

Kansas State Board of Pharmacy
Minutes of the December 15, 2015
Special Board Meeting

800 SW Jackson, Suite 1414
Topeka, Kansas

Tuesday, December 15, 2015

Meeting Called to Order: Vice President Chad Ullom called the meeting to order at 10:06 a.m.

Members Present: Chad Ullom, R.Ph., Vice President; Jim Garrelts, Pharm. D.; Michael Lonergan, R.Ph., Investigative Member; Cheri Pugh, Public Member; David Schoech, R.Ph.; and John Worden, Pharm. D., Alternate Investigative Member. Robert Haneke, Pharm D., President, joined the call at 11:10 a.m.

Staff Present: Alexandra Blasi, JD, MBA, Executive Secretary; Jim Kinderknecht, R.Ph., Licensed Pharmacy Inspector; Carly Haynes, R.Ph., Licensed Pharmacy Inspector; Melissa Martin, Compliance Inspector; Reyne Kenton, Compliance Inspector; Mitzi Dodds, Legal Assistant; and Randall J. Forbes, JD, General and Disciplinary Counsel

Others Present: See attached listing.

Consent Agenda

Licensing Software – Executive Secretary presented two software programs being considered to update the Board’s licensing capabilities.

- My License Office (Systems Automation) is a customizable system utilized by the Kansas Board of Healing Arts (BOHA). BOHA hosts its own environment through a license purchased through the Kansas Department of Agriculture. BOHA also hosts environments for the Kansas Board of Technical Professions (KBTP) and the Kansas Board of Cosmetology (KBOC). BOHA is willing to work on developing features needed by the Kansas Board of Pharmacy (KBOP), including developing interfaces with the National Association of Boards of Pharmacy (NABP) so that inspectors can do all electronic inspections. BOHA estimates the earliest they could have the KBOP system up and running would be July 2016. Currently, BOHA is still working to get the KBTP and KBOC environments operational, so it is unlikely that the proposed July 2016 implementation date for KBOP functionality will be met. BOHA estimates the hosting will cost approximately \$70,000 per year.
- eSoftware Solutions, Inc. – This option is superior to Systems Automation as it was developed by the Mississippi Board of Pharmacy specifically for use by boards of pharmacy. Currently, four other state boards of pharmacy (Arizona, Iowa, Maryland and Texas) are entering into contracts to use the software. The program interfaces with NABP, has electronic options KBOP staff feel are necessary, offers rolling updates, and the vendor seeks input from customers for

ideas on how to improve functionality. KBOP will receive a price break if it signs up for a six-year contract, which calculates to a cost less than the Systems Automation program.

- The Board members agreed that Executive Secretary can proceed with entering into a contract with eLicensing Solutions.

2016 Legislation

Executive Secretary reported that she had met with Representative Don Hill to discuss proposed legislation changes. Rep. Hill has passed a copy of the preliminary draft of proposed legislation to the Revisor of Statutes Office, but assured the Board members that there is still time to make any changes. The preliminary draft specifically addresses issues concerning federal compliance with third party logistics providers, wholesale distributors, and automation.

Pharmacy technician legislation – Technicians will be required to graduate from an accredited high school, GED program, or be enrolled in an accredited high school program; pass a certification examination; and biennially complete 20 hours of continuing education (CE) approved by the Board. Technicians will also be required to provide to the Board any change of residential address, email address or legal name within 30 days and will be required to wear a name tag. There was some discussion to clarify the national certification examination requirement. The language will be amended to clarify that new applicants will be required to pass a certification examination approved by the Board. The applicants must pass a certification examination within two (2) years of initial approval of registration. Any technician currently registered would not need to pass a certification examination unless they allow their registration to lapse. The CE requirement applies to all registrants, whether certified or not. Mr. Worden suggested that the Board's standing CE Committee approve CE for technicians in addition to pharmacists.

Motion was made and seconded (Lonergan/Schoech) to authorize Executive Secretary to request that legislation be introduced on behalf of the Board and to work with Mr. Worden and Mr. Lonergan to determine what mechanics will be used to address legislative inquiries should add-ins be attached to the legislation. Motion passed.

Motion was made and seconded (Schoech/Lonergan) that the president or vice-president of the Board could authorize Executive Secretary to speak on behalf of the Board, or decide if the entire Board should weigh in, on legislative inquiries. Motion passed.

Ms. Pugh rejoined the meeting at 10:47 a.m.

Department of Defense Gateway Request

Executive Secretary reported on the Department of Defense Gateway request discussed at the November 2015 Board meeting. The request would involve information from physicians and pharmacists only, as required by statute. Oklahoma, Colorado and Nebraska are already part of the pilot program and Kentucky is considering joining the program. Motion was made and seconded (Schoech/Garrelts) that the Board would enter into an agreement with the Department of Defense to allow

access to K-TRACS following the stipulation that only physicians and pharmacists use the program. Motion passed.

Regulation Update

Collaborative Practice – The regulations have been approved by the Attorney General's (AG) Office. A notice for public hearing will be prepared.

CE and Automation – Mr. Forbes has re-drafted the regulations based on the AG's objections. He suggested that Janet Arnt with the AG's Office be contacted to see if the AG's Office can review the regulations again instead of having to refer them to the Department of Administration to begin the process again. Executive Secretary will contact Ms. Arnt to see if the AG's Office can provide an unofficial review of the re-drafted regulations.

