: JoAnne Gilstrap, R.Ph., President; Karen Braman, R.Ph., Vice-President; Shirley Arck, Pharm. D, Investigative Member; Michael Coast, R.Ph.; Frank Whitchurch, R.Ph.; and Nancy Kirk, public member.

Staff Present: Debra Billingsley, Executive Secretary; Jim Kinderknecht, R.Ph., Pharmacy Inspector; Carly Haynes, R.Ph., Pharmacy Inspector; Melissa Martin, Compliance Officer, Reyne Kenton, Compliance Officer; Christina Morris, Assistant Executive Director, and Randall Forbes, General Counsel.

Others Present: See attached listing.

Approval of the Agenda

Move the Public Hearing before the Approval of the Minutes and
Add discussions:

- Prescription Drug Monitoring Alliance
 - Institutional Drug Room regulations
 - Letter from Rules and Regulation K.A.R. 68-20-23
 - Administrative Hearing Board
 - Under Telepharmacy discussion add Technician Ratio in Hospital Settings
- A motion was made and seconded to approve the agenda as amended. (Coast/Braman)
Motion passed.

Public Hearing for Proposed Regulation

K.A.R. 68-20-23. N-Benzylpiperazine included in Schedule I.

Ms. Gilstrap adjourned the meeting and opened the public hearing at 9:08am

Ms. Gilstrap asked for public comment – Ms. Billingsley provided a letter from the Legislative Research Department.

There were no public comments.

Ms. Gilstrap closed the public hearing.

Ms. Gilstrap called the meeting to order at 9:13am.

A motion as made and seconded to adopt the proposed regulation. (Arck/Coast)

Roll call: Mr. Coast – Yes, Mr. Whitchurch – Yes, Ms. Braman – Yes, Dr. Arck – Yes, Ms. Kirk – Yes, and Ms. Gilstrap – Yes.

Motion passed. The regulation will become effective 15 days after publication in the *Kansas Register*.

Approval of the December Minutes

December 2 & 3, 2008

The following corrections were made:

- Under Investigative Member Report: “Mr. Coast suggested the Board will see more of this type of case”
- E-scribing “The DEA review will be delayed”
- Under the Public Hearing vote add “Ms. Gilstrap – Yes”.

A motion was made and seconded to approve the minutes as corrected. (Coast/Arck)
Motion passed.

December 12, 2008

A motion was made and seconded to approve the minutes as presented. (Kirk/Coast)
Motion passed.

Board Discussion

Election process for board officers – Ms. Gilstrap stated that electing officers in June blindsides the newly appointed members. Mr. Coast suggested delaying the election until September giving the new board members the opportunity to learn the dynamics of the Board. The consensus was to elect officers in September. The Board discussed SB 33 as to the possibility of the current board members that remain on the Board past July 1, 2009 to continue to serve to fulfill the four years.

Administrative Proceedings

- Robert Richard – Case 08-150. Mr. Richard’s technician registration was revoked.
- Jennifer Graham – Case 08-147. Ms. Graham’s technician registration was revoked. Ms. Kirk expressed concern on the volume diverted and asked about new procedures the hospital has put into place to prevent future diversion. Ms. Martin answered Ms. Kirk’s questions. Board staff will follow-up with the hospital.
- Stan Stevens – Case 08-123. Mr. Stevens, R.Ph., was audited and did not have the hours needed. Mr. Stevens has paid the fine and submitted the necessary hours.
- CVS Pharmacy #8586 Case 08-100. The Board reviewed the case. CVS Pharmacy #8586 has submitted a signed Summary Order and paid the \$500 fine for working a non-registered technician.
- Walgreens #4234 Case 08-130. The Board reviewed the case. Walgreens #4234 has submitted a signed Summary Order and paid the \$500 fine for working a non-registered technician.

Board Discussion

Prescription Drug Monitoring Program Advisory Committee Update – Ms. Braman updated the Board on the progress of the task force. The Task Force will meet February 3, 2009 at 2:30pm. The Task Force will discuss Emergency Room dose packs reporting

and whether they should be exempted from reporting. Johnson and Johnson has a program to educate middle school students on the danger of using prescription medication. School nurses are implementing the program.

Prescription Drug Monitoring Alliance – Ms. Braman reported on *The Alliance of States with Prescription Monitoring Programs*. The Alliance dues are \$200 annually and she recommends the Kansas Board join. The Alliance meets yearly to discuss common concerns and trends.

Recess: Ms. Gilstrap declared a 5-minute break.

Reconvene: Ms. Gilstrap reconvened the meeting at 10:02am.

Administrative Proceedings

- Pete A. Felder, R.Ph. Case 08-46. Motion to Dismiss. Mr. Felder was present. Ms. Camille Nohe, Assistant Attorney General, was present on behalf of the Board and presented the case to the Board. Mr. Forbes was present as Board Prosecutor. Mr. Felder spoke to the Board on his own behalf. Mr. Forbes stated there was no legal basis for a motion to dismiss. Ms. Nohe said there currently was no consent order only charges.

A motion was made and seconded to go into executive session to discuss quasi-judicial deliberations. The executive session is to include Ms. Nohe. (Braman/Coast) Motion passed.

Ms. Gilstrap reconvened the meeting at 10:30am.

Ms. Nohe: Count 1 – motion to dismiss is denied.

Count 2 – motion to dismiss is granted.

Count 3 – motion to dismiss is granted.

