

**KANSAS STATE BOARD OF PHARMACY
MINUTES OF THE MEETING**

November 30 & December 1, 2004
ClubHouse Inn
924 SW Henderson
Topeka, Kansas

Tuesday, November 30, 2004

MEMBERS PRESENT: Jeff Thompson, RPh., President; Frank Whitchurch, RPh., Vice President; Merlin McFarland, RPh.; JoAnne Gilstrap, RPh.; Max Heidrick, RPh.; Howard Paul, Public Member.

STAFF PRESENT: Debra Billingsley, Executive Secretary; Jim Kinderknecht, RPh., Pharmacy Inspector; LaTonyua Rice, R.Ph., Pharmacy Inspector; Tom Frazier, R.Ph., Pharmacy Inspector; Melissa Martin, Compliance Officer; Randy Forbes, General Counsel, Camille Nohe, Assistant Attorney General and Karen Hollon, Administrative Officer.

OTHERS PRESENT: See attached listing.

MEETING CALLED TO ORDER:

Jeff Thompson called the meeting to order at 9:00 a.m.

APPROVAL OF AGENDA AND MINUTES:

A motion was made and seconded to approve the agenda (McFarland/Paul). Motion carried (5-0). A motion was made and seconded to approve the minutes of the September 2004 Board meeting as amended. (McFarland/Paul). Motion carried (5-0).

ADJOURNMENT: Mr. Thompson adjourned the meeting to go into a public hearing regarding K.A.R. 68-1-3a.

PUBLIC HEARING: K.A.R. 68-1-3a Qualifying Pharmaceutical Experience.

There were no appearances and no correspondence received by the Board regarding this change.

RECONVENE: Mr. Thompson called the regularly scheduled meeting to order at 9:08 a.m. A motion was made and seconded to adopt the regulation (McFarland/Paul). A role call vote was taken: Max Heidrick – yes, Joanne Gilstrap – yes, Merlin McFarland – yes, Howard Paul – yes, Frank Whitchurch – yes.

INTRODUCTIONS:

Jeff Thompson introduced Camille Nohe, Assistant Attorney General, to the Board. Ms. Nohe will act as general counsel to the Board on various matters. Ms. Nohe provided the Board with her background and stated that she is general counsel to several other state boards.

ADMINISTRATIVE PROCEEDINGS:

RANDALL FILE #1-09670 and HEATHER KLINE #1-12574:

Mr. File and Ms. Kline did not appear, but submitted letters to the Board office requesting formal release from their stipulations entered into with the Board. Both individuals had successfully completed the terms and conditions of their respective Stipulations and the Board formally released them from further reporting requirements.

SHIRLEY MELLO #1-11100:

Shirley Mello appeared in person and with her attorney, Dudley Smith. Marty M. Snyder, Assistant Attorney General, represented the Board. Frank Whitchurch recused himself from the case due to a conflict of interest. Mr. Thompson stated that he would not participate in the discussion or vote because he had reviewed the case prior to hearing. Howard Paul asked Mr. Smith if he had a problem with his hearing the case because he had been involved in a previous unrelated matter with Mr. Smith. Mr. Smith stated for the record that he had no objection to Mr. Paul sitting on the hearing panel. Following the hearing a motion was made and seconded to go into closed session to deliberate for 15 minutes. (McFarland/Heidrick). Motion carried 5-0.

RECONVENE: The Board returned to regular session at 10:45 a.m. A motion was made and seconded that based upon the evidence the Board concluded that Ms. Mello's license to practice pharmacy should not be disciplined. (Gilstrap/Heidrick). Motion carried 4-0.

RECESS: The Board took a 5-minute recess.

KAREN THOMAS #1-12501:

Mr. Thompson stated that the disciplinary matter against Karen Thomas was being dismissed.

ROGER FORT #1-09673:

Roger Fort appeared pro se. Marty M. Snyder, Assistant Attorney General, represented the Board. JoAnne Gilstrap recused herself from hearing the matter due to a conflict of interest. A motion was made and seconded to approve the consent agreement (Paul/McFarland). Motion carried 4-0.

RICK STONE #1-11112:

Mr. Stone appeared in person and with his attorney, Gary A. Peters, R.Ph. Marty M. Snyder, Assistant Attorney General, represented the Board. Howard T. Paul recused

himself from hearing the matter. A motion was made and seconded to approve the consent agreement as modified (McFarland/Heidrick). Motion carried 4-0.

RECESS: Lunch

RECONVENE: The Board reconvened at 1:00 p.m. with all members present as previously stated.

MICHAEL BELLESINE #1-11944:

Mr. Bellasine appeared pro se. Randy Forbes represented the Board in the matter. A motion was made and seconded to accept the consent agreement (Paul/Heidrick). Motion carried 5-0.

