

KANSAS STATE BOARD OF PHARMACY BOARD MEETING MINUTES

March 10 & 11, 2020

Meeting Location: Board of Healing Arts Conference Room
800 SW Jackson, Lower Level
Topeka, KS 66612

Tuesday, March 10, 2020

Members Present: Jonathan Brunswig, PharmD., President; Bill Walden, R.Ph., Vice-President; Terica Gatewood, PharmD., Investigative Member; Mike Lonergan, R.Ph.; Tiffany Strohmeyer, PharmD; John Worden, PharmD.; Cheri Pugh, Public Member

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; Linda Blasi, LMSW, Public Service Administrator; Rachel Gardner, Administrative Assistant; Nikki Aronhalt, RN, K-TRACS Program Specialist; Gayle Donaldson, K-TRACS Public Information Officer; Stephanie Pelton, Administrative Assistant; Randy Forbes, JD, General Counsel; Loren Snell, JD, Administrative Law Judge.

Opening:

The President called the open meeting to order at 8:32am.

Board Discussion:

The Board discussed manufacturers and the splitting of insulin pen boxes.

Approvals:

A motion was made and seconded to approve the Stipulations & Consent Agreements, minutes from the December 2, 2019 & Special January 1, 2020 Board meetings, and new Licensees & Registrants (Worden/Gatewood). Motion carries.

Stipulation & Consent Orders:

A motion was made and seconded to approve Stipulation & Consent Agreements for Cases 19-558, 19-561, 19-576, 19-580, 19-586, 19-587, 19-588, & 19-589 (Worden/Gatewood). Motion carries.

A motion was made and seconded to approve the Stipulation & Consent Agreement for Case 19-421 as conditional (Lonergan/Strohmeyer). Motion carries.

A motion was made and seconded to approve the Stipulation & Consent Agreement for Case 19-061 with partially suspended payment (Lonergan/Gatewood). Motion carries.

Hearings:

20-024 Jason Kent

- Dr. Strohmeyer recused herself from the case.
- The Board was represented by Mr. Tim Resner of Frieden & Forbes, LLP.
- Mr. Kent appeared in person without counsel.
- The Board entered into closed session for private health information and included the Executive Secretary, Board staff, and KsPRN staff at 9:02am. (Worden/Gatewood)

- No objections were made by Mr. Kent to the exhibits presented by the Board, so all were admitted.
- Judge Snell admitted Respondent's Exhibit A, following no objections to the contrary.
- Judge Snell swore in Kelly Rockers, KsPRN staff, who provided testimony.
- Judge Snell swore in Mr. Kent, who provided testimony.
- The Board entered into closed session for KAPA deliberations at 9:54am.
- The President reconvened the open proceedings at 10:34am.
- Motion made for a one-year suspension, with zero tolerance on KsPRN program compliance, no fine, a mental health evaluation within 45 days, and reappearance before the Board in a year to petition the Board for the lifting of the license suspension, at which time KsPRN notes will be taken into consideration to weigh that decision (Walden/Pugh). Motion carries.
- Additionally, the Board will complete a letter to the Real Estate Board to let them know that the Board does not feel Mr. Kent's discipline should affect his career with real estate.

18-552 Andrew Chau

- The Board was represented by Mr. Forbes.
- Mr. Chau appeared in person without counsel.
- Board Exhibits 1-8 were admitted with no objection from Mr. Chau.
- Judge Snell admitted Respondent's Exhibit A, following no objections by Mr. Forbes.
- The Board entered into closed session for private health information and included the Executive Secretary, Board staff, and KsPRN staff at 10:54am. (Strohmeyer/Gatewood)
- Judge Snell swore in Ms. Rockers, who provided testimony.
- Judge Snell swore in Mr. Chau, who provided testimony.
- The Board entered into closed session for KAPA deliberations at 11:52am.
- The President reconvened the open proceedings at 12:05pm.
- Motion made to revoke Mr. Chau's pharmacy intern registration (Walden/Gatewood). Motion carries.

