

Kansas State Board of Pharmacy
Minutes of the March 2010
Board Meeting

University of Kansas Student Union
Wednesday KansasRoom, Level 6
1301 Jayhawk Blvd.
Lawrence, KS 66047

Wednesday, March 10, 2010

Meeting Called to Order: President Karen Braman called the meeting to order at 9:07am.

Members Present: Karen Braman, R.Ph.,M.S., President; Shirley Arck, Pharm. D., Vice-President; Michael Coast, R.Ph., Investigative Member; Jim Garrelts, Pharm. D.; Nancy Kirk, Public Member; David Schoech, R.Ph.; and Frank Whitchurch, R.Ph (9:45am).

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

Others Present: See attached listing.

Approval of the Agenda:

A motion was made and seconded to approve the agenda as amended

- Tour of the West Campus pharmacy school 7:45 a.m. on Thursday morning
- Law Class 9 a.m. on Thursday morning

(Schoech/Garrelts). Motion passed.

Welcome to Dean Ken Audus and KU School of Pharmacy faculty:

Ms. Braman welcomed KU School of Pharmacy Dean Ken Audus and Dr. Tim Welty, Chair, Pharmacy Practice Dept., and thanked Dean Audus for his hospitality. Dean Audus welcomed the Board to the KU campus for the March meeting of the Kansas State Board of Pharmacy.

Recognition Resolution

Ms. Braman read aloud the recognition resolution from the Board honoring Harold Godwin, RPh, MS, for his many years of leadership and service to the field of pharmacy. Mr. Godwin will be installed as the president of American Pharmacists Association during their annual meeting held this week.

A motion was made and seconded to approve the recognition resolution honoring Harold Godwin, R.Ph., M.S. (Coast/Arck). Motion passed.

Approval of the February Minutes:

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

Administrative Proceedings

- William Pollard, R.Ph. (1-12224) **Case 09-58.** Mr. Pollard was in attendance. Justin McFarland, attorney on behalf of the Board, presented the case. Mr. McFarland presented Exhibits A, B, C, D, E and F, which were admitted as evidence. Ms. Braman swore in Mr. Pollard. Mr. Pollard requested that the suspension be lifted and allow him to return to active practice under the monitoring system he has in place currently. Mr. Pollard said he is willing to enter into a contract with CIPP. Mr. Pollard asked that a letter from the CIPP committee be entered as an exhibit. Exhibit Pollard 1 was admitted. A motion was made and seconded to go into executive session for quasi-judicial deliberations; the session included Ms. Billingsley (Kirk/Coast) Motion passed. Ms. Braman reconvened the regular board meeting at 10:20am. A motion was made and seconded to keep Mr. Pollard's license on suspension and to have Mr. Pollard enter into the CIPP program in Kansas; additionally, CIPP will perform approximately 5-6 random drug screens (a minimum of 5 screens) between March and June. CIPP and Mr. Pollard are to report back to the June 2010 Board meeting. The Board will render a final decision on the suspension at the June 2010 meeting (Coast/Garrelts). Motion passed.
- Paul Noel, Pharmacy Technician (14-02716) **Case 09-96.** Mr. Noel was in attendance. Justin McFarland, attorney on behalf of the Board, presented the case. Mr. McFarland presented Exhibits A, B, C, and D, which were admitted as evidence. Ms. Braman swore in Mr. Noel. Mr. Noel addressed the Board. Mr. Noel has found other full-time employment but desires to keep the pharmacy technician registration so that his options for a second job will be maintained. A motion was made and seconded to go into executive session for quasi-judicial deliberations; the session included Ms. Billingsley (Kirk/Arck) Motion passed. Ms. Braman reconvened the regular meeting at 10:49am. Ms. Braman thanked Mr. Noel for coming to speak to the Board and taking responsibility for his actions. A motion was made and seconded to set aside the summary order of revocation of Mr. Noel's pharmacy technician registration (Arck/Garrelts). Motion passed.
- Antonio Enriquez, Technician Applicant **Case 09-65.** Mr. Enriquez was not in attendance. Mr. McFarland presented the case to the Board. Exhibits A, B, C, and D were admitted as evidence. The applicant's technician registration was denied based on an incomplete application. Ms. Morris was called as a witness and Ms. Braman swore her in. Ms. Morris stated she had tried to verify Mr. Enriquez's employment and was unable to get confirmation from Blue Springs. Currently the application is incomplete and the additional information has not been provided. The denial of registration will stand. Mr. Enriquez does have the opportunity to provide the necessary information and the Board could reconsider his registration application at that time. A motion was made and seconded to uphold the denial of registration due to incompleteness (Coast/Garrelts). Motion passed.
- Syble Thompson, R.Ph. (1-11269) **Case 08-144.** - Approval of Stipulation and Final Agency Order - Ms. Thompson was not in attendance. Ms. Kenton presented the case to the Board. A motion was made and seconded to approve the Stipulation and Final Agency Order (Coast/Kirk). Motion passed.
- Brett Horyna, R.Ph. (1-12799) **Case 09-08B & 09-10B.** Approval of Stipulation and Final Agency Order – Mr. Horyna was not in attendance. Ms. Billingsley presented the case to the

