

KANSAS STATE BOARD OF PHARMACY
BOARD MEETING MINUTES
October 13, 2021

Meeting Location:

Landon State Office Building, Room 509
900 SW Jackson St
Topeka, KS 66612

Due to COVID-19, public access was provided only via the virtual Microsoft Teams platform.

Members Present: Jonathan Brunswig, PharmD., President; Bill Walden, R.Ph., Vice President; Terica Gatewood, PharmD., Inv. Member; Tiffany Strohmeier, PharmD.; Andrew Truong, PharmD.; Erick Axcell, PharmD.; Lucinda Noches-Talbert, Public Member

Staff Present: Alexandra Blasi, JD, MBA, Executive Secretary; Jim Kinderknecht, R.Ph., Licensed Pharmacy Inspector (virtual); Carly Haynes, R.Ph., Licensed Pharmacy Inspector; Shelley Rosebrook, R.Ph., Licensed Pharmacy Inspector; Kayla Montgomery, Compliance Inspector (virtual); Melissa Martin, Compliance Inspector (virtual); Jennifer Donnelly, MPH, K-TRACS Assistant Director & Sr. Epidemiologist; Reyne Kenton, K-TRACS Program Manager (virtual); LaTonyua Rice, PharmD, K-TRACS Pharmacist (virtual); Gayle Donaldson, K-TRACS Public Information Officer (virtual); Jackie Yingling, Assistant Director; Linda Blasi, LMSW, Public Service Administrator (virtual); Jeanine Brizendine, Sr. Administrative Assistant (virtual); Rachel Gardner, Administrative Assistant; Tammy Brown, Administrative Assistant; Brenda Head, JD, General Counsel; Loren Snell, Administrative Law Judge, Office of Administrative Hearings.

OPEN MEETING

At 8:32am, the President called the open meeting to order.

ADMINISTRATIVE PROCEEDINGS

20-221 Patrick O'Donnell

- Mr. Patrick O'Donnell appeared in person without counsel, via the virtual interface.
- The Board was represented by Ms. Brenda Head.
- Judge Snell explained the administrative hearing process and virtual guidelines for Mr. O'Donnell.
- Ms. Head requested that Board Exhibits 1-10 be admitted as evidence, and such was done by Judge Snell following no objections from Mr. O'Donnell.
- Ms. Head called forth Ms. Alexandra Blasi, who was sworn in and gave her testimony. Ms. Blasi stated that the CIPP Committee had not been able to meet on the issue, but that she believed Mr. O'Donnell, who has maintained compliance with his KsPRN program, should be allowed to return to the practice of pharmacy under a probationary status, so long as he remain in compliance with CIPP.
- Neither Mr. O'Donnell nor the Board had any questions for Ms. Blasi.
- Judge Snell swore in Mr. O'Donnell, who gave a brief statement of his growth and gratitude.
- No questions were offered to Mr. O'Donnell by Ms. Head nor by the Board.
- Ms. Head requested that Exhibit 1 be sealed, as it contains personal protected information; so, following no objection from Mr. O'Donnell, Judge Snell determined Exhibit 1 as sealed.
- A motion was made and seconded at 8:46am to enter into closed KAPA deliberations, to include Judge Snell and the Executive Secretary. (Walden/Strohmeier) Motion carries.
- The President reconvened the open proceedings at 8:52am.

- A motion was made and seconded to move Mr. O'Donnell's license from its current suspended status to active status under a probationary period, requiring continued compliance with his CIPP requirements. (Axcell/Strohmeier) Motion carries.
- Judge Snell noted that Exhibit 5 ought to be sealed as well based on personal information, and such was done following no objection from Ms. Head.

REPORTS

Financial and Budget Report

- Ms. Yingling, Director of Budget and Operations, gave an update on the Board's '22/'23 fiscal year budget review which was submitted on September 15.
- The Executive Secretary noted several changes enacted in this FY22/23 submission.
 - As a result of changes stemming HB 2066, it was determined Board staff would need additional staff.
 - We anticipate adding another KTRACS position as a program grant specialist for the KDADS SAMHSA grant subrecipient award.
- Next year, the Board will be doing the revision of FY23, as well as the entire budget for FY24/25.

