

Kansas State Board of Pharmacy
Minutes of the July 16 & 17, 2015
Board Meeting

800 SW Jackson, Lower Level
KBOHA Conference Room
Topeka, KS 66612

Thursday, July 16, 2015

Meeting Called to Order: Vice President Chad Ullom called the meeting to order at 9:03am.

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.

Members Absent: Robert Haneke, Pharm D., President

Staff Present: Debra Billingsley, JD, Executive Secretary; Jim Kinderknecht, R.Ph., Licensed Pharmacy Inspector; Carly Haynes, R.Ph., Licensed Pharmacy Inspector; Melissa Martin, Compliance Inspector; Reyne Kenton, Compliance Inspector; and Randall Forbes, JD, General and Disciplinary Counsel. Michele Tunnell, JD, General Counsel, arrived at 1pm.

Others Present: See attached listing.

Approval of the Agenda:

A motion was made and seconded to approve the agenda as amended. (Schoech/Worden) Motion passed.

Items added:

- Administrative Hearing for Nyla O'Neal for Thursday at 1:30pm
- Administrative Proceedings for:
 - Eugene Capocasale,
 - Bradley Reuer,
 - Walgreens #04234,
 - Walgreens #05840,
 - Walgreens #06113, and
 - Walgreens #02750

Approval of the April 23 & 24, 2015 Minutes:

A motion was made and seconded to approve the minutes of the April 23 & 24, 2015 Board meeting as printed. (Worden/Schoech) Motion passed.

Consent Agenda

NPLEx Report – Ms. Billingsley presented the report.

Approval of New Pharmacists and New Registrants

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

Investigative Member Report – Closed Cases - Mr. Lonergan presented the closed cases and asked for any questions. A motion was made and seconded to accept the closed cases. (Worden/Garrelts) Motion passed.

Board Discussion

Collaborative Practice – Dr. Garrelts gave the update.

1. Draft regulations – The Board reviewed the draft regulations. The addition of the physicians has helped in the process. The physicians expressed their comfort level with any registered pharmacist being involved in a collaborative practice agreement. The relationship between the physician and the pharmacist is the most important factor. The Board discussed the impact of the collaborative practice regulations on the vaccination protocol. The Board requested adding a clause in the proposed collaborative practice regulations so it does not impact the current vaccination program.
2. Unapproved June 2015 minutes – Dr. Garrelts reviewed the minutes with the Board. The Committee is preparing Guidance documents to further explain the intent of the regulations as proposed. Dr. Garrelts presented the work completed for Board review.
3. Clarification of Committee Date – The committee with official physician representation was not formed until June of 2015 well after the 90-day statute designated day to begin. The expiration date would be October 2015. The Board requested the possibility of the date to be calculated from appointment date. Mr. Forbes said the statute does not say the Board cannot reappoint the members. Derek Heim requested a pharmacist from a chain be appointed to the committee and if not possible then at least allow input from the chains. The Board will consider options and address appointments in the next meeting in November 2015.
4. Collaborative Practice Advisory Committee – The list was attached.

A motion was made and seconded to add a clause in the collaborative practice regulation exempting the vaccination protocols from this regulation and to approve the minutes from the June 2015 meeting. (Worden/Schoech) Motion passed. Mr. Ullom thanked the committee for their time and thoughtful consideration of collaborative practice.

Walmart Sales Clerk Functions – Debbie Mack and Shelley Tustison were present to represent Walmart. David Schoech recused himself from any decision as he works for Walmart.

Is bagging a prescription a technician and pharmacist function or may a clerk bag the prescription? Ms. Mack explained the bagging scenario. Mr. Kinderknecht spoke to the issue of the expanding functions of a clerk and requesting all people behind the counter being licensed or registered. If the Board chose to register pharmacy clerks then a statute change would be needed. Once the technician regulations are approved then looking to clerk registration could be considered The Board discussed options available.

A motion was made and seconded to consider bagging not part of the prescription process and to allow the computer to direct the Walmart clerks into which type of bag to bag the prescriptions. (Loneragan/Pugh) Motion passed. Mr. Schoech recused.

Recess: Mr. Ullom declared a break to reconvene in 15 minutes.

Reconvene Mr. Ullom reconvened the meeting at 10:46am.

Over-the-counter Pseudoephedrine

Who may dispense over-the-counter PSE products? OTC PSE is a C-V in Kansas. The regulation - K.A.R. 68-20-22 addresses dispensing of C-Vs and it requires a pharmacist to dispense. A technician or clerk may complete the financial transaction. As to OTC PSE the statute K.S.A.65-1643(j)(1)(A) should be referenced. The statute specifically addresses the sale of OTC PSE and allows sales clerks or technicians the ability to retrieve and sell and OTC PSE product.