Board. A motion was made and seconded to approve the Stipulation and Final Agency Order (Coast/Kirk). Motion passed. Ms. Kenton will provide the new policy and procedures for compounding from Bloodhart Drug to Mr. Coast for further review.

- Carol Toth-Bejan, Pharmacy Technician (14-05541) **Case 10-07.** Agency Order
Ms. Toth-Bejan's technician registration was revoked due to diversion of controlled substances from her employer.
- Kim Richardson, Pharmacy Technician (14-05545) Case 10-05. Agency Order - Ms. Richardson's technician registration was revoked due to diversion of controlled substances from her employer.

Report on controlled substances statistics – Ms. Morris provided the Board the statistics on diversion of controlled substances from pharmacies by pharmacists and pharmacy technicians. Mr. Schoech requested a report similar to this on an ongoing basis. Ms. Braman questioned if there was any way to stem the flow of drug diversions. These numbers do not reflect clerks that are diverting. Ms. Haynes suggested the Board consider having everyone behind the counter be either a pharmacist or registered technician.

Investigative Member Report – Closed Cases

Mr. Coast gave the Board the statistics from the prior years.

Of the 156 cases in 2008 – Six cases remain in the process.

In 2009, there were 111 cases of which 14 remain in the process. Of the fourteen cases, three are have been heard at the March Board Meeting and three are pending documentation or evaluation from the CIPP program. One of the cases will be heard at the June meeting and we are waiting on a signed order in one of the other cases. The remainder of the cases (6) are ongoing investigations.

There have been 14 cases so far in 2010 with 6 cases remaining open. Of the six, four are still under investigation. One is a reinstatement request that will be heard at the June Board meeting and the remaining one is a revocation order that has been sent to the attorney.

Ms. Braman discussed the delivery case involving an 8-year old child signing for the medication. The Board will develop a list of "Pharmacy Best Practices" that will include delivery of drugs that will be published in the newsletter.

Recess: Ms. Braman recessed the meeting for lunch at noon to reconvene at 1pm.

Reconvene: Ms. Braman reconvened the meeting at 1:02pm.

Board Discussion

Autologous Serum Eye Drops – Jim Kinderknecht and Melissa Martin presented the report from their visit to O'Briens Pharmacy in Kansas City. O'Briens is a state of the art compounding pharmacy. The pharmacy is 797 compliant and O'Briens does sterility testing on the final product. O'Briens requires HIV testing on the serum and a certificate must accompany the serum when it reaches the pharmacy. The pharmacy has been compounding the eye drops for over two years. Patients have been experiencing success with the eye drops. There was discussion about another pharmacy in the area that may also be compounding autologous serum eye drops. Ms. Martin and Mr. Kinderknecht will check on this pharmacy and will report back to the Board ..

Controlled Substance Samples - K.A.R 68-20-15a(c)(3) A controlled substance listed in schedules II through V shall not be distributed on a gratuitous basis by a manufacturer or distributed to a practitioner, mid-level practitioner, pharmacist, or any other person.

Ms. Braman said that Pfizer had contacted her and Ms. Billingsley requesting a review of this regulation to potentially exclude C-Vs. Lyrica, manufactured by Pfizer, is a C-V. Ms. Braman stated that Pfizer indicated they would be sending a letter to Ms. Billingsley asking the Board to review this issue. If the letter is received prior to the June 2010 meeting, it will be added to the June agenda.

