

## MINUTES

### OKLAHOMA STATE BOARD OF PHARMACY

4545 Lincoln Boulevard, Suite 112  
Oklahoma City, OK 73105-3488

**May 23, 2006**

#### **Call to order:**

President Bill Osborn called the May 23, 2006 meeting of the Oklahoma State Board of Pharmacy (OSBP) to order at 2:00 p.m.

#### **Those present were:**

Board members: Bill Osborn, President  
Gordon Richards, Vice-President  
John Lassiter, Member  
Jim Spoon, Member  
Dr. Diana Hampton, Member \*  
Dorothy Gourley, Member

\*Dr. Hampton called to let the Board know that she had been delayed

Board of Pharmacy: Bryan Potter, Executive Director  
Betty Beil, Compliance Officer  
Cindy Hamilton, Compliance Officer  
Gary LaRue, Compliance Officer  
Terry Bratt, Pharmacy Inspector

Guests John Rodden, Wal-Mart  
Kenneth Utz  
Candice Vaughn  
Billy Vaughn  
Assistant Attorney General John Crittenden

#### **Approval of minutes and claims:**

Motion was made by Dorothy Gourley and seconded by Jim Spoon to approve the minutes of the April 26, 2006 minutes. Motion passed on roll call vote.

Motion was made by Jim Spoon and seconded by Dorothy Gourley to approve expense claims #1106-#1137, #H0016031-#H0016034, May payroll and the expense claims of the Executive Director. Motion passed on roll call vote.

#### **Cancellations of Pharmacists, Pharmacies, Facilities and Technicians:**

After a review of the cancellation list for Pharmacist, Pharmacies, Facilities and Technicians, a motion was made by Dorothy Gourley and seconded by Gordon Richards to cancel those licenses that have not been renewed by for the month of March and were cancelled as of May 1, 2006. Motion passed on roll call vote.

#### **Duplicate certificate request approved:**

Motion was made by John Lassiter and seconded by Jim Spoon to approve the duplicate D.Ph. certificate request for Virginia Ray Nall Banks, D.Ph. #7637, Kerri Jones, D.Ph. #11816, Allison Dale Ray Stephens, D.Ph. #13625 and Tiffanie Leigh Myers, D.Ph. #13561. Motion passed on roll call vote.

#### **Board discusses request from William J. Porter:**

A technician application for William J. Porter was presented to the Board. Mr. Porter's original application had been denied because he omitted an arrest under the charges and conviction section.

After the Board reviewed the records, a motion was made by Jim Spoon and seconded by John Lassiter to allow him to be permitted as a technician. Motion passed on roll call vote.

**Board discusses State Travel P-Card:**

A discussion of the Travel P-Card was tabled until the June Meeting.

**Board approves OPHP contract:**

The Board reviewed the OPHP contract. Motion was made by Jim Spoon and seconded by John Lassiter to approve the new contract with OPHP. Motion passed on roll call vote.

**Board discusses results of CE Audit:**

Mr. Potter reviewed the CE Audit with the Board. The Board staff had received all of the information requested from the pharmacists that were audited. Some of the pharmacist had to use some hours from the year 2005.

**Board discusses PA prescribing:**

The PA Committee Representative Don Coody, had asked the Board to review the guidelines on PA prescribing. After a discussion, the Board determined that they would like to see a continuation of the present requirements and asked that Mr. Coody express that to the committee.

**Approval of Cooperative Agency Understanding between the Oklahoma Board of Pharmacy and the Oklahoma Veterinary Board:**

A "Cooperative Agency Understanding" between the Board of Pharmacy and the Oklahoma Veterinary Board was discussed. The Chief Investigator for the Vet Board will do inspections and investigations regarding sales of Vet drugs by Vet Wholesalers.

Motion was made by Dorothy Gourley and seconded by John Lassiter to approve the contract. Motion passed on roll call vote.

**OSBP vs. Rebecca Fisher, Intern #6376 – Case No 788:**

A motion was made by John Lassiter and seconded by Gordon Richards to dismiss the case of Rebecca Fisher. Motion passed on roll call vote.

**OSBP vs. John Braly, Technician #6505 – Case No 787:**

The Board was called to order to hear the case of John Braly. Mr. Braly was not present but it had been determined that he had been properly notified. Assistant Attorney General, Brinda White, prosecuted the case. Compliance Officer, Cindy Hamilton, testified for the Board.

Mr. Braly had admitted that he had stolen CDS's from the pharmacy where he was working and had ingested the drugs. He had also smoked marijuana.

Motion was made by Gordon Richards and seconded by Diana Hampton that based on the clear and convincing evidence presented, Mr. Braly be found guilty on all 5 counts. Motion passed on roll call vote.

Motion was made by Dorothy Gourley and seconded by Gordon Richards to revoke the technician permit of John Braly. Motion passed on roll call vote.

