

# KANSAS STATE BOARD OF PHARMACY BOARD MEETING AGENDA

June 6, 2019

**Meeting Location:** Board of Regents Board Room  
1000 SW Jackson, Ste 520  
Topeka, KS 66612

**Thursday, June 6, 2019**

**Members Present:** John Worden, PharmD., President; Jonathan Brunswig, PharmD., Vice-President; Chad Ullom, R.Ph., Investigative Member; Robert Haneke, PharmD; Bill Walden, RPh; and Mike Lonergan, R.Ph.

**Staff Present:** Alexandra Blasi, JD, MBA, Executive Secretary; Jim Kinderknecht, R.Ph., Licensed Pharmacy Inspector; Carly Haynes, R.Ph., Licensed Pharmacy Inspector; Shelley Rosebrook, R.Ph., Licensed Pharmacy Inspector; Melissa Martin, Compliance Inspector; Kayla Jones, Compliance Inspector; Jackie Yingling, Assistant Director; Lori Haskett, Assistant Director; Heidi Nelson, Administrative Specialist; Megan Tomlinson, Sr. Administrative Assistant; Randy Forbes, JD, General Counsel; Loren Snell, JD, Administrative Law Judge.

## **Case 18-553 Andrew Chau**

- The Board was represented by Mr. Forbes.
- Andrew Chau appeared in person with counsel, Diane Bellquist.
- Mr. Snell swore in Mr. Chau who gave testimony.
- Mr. Walden recused himself from the case.
- The Board entered into closed session for private health information and included the Executive Secretary, the Board's inspectors, and KsPRN staff at 8:45 am.
- Mr. Snell swore in Gene Hotchkiss, KU School of Pharmacy Dean, who gave testimony.
- Mr. Snell swore in Kelly Rockers, KsPRN staff, who gave testimony.

**Recess:** The Board recessed at 9:32 am.

**Reconvene:** The Board reconvened at 9:45 am.

- The Board entered into closed session for KAPA deliberations at 9:45 am.
- Dr. Worden reconvened the proceedings at 10:04 am.
- Motion made to approve the intern registration with a probationary status for a period of 5 years along with participation in the KsPRN program. Required to notify the PIC and preceptor of any pharmacy that he applies to of criminal background and obtain their acknowledgement of awareness of the criminal background in writing to the Board. (Lonergan/Haneke) Motion carries.

## **Case 18-512 Thomas Zlatohlavek**

- The Board was represented by Mr. Forbes.
- Thomas Zlatohlavek appeared in person with counsel, Jim Morrow.
- Mr. Snell swore in Mr. Zlatohlavek who gave testimony.
- Mr. Ullom recused himself from the case.

- Mr. Walden recused himself from the case.
- The Board entered into closed session for KAPA deliberations at 10:27 am.
- Dr. Worden reconvened the proceedings at 10:34 am.
- Motion made to dismiss the charges and write a letter to the defendant stating that it is his responsibility to make sure his signature was on the required documents and a letter to Walgreens requesting that they closely monitor their electronic signature system. (Haneke/Lonergan) Motion carries.

### **Case 18-557 Ronald Riley**

- The Board was represented by Mr. Forbes.
- Ronald Riley appeared in person with counsel, Mark Lynch.
- Mr. Snell swore in Mr. Riley who gave testimony.
- The Board entered into closed session for private health information and included the Executive Secretary, the Board's inspector, and KsPRN staff at 11:00 am.
- Ms. Rockers, KsPRN staff, who was already under oath provided testimony.

**Recess:** The Board recessed at 11:20 am.

**Reconvene:** The Board reconvened at 11:30 am

### **Case 18-557 Continued**

- Dr. Worden reconvened the open proceedings at 11:31 am.
- Mr. Forbes reviewed the stipulation agreement.
- The Board entered into closed session for KAPA deliberations at 11:46 am.
- Dr. Worden reconvened the proceedings at 11:57 am.
- Dr. Worden presented the following proposed changes to the stipulation agreement:
  1. Mr. Riley surrendering access to the pharmacy (surrendering the key to the pharmacist-in-charge);
  2. The pharmacy maintaining a perpetual inventory of controlled substances; and
  3. Assessing a \$5000 administrative fine against Mr. Riley.
- Mr. Riley and his counsel accepted the changes to the stipulation agreement.
- Motion made to accept stipulation with amendments. (Ullom/Haneke) Motion carries.