PMP Update – Ms. Morris thanked the Board for approving her hire as the PDMP Director. The National Association of State Controlled Substances Authorities (NASCSA) has awarded Kansas with the 2010 Prescription Drug Monitoring Program Grant in the amount of \$20,072. An overview of the PMP RFP was also presented. The RFP is scheduled to be released after the Board meeting and has a closing date of April 9, 2010 at 2pm CST. The PMP regulations will be reviewed at a public hearing scheduled in June. Ms. Braman thanked Ms. Morris for the great job Ms. Morris has been doing on the PMP, including the most recent grant application and subsequent award.

Budget – Ms. Billingsley has made several trips to the legislature for budget hearings this session. The RFP for professional licensing software was not released. \$111,000 was encumbered several years ago for the software. With the aid of Senator Vicki Schmidt, the Senate Ways & Means Committee approved another \$50,000 for the Board to utilize for the software, in addition to the \$110,000 already encumbered. The RFP was released to pursue the bid for the new software and online host. The budget will not be finalized until the end of the legislative session to determine financial outcomes for all state funds. There is concern that the money in the pharmacy fee fund could be swept by the state. Ms. Billingsley requested any board member attending NABP to let her know by Friday March 12, 2010, so that she can include all attending in one registration application. Ms. Billingsley also encouraged Board Members to utilize the state travel agency for booking air travel. Ms. Billingsley will e-mail contact information for state travel to Board Members. Mr. Whitchurch said he would be attending.

Electronic Logbook Data Collection System Update on Regulation – Mr. Forbes presented the progress on the regulations. The Attorney General's office has not approved K.A.R. 68-23-5. Mr. Forbes said the language has been altered that would not specifically say the dispenser must deny the sale. The KEMPL system will alert the dispenser that the sale would place the purchaser over the limit. Ron Hatfield, Appriss, Inc., said that the law does exempt a pharmacist from prosecution if the pharmacist claims to be under duress. The Board consensus was the language proposed by Mr. Forbes was a good option. He will continue working with the Attorney General's office for final approval of the regulation by their office.

The Board reviewed the Appriss' response to the follow up questions to the RFI. Ms. Braman thanked Ms. Billingsley for the side by side chart provided to compare Appriss and MethShield responses to the RFI.

A motion was made and seconded to approve Appriss as the vendor for Meth precursor program "contingent upon developing a successful MOU with Appriss that has been approved by the Board. (Kirk"Arck"/Whitchurch). Motion passed 5-2 (Schoech and Coast). The Board expressed that they felt it was important that the MOU be between the Board of Pharmacy and

Appriss as the actual vendor, and not a third party. The Board also stated that they want to review the MOU and approve it before the Board agrees to it.

A motion was made and seconded to develop the MOU with the vendor, Appriss (Arck/Kirk). Motion passed 5-2 (Schoech and Coast) Mr. Forbes will work on a draft MOU for approval by the Board.

Clarification of K.A.R. 68-2-22 Electronic Prescription Transmission – specifically faxes. The Board heard multiple issues dealing with the faxes and electronic prescription as well as whether or not the pharmacies must retain the faxes for new or refilled prescriptions. With the complexity of all the situations, the Board requested Mr. Forbes render an interpretation. A subcommittee of Mr. Coast, Mr. Whitchurch and Ms. Haynes will clarify and develop a specific list of issues for which we are requesting Mr. Forbes opinion.

CIPP Contract Information – Ms. Billingsley told the Board she met with the new CIPP Program Director, Sharon Iverson, and Mike Larkin, Executive Director, Kansas Pharmacists Association (KPhA). She also met with the CIPP committee. Mr. Larkin was not in attendance at the Board meeting, but did send his regrets to the Board. Ms. Billingsley had previously sent Mr. Larkin a letter on behalf of the Board requesting an update on the CIPP program, given that staff have turned over and a new CIPP Director has been hired. Ms. Billingsley asked Mr. Larkin and Ms. Iverson to attend the June meeting to address the Board’s expectations of the CIPP program. Ms. Billingsley also advised the Board that the CIPP committee needs more pharmacist representation, and if possible, a recovering pharmacist, and efforts will be made to attract more volunteers for the Committee, including a general call for volunteers in the next newsletter.

Legislative Update – Ms. Billingsley updated the Board on the progress of pharmacy-related bills through the legislative process. HB 2411 amended all bills concerning the scheduling of drugs into one bill. This bill makes BZP and K-2 C-I controlled substances. The governor signed the bill today, March 10, 2010. The bills on ARNP, optometry and immunizations are in process. The optometry bill does not appear to have any opposition.