Recess: The Board recessed for lunch at 12:08pm.

Reconvene: The Board reconvened at 1:00pm.

Public Comment:

None

Board Discussion:

The Executive Director gave highlights from the NABP annual Board member forum meeting packet including VPP inspection data, the DSCSA 10-year implementation plan, NABP's new Executive Director, and the upcoming annual NABP meeting in May.

Motion was made to approve the DEA Exempt Drug Product List (Strohmeyer/Lonergan). Motion carries.

2019 Technician CE Audit

Motion was made to approve a \$100 administrative fine in place of a revocation if responding prior to an order's effective date (Worden/Walden). Motion carries. Motion was made to impose disciplinary action on repeat technician CE violations offenders with 4 hours of CE and a \$200 fine (Gatewood/Walden). Motion carries.

Attorney Report:

Splitting of Insulin Pen Boxes - The Board would like to send a clear letter that boxes should not be split, but patient access could be an issue. The letter will try to balance that, and the Board would like

to have support from the AG's office. Justin McFarland, general counsel to the Kansas Insurance Department, states this would be well received by the Insurance Commissioner's office and complaints could be filed by those with issues.

Rx or Pharmacy Name Issue – After cross-referencing the Insurance Commissioner's list with the Board's list of registrants, 13 or 14 weren't registered with the Board, and all but three were Pharmacy Benefit Managers. Mr. McFarland noted that there is no evidence of misleading the public but the potential still exists. One concern is the PBMs forcing mail order, which patients may think was endorsed by a licensed pharmacist.

A motion was made and seconded at 1:44pm 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) to include the Board's attorney, the Executive Secretary, and the Director of Compliance to reconvene at 2:00pm (Worden/Gatewood). Motion passed.

Recess: The President reopened the meeting at 2:00pm to call a recess.

Reconvene: The President reconvened the open meeting at 2:21pm.

Board Discussion (cont):

The Board members and inspectors agreed that, in response to the shortage of face masks, compounders can reuse masks during a single day, rather than having to change them upon each entry. The Board members and inspectors also agreed that PO boxes are not acceptable as a physical address in regard to receiving a prescription, so this may need to be reworded specifically as *physical address* to clarify.

Attorney Report (cont):

NABP Amicus Brief – Mr. Forbes explained the Kansas Board of Pharmacy signature and participation in the NABP Amicus Brief in the pending Ninth Circuit case of Fusion IV Pharmaceuticals v. State Board of California.

KBOP v. Kollhoff – The Board has prevailed in this matter, which was appealed to the Kansas Supreme Court.

Committee Reports:

Compounding Task Force & Regulation Update

The Executive Secretary provided an update regarding the USP <795> and <797> appeals. USP accepted the appeal and no determination has been made regarding denying the appeal or remanding the matter to the Committee. The Task Force recommends ceasing work and awaiting the decision from USP.

Stipulation & Consent Orders:

Motions were made and seconded to approve Stipulation & Consent Agreements as presented for Cases 18-551A (Gatewood/Strohmeier), 19-457A (Worden/Gatewood), 19-457B (Pugh/Worden), 19-481 (Worden/Gatewood), 19-488 (Strohmeier/Gatewood), 19-520A (Gatewood/Lonergan), 19-520B (Strohmeier/Pugh). Motions carried.

Recess: The Board recessed at 3:14pm.

Reconvene: The Board reconvened at 3:22pm.

2020 Licensing Report

The Board's Licensing staff gave an interactive presentation on the licensing application and approval process. A non-resident pharmacy mock application was shown with common errors included. Mr.

Walden suggested the use of special wording or asterisk to highlight individuals vs. businesses as listed *owner*. The Executive Secretary noted the shifting of licensing staff and explained DSCSA changes are anticipated during the 2020 renewal period. Ms. Yingling noted the DSCSA build involved tracking, security changes, owner verification, enhanced search filters, and user update ability.