DIANE ADAMSON #1-11636:

Ms. Adamson appeared pro se and with her husband, Bob Adamson. Randy Forbes, Attorney at Law, represented the Board. Max Heidrick recused himself from hearing the matter due to a conflict of interest. A motion was made and seconded to approve the stipulation (Paul/McFarland). Motion carried 4-0.

DANDURAND PHARMACY #2-05313:

Mike Dandurand, owner, appeared pro se. Randy Forbes, Attorney at Law, appeared on behalf of the Board. A motion was made and seconded to approve the stipulation (Paul/Gilstrap). Motion carried 5-0.

JARRELL BRIDGES #1-08576:

Mr. Bridges appeared in person and with his attorney Gary Peters, R.Ph. Randy Forbes, Attorney at Law, appeared on behalf of the Board. Howard Paul recused himself from hearing the case. A motion was made and seconded to accept the stipulation (McFarland/Gilstrap). Motion carried 4-0.

RECESS: The Board took a 5-minutes recess.

ALAN CONRADY #1-09865:

Mr. Conrady appeared pro se. Randy Forbes, Attorney at Law, appeared on behalf of the Board. A motion was made and seconded to go into a closed session pursuant to K.S.A. 65-1627(b) (McFarland/Heidrick). Motion carried 5-0.

RECONVENE: The Board returned to regular session at 2:30 p.m. The Board offered a stipulation with terms and conditions that were accepted by Mr. Conrady.

LESLEY HARRIS 1-11826:

Ms. Harris appeared pro se. Randy Forbes, Attorney at Law appeared on behalf of the Board. A motion was made and seconded to accept an amended stipulation (Paul/McFarland). Motion carried 5-0.

TRAVIS SCOTT #1-11988:

Mr. Scott appeared pro se asking for reinstatement of his license. Randy Forbes, Attorney at Law, represented the Board in this matter. A motion was made and seconded to adjourn into a closed meeting pursuant to K.S.A. 65-1627(b) (Heidrick/McFarland). Motion carried 5-0.

The Board returned to open session at 4:10 p.m. A motion was made and seconded to adjourn into a closed session for deliberation (Gilstrap/Paul). Motion carried 5-0. A motion was made and seconded to reinstate Travis Scott's license to practice pharmacy in Kansas under certain conditions and terms (Heidrick/McFarland). Motion carried 5-0.

LORIE BRINKMAN #1-11787:

The Respondent did not appear. Randy Forbes, Attorney at Law, represented the Board. A motion was made and seconded to enter an Order for mental and physical examination. All other orders to remain in full force and effect. (Whitchurch/McFarland). Motion carried 5-0.

ADJOURNMENT: The Board adjourned the meeting at 5:00 p.m. and will reconvene at 8:30 a.m., December 1, 2004.

Wednesday, December 1, 2004

MEMBERS PRESENT: Jeff Thompson, RPh., President; Frank Whitchurch, RPh., Vice President; Merlin McFarland, RPh.; JoAnne Gilstrap, RPh.; Max Heidrick, RPh. and Howard Paul, Public Member.

STAFF PRESENT: Debra Billingsley, Executive Secretary; Jim Kinderknecht, RPh., Pharmacy Inspector; LaTonyua Rice, R.Ph., Pharmacy Inspector; Tom Frazier, R.Ph., Pharmacy Inspector; Melissa Martin, Compliance Officer; Randy Forbes, General Counsel and Karen Hollon, Administrative Officer.

OTHERS PRESENT: See attached listing.

MEETING CALLED TO ORDER:

Jeff Thompson called the meeting to order at 8:30 a.m.

INVESTIGATIVE REPORT:

Frank Whitchurch discussed with the Board the current status of investigative cases. The Board discussed having investigators provide the disciplinary history of persons being disciplined in future cases. The Board also discussed assessing legal fees and costs to those individuals being disciplined. The Board discussed newsletter issues as well as what type of information the inspectors need to see as it relates to incident reports. The Board also discussed pursuing legislation to make incident reports closed from discovery.

PHARMACY TECHNICIANS CONVICATION DATA:

The Board was asked whether they wanted to come up with specific criteria regarding technician conviction data on their applications. The Board determined that the Executive Secretary and Investigative member would use their discretion in reviewing the initial application and that they could make a determination as to whether it needed to go before the full board.

BUDGET:

Debra Billingsley discussed with the Board the Division of the Budget's report and recommendation. Budget recommended reducing the FY 2005 and FY 2006 spending authority by over \$40,000. The Division of Budget had also denied the supplemental request made by the agency. Budget recommended that the Board increase fees since they were spending more than they were bringing in. They also recommended that the Board review the fee allowance in the statute so that they could raise those statutory ceilings if it became necessary. The Board suggested putting in the newsletter how the budget system works in order to get some interest with pharmacists and to let them know that their fees could be raised due to the sweep. The Board members determined that there would be no fee increase at this time.