Regulatory Update

- Director Informational Report – Ms. Billingsley presented a document showing where the proposed regulations are in the process.
- Pilot Program – Ms. Billingsley has searched for other states that have statutes/regulations allowing pilot programs. Mr. Whitchurch gave the Board copies of the Texas statute. Mr. Garrelts and Mr. Whitchurch will work on information for the Board’s consideration.
- Prescriber Moves or Dies – Ms. Billingsley explained how we currently handle the problem. There is only one state that addresses the issue in their statutes/regulations. The Board requested the notification of past practice be placed in the next newsletter.
- Photo ID to pick up controlled substances – This will decrease diversion by script or forgeries. This item may be placed on “Pharmacy Best Practices” to include in a future newsletter.
- RFP Report – The RFP bids for new office space have been received. Ms. Billingsley has looked at several of the sites. One site was not acceptable. The Board requested in the February meeting the opportunity to review the finalist sites prior to a decision being made.

Recess: Ms. Braman declared a break to reconvene in 10 minutes.

Reconvene: Ms. Braman reconvened the meeting at 3:35pm

Board Member Reports

Frank Whitchurch - said NABP has posted the NABP Committee on E-Prescribing's study .. Mr. Whitchurch served on the committee. A few significant issues found in NABPs study include: Physicians are not able to view the entire prescription before it is electronically sent to the pharmacy; Direction fields are limited in size; Abbreviations are not standardized; A prescription cannot be canceled once sent; All states have different laws that make compliance by software vendor more difficult to manage. These are all problems related to e-prescribing that need to be addressed from a national perspective.

Michael Coast – asked about Canada Drug in Wakeeney. The pharmacy is telling patients he can help them acquire prescriptions from Canada. On an unrelated note, Mr. Coast stated that there has been a miscommunication regarding the necessity of documenting the person faxing or phoning in a prescription from the doctor's office. Faxing of prescriptions must have the name of the person faxing the prescription just as phoned in prescriptions must have the name of the person phoning the prescription if the caller is not the prescriber. In another question Mike has received, a pharmacist asked why his wife, who is an officer of the corporation could not be in the pharmacy without him being present. Current statute only allows other people in the pharmacy if a pharmacist is present. Mr. Coast also talked about Critical Access Hospitals and the review of orders before a patient receives any medication.

Nancy Kirk - will be attending the Utah School with CIPP.

Jim Garrelts – thanked Ms. Haynes for the pre-opening inspection of the new hospital in west Wichita. Electronic review of medication orders has become and increasingly exciting field.

Karen Braman – reported the state of Kansas has been notified that the federal HIE grants have been awarded. Kansas is receiving approximately \$7 million for the a regional center (RC) for health information exchange. The RC will be administered by the Kansas Foundation for Medical Care. Additionally, KDHE has been awarded approximately \$9 million for the development and implementation of a statewide health information exchange. Ms. Braman stated that the PMP Advisory Committee will be meeting in early April. Ms. Braman also shared a letter from Dr. Tim Welty regarding pharmacists' continuing education. The letter will be presented in the Public Hearing regarding continuing education.

Shirley Arck – No report

David Schoech – said that regulating clerks would be a hot button issue, but one that needs to be addressed. The Board needs to further discuss the tracking of anyone behind the pharmacy counter.

Staff Reports

Jim Kinderknecht – discussed clerks versus technicians. Canadian pharmacies are calling requesting prescription transfer even on controlled substances. The pharmacies are not honoring the transfer request.

Tom Frazier – reported to the Board that he gave a continuing education talk to EMS on the function of the Inspectors and the Board. He has been requested to meet with other groups to cover similar information.