**Board meets with Paul Moore of Remote Pharmacist Services:**

President Osborn called the Board to order to hear a presentation by Paul Moore on a company that he has formed called Remote Pharmacist Services. His proposal would be for his group of pharmacist to review orders made in rural hospitals electronically, prior to medication being administered. He is also working with a ServeRx System by MDG Medical to aid in the administration of medication in small rural hospitals.

Motion was made by Dorothy Gourley and seconded by Gordon Richards to approve the plan presented. Motion passed on roll call vote.

**Candice L. Vaughn of Choctaw Nation, request to appear before the Board:**

Candice Vaughn appeared before the Board to request that the Choctaw Nation be allowed to open a Central-Fill pharmacy in Ada. They would service their member by filling refill maintenance medications for the Choctaw Clinic pharmacies around the state. The building to house this operation is in the process of being built and would not open for about 1 year.

The Board directed Mr. Potter to work with Ms. Vaughn to finalize the procedure they would follow and then bring it back to the Board for review and approval.

**The Board was recessed until 8:00 a.m. on May 24th.**

## MINUTES

### OKLAHOMA STATE BOARD OF PHARMACY

4545 Lincoln Boulevard, Suite 112  
Oklahoma City, OK 73105-3488

May 24, 2006

#### Call to order:

President Bill Osborn called the May 24, 2006 meeting of the Oklahoma State Board of Pharmacy (OSBP) to order at 8:00 a.m.

#### Those present were:

Board members: Bill Osborn, President  
Gordon Richards, Vice-President  
John Lassiter, Member  
Jim Spoon, Member  
Dr. Diana Hampton, Member  
Dorothy Gourley, Member

Board of Pharmacy: Bryan Potter, Executive Director  
Betty Beil, Compliance Officer  
Cindy Hamilton, Compliance Officer  
Gary LaRue, Compliance Officer  
Terry Bratt, Pharmacy Inspector

#### Board meets with Reciprocity, Score Transfer and NAPLEX applicants:

The Board interviewed 3 Reciprocity, 1 Score Transfer and 2 NAPLEX applicants. All will be accepted upon passing the Oklahoma Law Exam and the NAPLEX if necessary.

##### Reciprocities:

James Leon Arney, Sr. .... TX  
Julie Lewis Caudill ..... MI  
Kelly Denise Langdon ..... IN

##### Score Transfer:

Ami Middleton ..... MO

##### NAPLEX:

Sarah E. Haeseker  
Lesley R. Maloney

#### OSBP vs. Gary Nichols, D.Ph. #12862, Moore Clinic Pharmacy, Inc., Lakehurst Pharmacy, L.L.C., Williams Pharmacy (7-4543), Allen Community Pharmacy (23-4707), Central Pharmacy (17-4718), Newt's Discount Pharmacy (32-3288), Clinic Pharmacy (7-4911), Lakehurst Pharmacy (1-4903) – Case No. 774:

President Osborn called the Board to order to hear the case of Gary Nichols, D.Ph. #12682, Moore Clinic Pharmacy, Inc., Lakehurst Pharmacy, L.L.C., Williams Pharmacy #7-4543, Allen Community Pharmacy #23-4707, Central Pharmacy #17-4718, Newt's Discount Pharmacy #32-3288, Clinic Pharmacy #7-4911 and Lakehurst Pharmacy #1-4903. Mr. Nichols was present with Counsel John Coyle. John M. Crittenden, Assistant Attorney General was present as Counsel and Advisor for the Board. Assistant Attorney General, Brinda White was the prosecutor of the case.

Mr. Potter made introductions and then turned the meeting over to President Osborn. President Osborn made an opening statement for the record, regarding the Administrative Procedures Act and that the hearing would be conducted under those rules. President Osborn then turned the meeting over to Assistant Attorney General, Brinda White to proceed with the prosecution of the case.

Brinda White, Assistant Attorney General, began by calling Cindy Hamilton, Compliance Officer for the Board. Ms. Hamilton was sworn in and Ms. White proceeded with questioning of the witness and the presentation of exhibits. The evidence, which was presented, was fraudulent transactions relating to Medicaid. An Audit of purchases by the Respondent's pharmacies and the amount billed to Medicaid were totaled on 12 drugs. Through the pharmacies, Gary Nichols billed for these drugs, approximately \$399,436.87 more than the pharmacies had purchased, through the audit period of time.

An investigation of prescriptions that were prescribed for patients of a Residential Care Center in Konawa, Oklahoma and were filled by Gary Nichols and Williams Pharmacy showed that the prescriptions were billed to Medicaid but had not been prescribed, received or administered to the patients. The medication order and records provided by the physician were for the medications indicated on the medication administration charts of the patients and were the same drugs. Mr. Nichols billed Medicaid for approximately \$61,680.28 for drugs that were not on these records. Mr. Nichols admitted that he would fill some Medicaid prescriptions for patients and bill the next

month using a different fill date, which is a violation of the Medicaid Contract.