Supervising physicians

PA's and APRN's must still identify their supervising physician on the prescription. The lack of a supervising physician documented on the prescription is becoming more apparent with the electronic prescriptions. Most of the electronic prescriptions do not contained the required information. Ms. Billingsley will follow-up with the other agencies and SureScripts.

Regulatory Update – Ms. Billingsley provided the update. The regulations reviewed were the automation regulations. A “reasonable length of time” has been a problem with the AG’s office due to the ambiguity of meaning. A list of factors such as emergency, availability of the drug, hours of operation of the pharmacy, and drug stability were placed in the regulation. The Board suggested changing the wording to “reasonably meet the needs of the patients considering the factors of emergency, availability of the drug, hours of operation of the pharmacy, and drug stability.” A motion was made and seconded to adopt the suggested language. Garrelts / Loneragan. Motion Passed
Ms. Billingsley presented the other non-substantive changes and suggested the Board may be able to have the public hearing on the automation regulations in November. The proposed regulations, if signed off by the AG’s office, would be noticed in the Kansas Register with the date of the hearing. The notice must be at least 60 days prior to the public hearing.

Pharmacy Technician Regulations – stalled due to a problem with other statutes and regulations in how technicians are registered.

The memorandum of understanding has not been signed with the FDA. The deadline has been extended. Ms. Billingsley presented the letter from HDMA to the Board for review. HDMA – Healthcare Distribution Management Association. Representative Hill will have a reviser work with the Board to make the necessary statute to comply with DQSA, Drug Quality and Security Act.

Other legislative items – Ms. Billingsley gave the Board a handout showing the other issues. The Board discussed the current audit laws. A bill was presented last year by

KPhA regarding audits of pharmacy prescriptions and recoupment practices. The Board consensus is to support the bill.

Hemp Oil is another issue the legislature may hear again this year. Ms. Billingsley provided information from the FDA as to how physicians can initiate a drug study for even one patient. This would allow for collection of data that could be used to support the legalization of hemp oil as a medicinal product.

Compounding Regulations are currently being prepared for re-review by the AG's office. Mr. Forbes suggested resubmitting all of the pages to have them re-stamped.

The KTRAC advisory committee is considering how to make KTRACS mandatory for pharmacists and prescribers. The discussion will continue in the committee as they consider options on how to increase participation and use.

DUR Board (Drug Utilization Review) - The Board will submit the name of LaTonyua Rice, R.Ph, PharmD. A motion was made and seconded to appoint LaTonyua Rice to be the Board representative on the DUR Board. (Worden/Schoech) Motion passed.

Board Discussion

PARE Exam – Ms. Billingsley received a response from NABP regarding questions with the PARE Exam. The failure rate looks rather high from the numbers they quoted. Mr. Kinderknecht has volunteered to take the test and report back to the Board on his thoughts of appropriateness. The Board considered whether the two pharmacists must continue to take the test until they pass and their orders say they must pass the test. Ms. Billingsley will contact the two pharmacists and have them reschedule the test.

Recess: Mr. Ullom recessed the meeting for lunch at 11:57am to reconvene at 1pm.

Reconvene: Mr. Ullom reconvened the meeting at 1pm.

Administrative Hearings / Proceedings

- Chris Henington (2-13153) **Case 14-55**. Mr. Henington was not present. Mr. Forbes requested the Board consider the agreed upon stipulation and order between the Board and Mr. Henington. Mr. Forbes told the Board the agreement includes a surrender of license with conditions. Mr. Henington cannot reapply before one year and must show documentation of rehabilitation plus other items. Please the Stipulation and Consent Order. A motion was made and seconded to accept the Stipulation and Consent Order with Mr. Henington (Garrelts/Worden) Motion passed. The Stipulation and Consent Order was approved.
- Walgreens Pharmacy #04234 (2-13131). **Case 15-005A**. There was no one present to represent Walgreens. Mr. Forbes presented the case to the Board. Mr. Ullom recused himself from the decision due to employment with Walgreens. A motion was made and seconded to approve the Stipulation and Consent Order. (Schoech/Worden) Motion passed. The Stipulation and Consent Order was approved.