50-Year Certificates – Ms. Billingsley presented the list of pharmacists marking their 50 years in practice. Those pharmacists are:

| | | | |
|-----------|---------------------|----------------|---------|
| 1/23/1959 | RICHARD K WADE | FONTANA | 1-07949 |
| 2/27/1959 | ALLEN R HALE | WICHITA | 1-07972 |
| 2/27/1959 | JAMES L ENYART | SHELL KNOB | 1-07963 |
| 2/27/1959 | WILLIAM C DAUGHERTY | LAKIN | 1-07962 |
| 2/27/1959 | PATRICK A ALKIRE | WICHITA | 1-07960 |
| 6/5/1959 | JAMES W CLELAND | WAKEENEY | 1-07981 |
| 9/30/1959 | DARRELL L THORSELL | MEADE | 1-07999 |
| 10/2/1959 | SHERWIN SNYDER | WICHITA | 1-08003 |
| 10/2/1959 | FRANK W LEVELL JR | KANSAS CITY | 1-08011 |
| 10/2/1959 | JAMES L DISQUE | NEW PROVIDENCE | 1-08008 |
| 10/2/1959 | WILLIAM L CUMMINGS | WICHITA | 1-08007 |
| 10/2/1959 | BURTON J CROWELL | PITTSBURG | 1-08002 |
| 10/2/1959 | RICHARD D BAUER | COFFEYVILLE | 1-08006 |

A motion was made and seconded to award 50-year certificates to these pharmacists (Coast/Arck). Motion passed.

Approval of New Pharmacists and New Registrants

A motion was made and seconded to approve the new licenses and registrations. (Coast/Arck) Motion passed.

Update Matrix – Review of Action Items for the Board

Ms. Morris reviewed the agenda items requiring action by the specified individual and the date the action is due.

Adjourn: Ms. Braman adjourned the meeting at 4:18pm.

Thursday, March 11, 2010

KU School of Pharmacy
1251 Wescoe Hall Dr.
2056 Malott Hall, Room 2048
Lawrence, KS

Tour of the New Pharmacy Building 7:45am (West Campus)

Law Class 9am (Room 2049)

Meeting Called to Order: President Karen Braman called the meeting to order at 10:30am.

Members Present: Karen Braman, R.Ph.,M.S., President; Shirley Arck, Pharm. D., Vice-President; Michael Coast, R.Ph., Investigative Member; Jim Garrelts, Pharm. D.; Nancy Kirk, Public Member; David Schoech, R.Ph.; and Frank Whitchurch, R.Ph.

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

Others Present: See attached listing.

Public Hearings for Proposed Regulations

K.A.R. 68-20-10a – Electronic Prescription transmittal of controlled substances.

K.A.R. 68-1-1b – Continuing Education

K.A.R. 68-7-21 – Institutional Drug Rooms

Ms. Braman adjourned the regular meeting and opened the public hearing at 10:31am
Ms. Billingsley provided a letter from Kansas Legislative Research Department that responded on all three proposed regulations and made no recommendations for changes.

K.A.R. 68-20-10a – Electronic Prescription transmittal of controlled substances.
No one from the public spoke on the regulation change.

K.A.R. 68-1-1b – Continuing Education

A letter from Dr. Tim Welty was received as comments.

A question as to whether the Board will approve the CE or the provider was raised. Ms. Braman believes the proposed regulation requires the program be approved, not the provider. After discussion it was determined that non-ACPE providers would submit the program for approval, not the individual pharmacists. The Board Office will assign a number for tracking programs. Other discussion included CME and commercial biases.

K.A.R. 68-7-21 – Institutional Drug Rooms

This proposed regulation has been circulating for some time. The last changes made were from the recommendations from The Joint Committee on Administrative Rules.
No one from the public spoke on the regulation change.

Adjourn Public Hearing: Ms. Braman closed the public hearing.

Reconvene Regular Meeting: Ms. Braman called the regular meeting to order at 11:15am.

K.A.R. 68-20-10a – Electronic Prescription transmittal of controlled substances.

A motion was made and seconded to adopt the proposed regulation. (Coast/Kirk)

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

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

K.A.R. 68-1-1b – Continuing Education

A motion was made and seconded to adopt the proposed regulation. (Garrelts/Schoech)

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

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

K.A.R. 68-7-21 – Institutional Drug Rooms

A motion was made and seconded to adopt the proposed regulation. (Coast/Kirk)

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

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

Executive Session:

A motion was made and seconded to go into executive session for 15 minutes to discuss client/attorney privileged information at 11:25am and to reconvene the regular meeting at 11:40am in the same room. The executive session is to include Mr. Forbes, Ms. Billingsley and the Board staff. (Coast/Schoech) Motion passed.

Ms. Braman reconvened the meeting at 11:35am.

Adjourn: Ms. Braman adjourned the meeting at 11:40am.