Compounding – The AG's Office felt there was a real issue with whether the Board has sufficient authority to do everything included in the regulations. The proposed legislation provides specific requirements in the regulations, too. The Board discussed waiting until the bill is passed and then taking the regulations back to the AG's Office for review or continuing to deal with the other issues raised by the AG's Office. Mr. Worden reported that he has worked on the regulations to address the AG's concerns and wondered if the Board should try to work with the AG's Office again on the re-drafted regulations. He is in favor of all Board members reviewing the regulations and assembling a task force to review/change the regulations in coordination with the federal law changes regarding 503A and 503B businesses. This would allow the Board to move ahead if statutory authority is granted. Mr. Forbes reported that if the introduced bill is passed, it would become effective on July 1, 2016. He asked the Board if the revised regulations should be sent out to compounders and ask them to review it. Mr. Worden agreed that would allow the compounders input and would generate discussion from practitioners as the Board works toward getting statutory authority. Dr. Garrelts agreed. Mr. Worden pointed out that the Board did not have the authority to enforce some of the proposed regulations, but Executive Secretary has addressed those issues in the statutory proposal. Motion was made and seconded (Lonergan/Schoech) to have Mr. Worden gather a task force of stakeholders to weigh-in on the regulations and then submit the re-drafted regulations to the Board for consideration. Motion passed.

Technician – If the statute as reviewed by the Board today passed, a lot will be accomplished through the legislation.

Special Budget Item

Executive Secretary reported that overall the budget is in good shape. However, expenses incurred for attorney services are running higher than in previous years. The amount budgeted for FY 2016 was \$60,000. Including billing from July 1, 2015 through mid-November 2015, expenses now total \$30,000. If this rate of spending continues, it is projected that expenses could reach \$100,000 for FY 2016. The expenditures for FY 2014 totaled \$35,000 (with an average monthly bill of \$3,200) and expenditures for FY 2015 totaled \$68,000 (with an average bill of \$6,750). The monthly bills for FY 2016 are averaging \$7,900.

Executive Secretary explained that budgetary increases have been requested for certain areas, but suggested the Board be cautious with statutory authority granted for budgetary purposes. Mr. Forbes added that some of the FY 2016 costs were incurred when he took a lead in the process for updating regulations. In addition, there are four contested discipline cases he has spent a large amount of time on and a fifth discipline case where the other party was allowed to engage in discovery. Executive Secretary explained that the Board does have a litigation fund, but that is for appeals to the district court level or higher. Executive Secretary suggested that perhaps Mr. Forbes could provide Board staff with templates he uses for Stipulation and Consent Orders and Summary Orders so those orders could be drafted by staff and, if needed, sent to Mr. Forbes for review. Executive Secretary also suggested that the Board could allow Mr. Lonergan, as the Investigative Member, to review proposed settlements for contested cases and determine if settlement was appropriate. Settling cases would also save time and money.

Board members agree that Mr. Forbes is a valued resource to the Board as both the Board's attorney and as disciplinary counsel. Dr. Garrelts asked if transferring funds to cover attorney services expenses would be possible. Executive Secretary stated there is some room to adjust contractual services expenses, but not major expenses. If the Board overspends on a consistent basis, it may be urged to obtain counsel elsewhere and potentially remove Mr. Forbes as the Board's legal resource. Executive Secretary does not want to lose Mr. Forbes' services and does not want to cut corners in order to save costs. She simply wants the Board to be aware of the situation and feels that if everyone is aware of the situation, everyone can do better with the budget and avoid any negative ramifications for FY 2016.

CE Summary Orders

Staff have completed the 2015 CE audit and have composed a list of the pharmacists who have not been able to provide proof of the required number of CE hours for the July 1, 2013 through June 30, 2015 renewal period. Executive Secretary has prepared a sample of the cover letter and Summary Order that will be sent to those individuals who failed to provide the required CE. In previous years, the Investigative Member has signed each CE Summary Order and the Board subsequently voted on the orders once the fine and additional CE requirements were met. Since the orders are basically identical except for a few variables specific to each licensee (name, address, CE provided, fine amount, additional CE required, etc.), Executive Secretary requests authority to enter the Summary Orders on the Board's behalf. Motion was made and seconded (Lonergan/Schoech) to grant Executive Secretary the authority to enter into and mail out the CE Summary Orders as soon as possible. Motion passed.

Strategic Planning

Executive Secretary reported on an additional agenda item involving strategic planning. She indicated the Department of Administration has offered to assist the Board in strategic planning at its next scheduled meeting in February 2016. Mr. Ullom, Mr. Schoech and Mr. Lonergan reported both had some experience in strategic planning, but felt a quick refresher would be beneficial. Executive Secretary asked if the Board members would be interested in an introductory discussion and/or a beginning

discussion on mission/vision at the February 2016 meeting. Joint discussions are often helpful in a longer segment, so the Board could plan to address strategic planning for approximately 60 to 90 minutes at each 2016 Board meeting or plan a retreat specifically focused on strategic planning. The Board determined that a retreat could be scheduled for the afternoon of its next regularly scheduled meeting, which will be the afternoon of February 5, 2016.

Adjourn: Mr. Ullom adjourned the meeting at 11:30 a.m.