BOARD DISCUSSION

COVID-19 Updates:

- With new flu immunization allowance, the Fed requires separate training and wants an allocation of these vaccines to pharmacies. KDHE will work to get those out as authorized by the PREP Act. The Board was agreed that its guidance extending remote work will be revisited at December's meeting.

CE Audit:

- Results this year were similar to last, with 93.5% compliance this year compared to 92.8% last year.
- A motion was made and seconded to waive discipline for non-compliance as back in 2020, with the exception of licensees who have 2019 discipline *and* less than 29 hours completed. Audits will resume next year. (Strohmeier/ Gatewood) Motion carries.

FDA MOU on Human Drug Compounding: The deadline was extended to October 2022 at the request of Boards of Pharmacy; however, in September, several pharmacies filed lawsuit against the FDA MOU on three counts. The pharmacies allege this was an administrative regulation imposed without having followed the administrative regulation process, including economic impact statements for the burden being placed upon the pharmacies. The court determined that these pharmacies had standing to bring this lawsuit, and that the FDA must in 60 days present an update on a required economic impact statement. NABP is monitoring the situation very carefully. The Board will need to keep a close eye on this as well to know if the October deadline is set or if there will be other options.

Recess: The President called a recess at 10:02am.

Reconvene: The President called the open meeting back to order at 10:15am.

NABP Examinations: The Board received notification on September 17th that approximately 430 NAPLEX candidates this year received wrong outcomes, with 410 who passed having been told they failed, and 20 who failed having been told they passed. In Kansas, only five candidates were affected who luckily had ultimately passed. All Kansas candidates have been notified. From now on, the exam will be cross-scored both by computers and humans, and will utilize independent scoring through a test center. NABP waived their 45-day waiting period for these many candidates when the I.T. issues were realized, but would not grant such waiver in an entirely separate case for an individual who failed due to a technical issue at a testing center.

- A motion was made and seconded to have the Executive Secretary put together a letter to NABP encompassing an ask: for them to explore the opportunity for boards to waive, on a case-by-case basis, the 45-day retake waiting period and not count the failure as any of five passing chances, should investigation

show that a technical issue resulted in a test failure which was not then the fault of the tester.
(Walden/Truong) Motion carries.

Gratuitous Dispensing of Controlled Substances: A request has been made to the Board on whether or not, with a manufacturer-sponsored program, legitimate controlled substance prescriptions can be provided free of charge to patients. The Board's attorney reads that this is not allowed by the existing Kansas statute; the Executive Secretary will check to see if other states have similar statutes. The Board was in agreement that the answer is no, but that manufacturer discount cards are one avenue to be used for patients.

2022 Legislative Session:

The Executive Secretary discussed some upcoming potential legislation. The Board expressed concern over this matter, and so the Board will keep track of this in the coming months.

REPORTS

Attorney Report – None.

Board Member Reports

- Ms. Strohmeyer questioned if there could be a more streamlined process for helping trafficking victims who show up at the pharmacy, but Ms. Rosebrook noted that the current treatment is a federal issue. The Board's March newsletter will contain information regarding a related upcoming expansion of HHS.
- Vice President Walden noted that he is seeing many telehealth prescribers who show no Kansas license, to which the Executive Secretary stated that, for a certain time, telehealth requirements had been temporarily waived such that if one held a home state license, a Kansas license wasn't needed.

APPROVALS

Minutes and New Licensees & Registrants

- A motion was made and seconded to approve the minutes from the Board meeting on August 19, 2021. (Truong/Gatewood) Motion carries.

K-TRACS Advisory Committee Appointment

- A motion was made and seconded to approve KBI nominee Chris Bumgarner to the K-TRACS Advisory Committee for a three-year term. (Walden/Noches-Talbert) Motion carries.

Board Delegation of Authority Document: The Executive Secretary identified items in the Board's Delegation of Authority document which could be expedited, considering the new turnaround times in House Bill 2066 and to utilize the Board's time as best as possible.