RECESS: The Board took a 5-minute recess.

TELEPHARMACY:

The Board reconvened at 10:00 a.m. Steve Smith, R.Ph. of Hiawatha, Kansas requested an opportunity to address the board regarding a proposed pilot program for telepharmacy. Griff Danheim of AutoMed also appeared with Mr. Smith. They provided information about pilot programs that are currently operating in other states. Mr. Smith also explained the need for telepharmacy in his part of the state and how it could be set up. The Board requested that the task force meet again prior to the next meeting.

CONFIDENTIALITY STATUTES:

The Board discussed a dental board statute that makes all investigations confidential. The language is borrowed from the Healing Arts statute and has some benefits. The Board directed the attorney to explore whether the Pharmacy Board would want to enact similar legislation. The Board also discussed open meetings and open record legislation.

CHILD SUPPORT ENFORCEMENT REGULATIONS:

The Executive Secretary gave the Board an update on the agreement that SRS has with Health Care Data regarding child support enforcement. Ms. Billingsley received a letter from Health Care Data saying that it's permissible for the Board to use Health Care Data as their agent but the Board requested that Ms. Billingsley obtain additional legal information regarding an Attorney General opinion. Ms. Nohe had written the opinion and she advised the Board staff that she could look at the information and give the Board some information on the matter.

REFILLS ON MAINTENANCE DRUGS:

The Board discussed and authorized seeking legislation that would permit a pharmacist to refill a prescription order without the prescriber's authorization when all reasonable efforts to contact the prescriber have failed and when in the pharmacist's professional judgement, continuation of the medication would be necessary for the safety and welfare of the patient. The Board excluded narcotics but would permit nitroglycerin. The supply should be limited to no more than seven days.

PHARMACY TECHNICIAN TRAINING:

The Board discussed clarification of the requirements of K.A.R. 68-5-15 regarding training of pharmacy technicians. The Board determined that the regulation would require the pharmacist in charge to ensure that the pharmacy technician training manual has been kept up to date for completeness. The Board Inspectors will accept either a signed and dated statement that the manual has been reviewed annually or annually sign and date the list of functions that each technician has been trained to perform. The PIC will also need to have separate documentation that the pharmacy technician has been trained within 180 days of their employment in that particular type of practice setting.

RECESS: Lunch

RECONVENE: The Board reconvened at 1:30 p.m. with all members present as previously stated except for Howard Paul.

CANADIAN DRUG ISSUE:

The Board discussed the Governor's decision to participate in the prescription drug importation program. John Keifhaber, Director of the Kansas Pharmacist's Association, discussed with the Board Governor Sebelius' press conference and the information that has been placed on her website. The Board directed that their correspondence between the Board of Pharmacy and Bob Day, Director of the Governor's Office of Health Planning and Finance be placed on the Board of Pharmacy website. The Board also directed that a public statement be made setting out the Board's statutory mission, authority, and concern that the prescription drug importation currently violates federal law. Further, the Board wanted their concerns regarding the safety of this program to be indicated. The Board determined that they would look into ways to get legal high quality low cost drugs to patients. The Board also wanted to share their concerns with the Attorney General's Office.

DEPARTMENT OF REVENUE TAX CLEARANCE PROPOSAL:

The Department of Revenue provided the Board with statistics of tax compliance for their profession. Revenue gave similar information to the interim legislative committee and asked that a bill be passed that would require professional agencies to provide social security numbers to Revenue so that they could accurately determine who was not in compliance. The bill would also require each professional agency to police tax compliance by holding licensure hearings on those persons not in compliance. The Board requested that this bill continue to be monitored. The Board agreed that all citizens should be tax compliant but the Board wanted to know whether this would impact the ability to offer on-line renewals and whether this would financially impact the agency.

STAMPED SIGNATURES ON PRESCRIPTIONS:

The Board reviewed a couple of requests from physicians that the Board review the use of stamped signatures on prescriptions as it related to non-controlled substances. The Board reviewed their statutes and regulations but requested that information from other states be provided so that they could determine whether Kansas needed to make any changes. At this point, the Board made no changes and it shall remain their position that stamped signatures on prescriptions handed to the patient are not legal.

BOARD REPORTS:

Jeff Thompson stated that he had received several calls from physicians using an electronic prescription, but it was resolved because all pharmacists refused to fill the prescriptions. Mr. Thompson reported that the compounding regulations have been sent to the Department of Administration and that the office is waiting to hear back from them.