The Executive Secretary provided an update regarding the mock Board meeting on April 8th for the KU School of Pharmacy. During the Pharmacy Law Class, the students could have a stake in the questions they'd respond to. Each Board member could be assigned a different pharmacist archetype. An altered case will be provided.

Committee Reports (cont):

Tripartite – The objective for next meeting will be setting the intern registration schedule. Working with the school to communicate transparency about disciplinary history, etc.

Pilot Project – No new issues reported; the legislative bill includes telepharmacy language.

KTRACS – No January meeting, as filling the new grant positions took additional work. No quorum was present for the most recent meeting, so no action could take place. The meeting talked about legislation and budget issues, but all in all they are very pleased with the progress seen from monthly meetings.

CE Review – Most requests are approved. Denials are usually for CE unrelated to pharmacy practice.

Legislative Update:

The Executive Secretary worked with Dr. Eplee to introduce HB 2579 and 2712 to the House Health Committee, as well as support the epinephrine in schools legislation.

K-TRACS Stakeholders agreed that the Board will not use the fee fund, will not receive transfers from KDHE, & will use moneys already transferred to support K-TRACS for FY 2021. The Executive Secretary's belief is that K-TRACS needs its own revenue source to be sustainable. No health-related bills will likely pass this year but KPhA can continue crafting regulations so that when the bill passes, we'll be ready.

The Executive Secretary gave an update on relevant pending legislation.

We continue to receive updates on Telepharmacy State Analysis.

Adjourn: The President adjourned for the day at 4:32pm.

Wednesday, March 11, 2020

Members Present: Jonathan Brunswig, PharmD., President; Bill Walden, R.Ph., Vice-President; Terica Gatewood, PharmD., Investigative Member; Tiffany Strohmeyer, PharmD; John Worden, PharmD.; Cheri Pugh, Public Member.

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; Linda Blasi, LMSW, Public Service Administrator; Rachel Gardner, Administrative Assistant; Randy Forbes, JD, General Counsel.

Opening:

The President reconvened the open meeting at 8:28am.

NABP:

The Executive Secretary noted an NABP *Conflicts of Interest* webinar for participation on March 24, 2020 at 1:00pm, and discussed PMPi Enhancements including the Rx check hub audit trail.

Director Report (cont.):

The Executive Secretary provided her annual report, highlighting the many facets of her job including: adaptation, problem solving, positivity, discernment, perseverance, grace, tenacity, and resourcefulness. Also included in the presentation was an overview of the new Board office layout, and an expression of the intent to look for ways to sustain several K-TRACS positions beyond their grant funds.

Recess: The Board recessed at 9:32am.

Reconvene: The Board reconvened at 9:38am.

Strategic Planning:

The Board reviewed the previous 5-year strategic plan and discussed planning for FY 2021 – FY 2025. The Board reevaluated past goals and updated the FY 2021-2025 goals under the overarching themes of protection, compliance, regulatory footprint, collaboration, and prescription monitoring.

Recess: The Board recessed at 11:57am.

Reconvene: The Board reconvened at 12:30pm.

A motion was made and seconded at 12:30pm to enter into executive session for the purpose of discussing matters of non-elected personnel per K.S.A. 75-4319(b)(1) to include the Board's attorney and the Executive Secretary to reconvene at 1:00pm (Worden/Gatewood). Motion passed.

Reconvene: The President reconvened the open meeting at 1:00pm.

A motion was made and seconded at 1:00pm to enter into executive session for the purpose of discussing matters of non-elected personnel per K.S.A. 75-4319(b)(1) to include the Board's attorney to reconvene at 1:20pm (Worden/Gatewood). Motion passed.

Reconvene: The President reconvened the open meeting at 1:20pm.

Adjourn: The President adjourned the meeting at 1:20pm.