- Walgreens Pharmacy #05840 (2-13143) **Case 15-012**. There was no one present to represent Walgreens. . Mr. Forbes presented the case to the Board. Mr. Ullom recused himself from the decision due to employment with Walgreens. A motion was made and seconded to approve the Stipulation and Consent Order. (Garrelts/Schoech) Motion passed. The Stipulation and Consent Order was approved.
- Walgreens Pharmacy #06113 (2-13122) **Case 15-013**. There was no one present to represent Walgreens. . Mr. Forbes presented the case to the Board. Mr. Ullom recused himself from the decision due to employment with Walgreens. A motion was made and seconded to approve the Stipulation and Consent Order. (Schoech/Worden) Motion passed. The Stipulation and Consent Order was approved.
- Walgreens Pharmacy #02750 (2-13128) **Case 15-014**. There was no one present to represent Walgreens. . Mr. Forbes presented the case to the Board. Mr. Ullom recused himself from the decision due to employment with Walgreens. A motion was made and seconded to approve the Stipulation and Consent Order. (Worden/Garrelts) Motion passed. The Stipulation and Consent Order was approved.
- Marlin Buchholz (1-09929) **Case 14-130**. Mr. Buchholz was not present. Mr. Forbes presented the case to the Board. A motion was made and seconded to approve the Stipulation and Consent Order. (Worden/Garrelts) Motion passed. The Stipulation and Consent Order was approved.
- Gary Vratil (1-08881) **Case 15-010**. Mr. Vratil was not present. Mr. Forbes presented the case to the Board. A motion was made and seconded to approve the Stipulation and Consent Order. (Worden/Schoech) Motion passed. The Stipulation and Consent Order was approved.
- Bruce Sheridan (1-09762) **Case 15-004**. Mr. Sheridan was present with counsel, Traci Johnson. Mr. Forbes presented the case. Ms. Johnson made statements on behalf of Mr. Sheridan. Please see the Court Reporters recording. Mr. Sheridan was sworn in for testimony. Mr. Forbes and Ms. Johnson requested approval by the Board. The Board entered into a closed session for quasi-judicial deliberations at 1:34pm and included the Board; Ms. Tunnel, Board counsel; and Ms. Billingsley. Mr. Ullom reconvened the open session at 1:44pm.

A motion was made and seconded to approve the Stipulation and Consent Order. (Schoech/Worden) Motion passed. The Stipulation and Consent Order was approved. The consent order requires Mr. Sheridan's license to be suspended for 365 days from the effective date of the Consent Order; remit a \$50 processing fee for the fingerprint card he is to give the Executive Secretary; attendance at the Ethics and Boundary Course (*PROBE*). Once the suspension is completed Mr. Sheridan's license will be placed on probation for 5 years with the stipulations he not be a pharmacist-in-charge or preceptor, may not fill

prescriptions for himself or a family member, and not fill any prescriptions written by family members.

- Nyla O'Neal (1-12654) **Case 15-083**. Ms. O'Neal was present with counsel, Wm. Scott Hesse. Mr. Forbes presented the case. Mr. Hesse presented Ms. O'Neal's view of the case. Ms. O'Neal was sworn in for testimony. Please see the Court Reporters recording. The Board entered into a closed session for quasi-judicial deliberations at 2:04pm and included the Board; Ms. Tunnel, Board counsel; and Ms. Billingsley. Mr. Ullom reconvened the open session at 2:19pm. A motion was made and seconded to approve the Stipulation and Consent Order. (Schoech/Worden) Motion passed. Ms. O'Neal is to complete 120 hours of continuing education and may include the 45 hours she obtained while studying for the certification. She must also pay a fine of \$3000 for not completing the required CE and a \$2000 fine for practicing on an expired license. License is reinstated.
- Precision Pharmacy (22-12940) Case 15-032. There was no one present to represent Precision Pharmacy. Mr. Forbes presented the case to the Board. A motion was made and seconded to accept the Stipulation and Consent Order as presented. (Schoech/Lonergan) Motion passed. The Stipulation and Consent Order was approved.
- Bradley D. Reuer (1-12665) Case 15-075. Mr. Reuer was not present. Mr. Forbes presented the case to the Board. A motion was made and seconded to accept the Stipulation and Consent Order as presented. (Garrelts/Worden) Motion passed. The Stipulation and Consent Order was approved.

Recess: Mr. Ullom declared a break to reconvene in 15 minutes.

Reconvene Mr. Ullom reconvened the meeting at 2:52pm

Board Reports and Discussion

Budget – Ms. Billingsley presented the report. Ms. Yingling is attending a PMPi meeting in Chicago, Illinois. The office has ordered new computers for the inspectors and board members. The computers for the inspectors will be notebooks and will be more compatible with the programs and reports the inspectors need to access. The computers for the Board members will be more functional with viewing the reports and accessing data needed for the board meetings. Ms. Billingsley said the State budget people are scrutinizing agency spending more closely. Ms. Billingsley is looking to utilize NABP licensing software as a sole source; however, there is some resistance from the state. The Board and professional organizations will need to be on the watch for fee sweeps. The Board inquired as to possibility of doing a salary survey of pharmacy inspectors in other states for the possibility of increasing salaries.