**Recess:** The Board recessed at 12:10 pm.

**Reconvene:** The Board reconvened at 12:22 pm

### **Case 18-804 John Crumly**

- The Board was represented by Mr. Forbes.
- John Crumly appeared in person without counsel.
- Mr. Snell swore in Mr. Crumly who gave testimony.
- The Board entered into closed session for KAPA deliberations at 12:39 pm.
- Dr. Worden reconvened the proceedings at 12:44 pm.
- Motion made to approve the pharmacist by reciprocity application with the limitation of not being a pharmacist-in-charge. (Haneke/Lonergan) Motion carries.

Dr. Worden called the open meeting to order at 12:50 pm.

## **Reports**

### **Director's Report**

Board of Pharmacy staff is visiting other board meetings with inspectors going to Pharmacy Board meetings of other states. Ideas that are brought back are being added to our meetings.

The Assistant Director of K-TRACS has tendered her resignation. The vacancy will be posted on the Kansas jobs website for applications.

The Board expects to have all 2019 incoming KU School of Pharmacy intern applications processed by July 1.

The Board's law student, Lauren Moon, wrote a medical marijuana article for law school; provided to the Board for reference.

#### Committee Reports

Collaborative Drug Therapy Management Committee: A statewide immunization protocol is in the final stages of approval with the Kansas Department of Health and Environment.

Compounding Task Force: Joanna Robinson is setting up meetings.

CE Review Committee: Review is fairly automated now. Dr. Haneke will go off as a Board member and will need to be replaced though he is invited to stay on as a member of the profession.

PMP Advisory Committee: Members are meeting monthly and have been very productive.

Automation Task Force: The Executive Secretary and Mr. Brunswig attended the NABP Annual meeting in May. The focus was on technology in pharmacy and healthcare. The Executive Secretary suggested that the Board seriously consider reconvening the Automation Task Force in September and propose language for the 2020 session. Currently much automation is prevented by statute, but regulations would still have to be written after any statutory change.

Technician Task Force: The Executive Secretary recommended placing on hold.

#### **Public Comment**

Christine Estivo from Cardinal Health asked the Board if they would be enforcing USP 797 or USP 825.

**Recess:** The Board recessed at 12:59 pm.

**Reconvene:** The Board reconvened at 1:06 pm.

#### **Presentation from Hyatt Life Sciences**

Preston Moore and Jason West gave a presentation to the Board.

#### **Compliance Report:**

Carly Haynes, Director of Compliance presented the annual report to the Board.

**Recess:** The Board recessed at 1:47 pm.

**Reconvene:** The Board reconvened at 1:52 pm.

A motion was made and seconded at 1:52 pm to enter into executive session for the purpose of consulting with the Board's attorney on a matter that would be deemed privileged under the attorney-client relationship per K.S.A. 75-4319(b)(2) and include the Board's attorney, the Executive Secretary, and the Compliance staff to reconvene at 2:05 pm (Loneragan/Haneke). Motion passed.

**Reconvene:** The Board reconvened at 2:05.

#### **Board Discussion**

"Rx" or "pharmacy: used for other business types

Insurance Commissioner Vicki Schmidt and General Counsel Justin McFarland updated the Board on the Insurance Department's concern with the use of 'Rx' or 'pharmacy' for non-pharmacy businesses like pharmacy benefit managers. The Insurance Commission plans to request clarification from the

Attorney General's office and asks for, and welcomes, the Board's support. Mr. Haneke proposed that Mr. Forbes draft language to provide to Mr. McFarland to be submitted with the Attorney General request.

### Physician Dispensing

Commissioner Schmidt also provided the Board with a list of drugs that are being dispensed at the new State Employee Health Clinic that recently opened in Topeka. The clinic does not have a pharmacy and is utilizing physician dispensing of drugs purchased by Marathon Health.