Max Heidrick discussed the FDA's final rule implementing the Prescription Drug Marketing Act, specifically, the portion dealing with prescription drug pedigrees and the definition of authorized distributor. The NABP recently issued model rules and several surrounding states are working on implementing pedigree requirements. Mr. Heidrick will continue to collect information on this issue.

Mr. Heidrick also discussed the question of whether an intern/pharmacy student could transfer a prescription. The Board agreed that the intent of the statute and regulations was that an intern/pharmacy student be permitted to transfer prescriptions. The Board directed that any conflicting language in the statute and regulations be changed to reflect the Board's position.

Frank Whitchurch stated that he was very interested in finding information that would prevent incident reports being used for discovery. He is going to check with other jurisdictions to see if there is something that can be accomplished legislatively regarding this matter.

Joanne Gilstrap requested that Board staff provide additional information on the pharmacy technician registration cards. Specifically, if it registration card could include the license number and expiration date on one side of the card it could be displayed and would make it easier on inspectors and the pharmacists-in-charge. The Board staff indicated that this could be accomplished and that future cards would have this information printed on them.

Ms. Gilstrap discussed complaints she had received from several pharmacists regarding physicians that were not filling out prescriptions completely. Specifically, the patient name was left blank or left for the patient to fill in. The Board directed staff to write a letter to the physicians asking for cooperation.

Ms. Gilstrap stated that it was great that the inspectors were educational to the pharmacists.

Merlin McFarland reported that the "Pharmacist Letter" had an article regarding levothyroxin substitutions. On July 28, 2004, therapeutic ratings for levothyroxine sodium products were updated in the "Orange Book". Many of the products have been given a three-character code (AB1, AB2, or AB3). Drugs coded with a three character code are considered therapeutically equivalent only to other drugs coded with the same three character code. There has been a lot of confusion on whether these drugs are equivalent or interchangeable with one another and Mr. McFarland thought it might help to put information in the newsletter.

Mr. McFarland also advised the Board that Kingman Hospital owns a clinic and KDHE recently surveyed the Clinic. KDHE indicated that the clinic was subject to the same scrutiny as the Hospital. The implication is that the Board of Pharmacy might need to be inspecting Clinics as well as hospitals. Mr. McFarland is meeting with KDHE to get clarification.

STAFF REPORTS:

Debra Billingsley received notice from NABP that a new form of the TOEFL and TSE will be available in September 2005. The new TOEFL will be administered over the Internet. The test will have a section in speaking English so the TSE will no longer need to be given. The new scores will range from 0 to 30. The minimum score has not been determined. If Kansas makes any changes to the testing or scoring we will need to change our regulation.

Ms. Billingsley met with John Keifhaber regarding the methamphetamine bill. Once the bill is received in final form the Board will get a copy and they can make a determination as to whether they wish to support it or ask for some amendments.

Ms. Billingsley discussed with the Board the requirement for direct deposit for all employees and board members for travel reimbursement and expenses.

Jim Kinderknecht advised the Board that generic levothyroxine by Sandoz is not listed in the "Orange Book". However, the levothyroxine by Sandoz is listed under the manufacturer's name of Alara Pharmaceutical, which is sold exclusively by Sandoz.

Mr. Kinderknecht also discussed with the Board that the office has been telling everyone that it was permissible for a physician to write multiple prescriptions for the same controlled substance on one prescription and put directions on the script saying not to fill until a specific date. This used to be on the DEA website as an acceptable practice; however, in November of 2004 the Dept. of Justice published in the "Federal Register" that this practice was tantamount to writing a refill for a C-II. The change in opinion will be put in the January newsletter.

Jim Kinderknecht also requested clarification as to who should be permitted in the pharmacy when it is open. The inspectors have been questioned about whether non-pharmacy personnel may put drugs away, take medications off of the shelves, or assist the technician. The Board stated that the only persons permitted to work in the pharmacy are the pharmacists and the technicians. The pharmacy may use a sales clerk to run the register but the pharmacists or pharmacy technicians must perform all other functions.

Tom Frazier expressed problems with indigent medications that are showing up and aren't properly labeled. Patients have been bringing them into the pharmacy saying they don't know how to use the drugs.

Mr. Frazier also stated that he had discussed a situation with a pharmacist regarding a burglary of his pharmacy. The question arose as to whether the police could prevent the pharmacist from entering the store while the police checked out the premises. Randy Forbes stated that the police probably had the right to secure the store prior to letting anyone in so as not to jeopardize their own or the owner's safety.

APPROVAL OF NEW LICENSES/REGISTRATIONS:

A motion was made and seconded to approve the new pharmacist licenses and pharmacy registrations (Whitchurch/Gilstrap). Motion carried 4-0.

ADJOURNMENT: Jeff Thompson adjourned the Board meeting at 2:50 p.m.