Board Discussion

Letter from Rules and Regulation K.A.R. 68-20-23 – Mr. Forbes attended the meeting that generated the letter and he gave background to the Board. The legislature may need guidance as to where to place N-Benzylpiperazine, BZP, in the statute of schedule 1 drugs. Rules and Regulation recommended the Board make an annual report concerning drugs that need to be scheduled. Mr. Forbes drafted a letter for the Board's review. The Board accepted the letter and the letter was to be sent to the legislature.

Safety Net Clinic Registrations – Ms. Billingsley responded to questions posed by the Board. KDHE had two different lists of clinics. Ms. Billingsley sent letters to all of the clinics not registered with us. Many of the clinics called and told Ms. Billingsley they are not dispensing. The clinics that are dispensing are to be registered. The clinics that wish to participate in donated medications must be registered. The official warehouse may be at the Community Health Center in Pittsburg. Hunter Clinic, Wichita, had volunteered to be a warehouse as well. Ms. Gilstrap posed questions concerning the pharmacist in charge at the clinics. KDHE has a clause in their law that protects volunteer medical personnel from malpractice. Ms. Gilstrap questioned if that would relieve the pharmacist from administrative liability. Ms. Braman brought up for suggestion that the Board provide a "best practices toolkit" for the clinics. Clinics that only provide samples would not need to register. Mr. Coast said that some rural hospitals have purchased some of these clinics and have their hospital pharmacist oversee the clinic as part of the hospital. The clinics

will need to develop a policy and procedure manual. Ms. Billingsley will follow-up with the clinics on the KDHE list and determine what each clinic provides in drug services.

Legislative Update

- Pharmacy Practice SB 16 – Ms. Billingsley said the bill will be heard February 4, 2009.
- Senate Bill 33 - Ms. Billingsley said the bill will be heard February 4, 2009.
 1. Background Checks
 2. Term Limits
 3. Number of Board Members
 4. Display of Technician Registration
- Administrative Hearing Board – A bill has been reintroduced to clean up KAPA, Kansas Administrative Procedures Act. The agencies are monitoring the bill for amendments that would force the agencies to use Administrative Hearing Officers. Ms. Billingsley said the bill is a judiciary bill, SB 87.
- Labels – Ms. Billingsley said this was a regulation change. Feedback from providers, Medco in particular, said that the change would have a significant cost. If the practitioner is a midlevel practitioner then add the initials “ARNP or PA” after the name. Mr. Whitchurch said that the change should only require the prescribing practitioner’s name. The consensus of the Board is to accept Mr. Whitchurch’s suggestion and move forward with the regulation.
- Dosage Form Substitution. Mr. Forbes drafted new language for K.S.A.65-1637. The Board reviewed the language. The consensus was to continue the process with the language proposed. The language needs to be sent to Senator Schmidt immediately.

Institutional Drug Room Regulations – Mr. Forbes discussed the changes requested by the Department of Administration and the language that incorporates those changes. The Board discussed the changes and simplification of the wording to reference the regulations K.A.R. 68-7-15 and 16.

Recess: Ms. Gilstrap recessed the meeting for lunch at noon to reconvene at 12:45pm.
Reconvene: Ms. Gilstrap reconvened the meeting at 12:45pm.

Board Discussion

Software Update – Ms. Morris stated the RFPs are all complete. Several vendors are being considered, plus other vendors can bid if they can meet the specifications. Both Ms. Morris and Ms. Billingsley will review.

Regulation Update

- Telepharmacy – Ms. Billingsley stated the Retail Telepharmacy regulations are at the Department of Administration. Mr. Forbes asked the Board what they wanted the pharmacist at the Parent Facility to be able to see over the camera link. The hospital providing the oversight must be in the state of Kansas. The Board briefly discussed

technician ratio in the hospital telepharmacy. A meeting was scheduled for Monday, March 2, 2009 at 1:30pm in Topeka to look at technology for the hospital telepharmacy.

- Nuclear Pharmacy – Mr. Forbes said K.A.R. 68-10-4 has been sent back from the Department of Administration with notes attached. The Board discussed the changes and accepted some of the proposed changes.
- Annual Inventory – The Department of Administration office has returned with comments. The CFR references must be narrowed down to only the portion that pertains to recordkeeping.
- Legitimate Medical Purpose/Valid Prescriptions – KMS/Board of Healing Arts does not want to change the regulation as we propose, but to add to the Board of Healing Arts regulation or statute. Scott Hesse was working on appropriate language. Ms. Billingsley will contact Mr. Hesse by March.
- Faxing CII Prescriptions – Ms. Billingsley has talked with Scott Schwab. Mr. Schwab does not have any proposed statutory language for faxing CII for assisted living. This can be accomplished through a regulation rather than a statute.
- Continuing Education – The regulation was received back from the attorney general's office with comments attached. The Board discussed clarifications.
- Compounding – Dr. Arck told the Board where the regulations are currently in the process.

Update regarding automation review – Mr. Kinderknecht and Ms. Martin reported on the automation they have seen in offices in the Kansas City area. Mr. Kinderknecht said the office tells the patient it may cost more. Patients will choose the automation for convenience. The medications needing reconstitution have a bottle of water given with the medication and the patient or parent would need to mix before giving. The nurse enters the prescription into the system and gives the patient an access code. The patient uses the code to access the medication in the Instymed system. The Board of Healing Arts Inspector was to write up a report, but the Board Office has not received the report.

Budget – Ms. Billingsley gave a small update regarding the budget situation.

Action Items – Ms. Morris reviewed items needing action, who is responsible, and dates action is due.

Adjourn: Ms. Gilstrap adjourned the meeting at 2:25pm.