KTRACS – Ms. Billingsley presented the report to the Board.

- PMP AC Meeting Minutes (Advisory Council)
- KDHE has received the grant for the epidemiologist and will be looking at the PMP data.
- Kroger has already started the project and will be able to use the grant money

- KHIN is backing out of the program and grant.

Board Member Reports

David Schoech – Mr. Schoech shared with the Board the concerns brought to him by pharmacists. The lack of a supervising physician on electronic prescriptions was the leading complaint.

Executive Director Report - Ms. Billingsley

- District 6 will be held in Lake Tahoe with Districts 7 & 8 September 14-17, 2015. Currently Mr. Lonergan, Mr. Ullom, and Mr. Worden are planning to attend.
- Maltagon will be held October 25-28, 2015 in Louisville, Kentucky. Currently, Carly Haynes will attend.
- NASCA is in October 20-23 2015. Melissa Martin and Jackie Yingling will attend.

Executive Session:

Personnel

A motion was made and seconded to enter into executive session for discussion of personnel for 20 minutes to include the Board, Ms. Billingsley, Mr. Forbes, the inspectors, and the intern, Brendan Handy. (Worden/Schoech) Motion passed.

Mr. Ullom reconvened the regular meeting at 3:47pm.

Adjourn: Mr. Ullom adjourned the meeting at 3:48pm.

Friday, July 17, 2015

Meeting Called to Order: Vice President Chad Ullom called the meeting to order at 9:08am.

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.

Members Absent: Robert Haneke, Pharm D.

Staff Present: Debra Billingsley, Executive Secretary; Jim Kinderknecht, R.Ph., Licensed Pharmacy Inspector; Carly Haynes, R.Ph., Licensed Pharmacy Inspector; Melissa Martin, Compliance Inspector; Reyne Kenton, Compliance Inspector; Randall Forbes, JD, General Counsel; and Michele Tunnell, JD, General Counsel. (Ms. Tunnell left at 10:05am)

Others Present: See attached listing.

Administrative Hearings / Proceedings

- Coram/CVS Specialty Infusion Services (2-10384) **Case 15-015.** Laurie Scheffer, PIC of Coram, was no one present to represent Coram/CVS with counsel, Harold Hilborn. Mr. Forbes presented the case to the Board. Ms. Scheffler was sworn in and answered questions. Ms. Haynes, investigator on the case, was sworn in

to answer the Board's questions. A motion was made and seconded to accept the Consent Order, (Schoech/Garrelts) Motion passed.

- Ankeyta White (14-11873) **Case 14-21**. Ms. White was not present. Ms. White is in default. Mr. Forbes presented the case to the Board. Exhibits were entered. A motion was made and seconded to revoke the technician registration of Ankeyta White. (Garrelts/Lonergan) Motion passed.
- William L. Pollard (1-12224) **Case 09-58**. Mr. Pollard was not present. Mr. Pollard is in default. Mr. Forbes presented a portion of the case and then requested the session be closed to receive information from KsPRN. Mr. Ullom closed the session to the public. Kelly Rockers, Sara Rust-Martin, KsPRN representatives; Mike Larkin, KPhA Executive; and Ralph Holbrook, CIPP committee chairman. Mr. Ullom reconvened the regular meeting at 9:48am. A motion was made and seconded to continue the temporary emergency suspension of Mr. Pollard's pharmacist license [Please see the court reporters transcript for actual motion.] (Worden/Schoech). Motion passed.
- Eugene Capocasale (1-11156) Case 14-174. Mr. Capocasale was not present. Mr. Forbes presented the Board the opinion of the statutes and regulations regarding continuing education, relicensure, and any grace period as a response to Mr. Capocasale letter explaining his position. The Board entered quasi-judicial deliberations at 10:02am. Mr. Ullom reconvened the regular meeting at 10:12am. A motion was made and seconded to affirm the original Summary Order with Mr. Capocasale. (Garrelts/Schoech)

Summary Orders

- Rachel Dawn Hackett (14-07238) **Case 15-022**
- Brenda Polzin (14-05488) **Case 15-023**

Executive Session

Mr. Ullom closed the open meeting so the Board could enter into executive session to discuss personnel at 10:15am. The session included the Board and Mr. Forbes. Ms. Billingsley joined the executive session at 10:38am.

Adjourn: Mr. Ullom adjourned the meeting at 10:56am.