- A motion was made and seconded to adopt the ratified Delegation of Authority Document as presented by the Executive Secretary. (Strohmeyer/Axcell) Motion carries.

REPORTS (cont.):

Director Report

NABP:

- The Board members will review their schedules to see which will attend the January 26th and 27th Interactive Member Forum on behalf of the Board. In conjunction, Ms. Head and Ms. Rosebrook will be respectively attending the Legal and Investigator forums.
- The Board will revisit at a future meeting whether to send a member to the March 2022 summit of the newly-formed, multiorganizational Opioid Regulatory Collaborative.
- Two new appointments have been made to the NABP Advisory Committee on Examinations.

- The recent District 6-7-8 meeting had voting delegates from both the Kansas Board and school. The 2022 meeting will take place in Oklahoma from August 27th-30th.

Staffing:

- Excellent candidates for the staff Inspector position are actively being interviewed, so it is expected that a hire will be made within several weeks for a start date in December.
- In looking at increased workload and decreased timelines set by HB 2066, the Board requested and received approval for a Public Service Administrator position that will oversee the licensing division and be the point-person for eLicensing. This is currently only open to internal candidates.
- Despite staff efforts to appease “customers”, a recent incident occurred involving a licensee in-office visitor who left staff feeling unsafe and threatened. The staff will now err on the side of caution and be instituting the following practices: camera(s) will be installed outside the public entrance door; Capitol Police will be called immediately upon the staff feeling unsafe; ban letters will be issued for relevant individuals immediately and effective for a period of two years, noting that Capitol Police will be called immediately upon arrival of the banned individual and not after misbehavior, and that the ban will not apply to access points outside of the staff office. Additionally, Board Investigation may be made into whether the threatening behavior carries over into the individual’s Board-licensed workplace.

Statewide Immunization Protocol: The Protocol as originally written was scheduled to expire in November 2021, but has been updated with the inclusion of FDA’s COVID-19 vaccine approval and the striking of the Yellow Fever vaccine to prevent confusion. Dr. Norman has already approved and signed this updated version, now available on the Board website for pharmacists to update.

Managing Expectation: With annual uptick in applicants also comes uptick in work. Then came COVID, when staff became highly focused on core issues while keeping the day-to-day running. As staff have re-evaluated end-of-year priorities, the hoped-for surveys on workplace conditions and on remote work utilization have not been able to be carefully crafted for completion. The Executive Secretary hopes to have further insight for presentation by the time of December’s meeting. However, a proud point is the updated regulations brought hereafter for discussion, on which Ms. Haynes, Ms. Rosebrook, and the Executive Secretary each and together spent hours verifying consistency with federal and other relevant interactions. No economic impact statement has yet been created, as that falls later in the timeline.

I.T. Security Training Additional Update: Board staff will be required to complete additional I.T. security training that is new this year, but is optional for Board members.

Committee Updates: None.

Revisiting I.T. Website Situation: The Executive Secretary provided an overview of the OITS website upgrade, rollback, and next steps to move forward.

Recess: The Board recessed for lunch at 11:50pm.

Reconvene: The President called the open meeting back to order at 12:58pm.

PUBLIC COMMENT

None.

BOARD DISCUSSION (cont.)

Discussion on Draft Regulations:

The Executive Secretary detailed the administrative rulemaking process. Subsequently, the Board was fully briefed on a list of proposed updates to its regulations that would serve to maintain consistency with federal law. Regulations reviewed include: KAR 68-1-2a, 68-1-9, 68-2-20, 68-7-19, 68-20-1, 68-20-16, 68-20-18, 68-20-19, 68-20-20, and 68-20-21.

EXECUTIVE SESSION

A motion was made and seconded at 1:53pm to enter into executive session per K.S.A. 75-4319(b)(1) to discuss matters of non-elected personnel, to include the Board's attorney and Executive Secretary, and to be reopened to the public at 2:05pm for adjournment. (Walden/Gatewood) Motion carries.

Reconvene: The President reopened the meeting to the public at 2:05pm.

Adjourn: A motion to adjourn was made and seconded at 2:05p.m. (Gatewood/Truong) Motion carries.