Mr. Forbes shared historical information and legal research regarding physician dispensing, including Kansas Attorney General opinions. Counsel for Marathon Health informed the Executive Secretary that Marathon Health is a physician-owned entity thus they are the owners and dispensers of the medications. The Board discussed the scope of physician dispensing. The Executive Secretary stated that there are ongoing conversations with the Kansas Board of Healing Arts, Board of Nursing, and other stakeholders to better understand the scope of physician dispensing, delegation of that authority, and compounding to identify a path to move forward consistent with Kansas law.

Dr. Worden said the path forward needs to include determining if the Marathon clinic drugs are owned by a physician and to continue conversations with the Board of Healing Arts.

### Prescription delivery via independent contractor

A question has arisen about the legality of an independent entity delivering prescriptions directly to the patient from the pharmacy.

Mr. Forbes believes that it would be a violation of the Kansas Practice Act.

The Executive Secretary thanked Bob Haneke and Chad Ullom for their eight years of service to the Board and presented them with a plaque and mortar and pestle.

**Recess:** The Board recessed at 3:26 pm.

**Reconvene:** The Board reconvened at 3:41 pm.

### Director's Report cont.

The Executive Secretary provided new and amended regulations that are currently moving through the regulatory process. They include new regulations on cessation of pharmacy operations that were crafted from language from other states and a regulation for mandatory K-TRACS registration. Amended regulations include packaging of oral drugs, CQI requirements, K-TRACS interstate data sharing, and new and amended regulations on distributors, third-party logistics providers, and outsourcing facilities.

Dr. Worden requested that the Executive Secretary request that the Board of Healing Arts asks the following questions on their renewals:

- Do you dispense?
- Does it involve controlled substances?
- Does it involve intravenous or compounded medications?

### Legislative Briefing

The Legislature allocated \$705,000 from the Drug Manufacturer Rebate Fund for K-TRACS with the balance coming from Board of Healing Arts, Pharmacy, Nursing, Dental, and Optometry fee funds. The Governor line-item-vetoed the \$705,000, but the Legislature overrode the veto. If K-TRACS receives other funds from grants, then it would not use all the allocated money.

The Executive Secretary thanked the staff for their work along with the work done by the PMP Advisory Committee to secure the K-TRACS funding for FY 2020 & 2021. Work continues to identify other sources of permanent, long-term funding.

Claire and Lola's law passed which allows a prescriber to give a permissive card to patients with certain conditions that would allow them to possess CBD with up to 5% THC.

HB 2119 was signed by the Governor and authorizes pharmacists to administer injectable medication by prescription order will go into effect on July 1, 2019. The same bill requires electronic prescribing of controlled substance opiates by July 1, 2021.

#### Review of Procedures and Criteria for draft K.A.R. 68-5-16

The Board is comfortable with the amended language for 68-5-16 draft C (technician ratio 4:1, waiver option for up to 6:1). The Board directed the regulation be moved through the administrative review process.

#### Review of Comments on Split Prescriptions in LTC

Shane Williams from Senior Rx Care appeared before the Board to speak about the practice of 'splitting prescriptions' in order to complete an order for a long-term care resident.

The Board supports the practice of 'splitting prescriptions' for long-term care shortage of non-controlled drugs.

#### **Approvals\***

A motion was made and seconded to approve the Stipulations & Consent Agreements, minutes from the February 8, 2019 & May 7, 2019 Board meetings, new Licensees & Registrants, nominations to the Kansas Medicaid Drug Utilization Review Committee, and Fingerprints and Criminal History Record Check Reports Policy (Haneke/Ullom). Motion carries.

#### Pharmacy/Nurse Immunization

A pharmacy requested guidance concerning a technician who is also a nurse that is providing immunizations under a protocol with a physician and is providing those at the pharmacy. Records are being maintained at and billed through the pharmacy.

The Board directed Randy to provide a response to the pharmacy indicating that there is nothing wrong with the nurse immunizing, but they can't be supervised by the pharmacist and records shouldn't be kept by the pharmacy. The nurse would need to be doing the action separately from her work with the pharmacy.

#### **Board Member Reports**

Jon Brunswig shared that at the NABP meetings there was conversation about the DEA coming into pharmacies and he would like to see the Board provide information to pharmacies about how a pharmacist can prepare for a DEA inspection and what to do when one occurs.

**Adjorn:** Dr. Worden adjourned the meeting at 4:28 pm.