Two patients complained that Mr. Nichols had billed Blue Cross and Blue Shields of Illinois for drugs that they had not received. The total paid for these false claims was \$11,183.39. A husband and wife from the Houston area had excessive prescription insurance claims with Aetna at Williams Pharmacy. Aetna cancelled their prescription coverage. Neither patient contacted their employer or Aetna about the cancellation of their coverage. The employer has paid Aetna approximately \$62,000 to Aetna for claims paid to Mr. Nichols and Williams Pharmacy for this couple. The wife is the mother of Gary Nichols.

Mr. Nichols and Williams Pharmacy attempted to return more than \$100,000 worth of prescription drugs to AmeriSource Bergen that had not been purchased from Bergen. The Board seized these drugs and requested invoices for these drugs. No such invoices could be produced. Mr. Nichols said that he had purchased these drugs in the parking lot of Williams Pharmacy for \$25,000 cash. He testified that he did not know the person or his name. He said he had a phone number but had lost it. The lot numbers of the drugs indicated that they had been sold to an Indian tribe located about 50 miles from Lexington. The purchase of these drugs is a violation of state law (a felony) to purchase stolen property without pursuing the fact that they were stolen. Violation of Federal Law 21 U.S.C. 353C(3)(A) of the Food, Drug and Cosmetic Act.

An Audit conducted of Schedule II's dispensed at Mr. Nichols' Clinic Pharmacy in Moore for a period of time from 9/13/04 to 6/26/05 showed that the DEA 222 forms had not been completed when the drugs were received. 20% of the prescriptions were deficient in some requirements; address, DEA number, not dated by the physician, no initial by pharmacist, altered, no signature, showed to be filled and no hard copy, quantity increased and filled with compounded drug with no authorization indicated on the prescription and record keeping. There were a total of 19 counts. Testimony and exhibits were presented to prove each count. Testifying were Todd Webb and Cathy Chance of Konawa, Johnnie Shatswell of Lexington and Barry Fisher Investigating Officer for the Oklahoma State Insurance Commission.

Respondent, Gary Nichols, testified on his own behalf and Marketa Ille, an employee of Mr. Nichols also testified. Attorney, John Coyle questioned Mr. Nichols about a number of the allegations and presented some exhibits. Mr. Nichols indicated that he had made some mistakes in judgement and had been lazy about doing some of the CDS requirements. He did not recall the name of the person that sold him the drugs nor did he remember the color or make of the car that he was driving. When he was asked the ownership of each of the respondent pharmacies, he indicated that he owned Williams Pharmacy, Newt's Discount Pharmacy, Allen's Pharmacy and Central Pharmacy. He indicated that he was only part owner in Lakehurst Pharmacy and Moore Clinic Pharmacy and said that he did not know the names of the other partners.

Mr. Nichols indicated that he had closed Lakehurst Pharmacy because they had been broken into a number of times. Moore Clinic Pharmacy was closed when they lost their contract with Medicaid. The Moore Pharmacy has not gone through the closing process of notifying the Board. Both Attorneys made closing statements and the Board moved into Executive Session for deliberation.

The Board returned from Executive Session and President Osborn called the Board to order for a motion. Motion was made by Jim Spoon and seconded by Gordon Richards that in the Case No. 744, that based on the clear and convincing evidence and testimony presented, the Respondents be found guilty on each count in which they were charged. Motion passed on roll call vote.

A motion was made by Dorothy Gourley and seconded by Jim Spoon that Mr. Nichols be fined \$1000 on Counts I, II, III, IV, V, VI, VII, VIII, IX, X and XI for a total of \$11,000. His pharmacist license be revoked based on each count that he has been found guilty. He will not be allowed to request the Board's permission to make application to sit for licensure for 5 years from the date of the final order. He is to divest himself of ownership of any whole or part ownership of a pharmacy. He has 90 days in which to sell the pharmacies, and if not sold, they are to be sold.

Respondent Lakehurst Pharmacy, LLC, license is fined \$1,000 for Counts I and IX for a total of \$2,000. The license is to be revoked.

Respondent Moore Clinic Pharmacy is fined \$1,000 on Counts I, III, IX, XI, XII XIII, XIV, XV, XVI, XVII, XVIII and XIX for a total of 12,000. The license is to be revoked.

Respondent Williams Pharmacy is fined \$1,000 for Counts, I, II, IX and X for a total of \$4,000. The pharmacy license is to be placed on probation for 5 years.

Respondent Allen Community Pharmacy is fined \$1,000 on Counts I and IX for a total fine of \$2,000. The pharmacy license is to be placed on probation 5 years.

Respondent Central Pharmacy is fined \$1,000 on Counts I and IX for a total of \$2,000. The pharmacy is to be placed on probation for 5 years.

Respondent Newt's Discount Pharmacy is fined \$1,000 on Counts I and IX for a total fine of \$2,000. The pharmacy license is placed on probation for 5 years.

Motion passed on roll call vote.

**Board adjourned at 6:45 p.m.**