

MINUTES

OKLAHOMA STATE BOARD OF PHARMACY

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

June 17, 2009

Call to order:

President Gourley called the June 17, 2009 meeting of the Oklahoma State Board of Pharmacy (OSBP) to order at 8:00 a.m.

Those present were:

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

Board of Pharmacy: John A. Foust, Executive Director
Gary LaRue, Compliance Officer
Cindy Hamilton, Compliance Officer
Betty Beil, Compliance Officer
Terry Bratt, Inspector
Rhonda Jenkins, Registration Secretary

Guests: Shannon Griggs, Wal-Mart
Amanda Wenzel, Target
Walter Setmeyer, Walgreens
Ryan Walker, Walgreens
Derek Dennis, Walgreens
Melanie Shewmake, CVS
Courtney Sexton, CVS
Vanessa England, CVS
Kay Vaughan, CVS
Terry Cothran, Prescription Solutions
Becca Baugher, Cardinal Health

Approval of minutes and claims:

Motion was made by Gordon Richards and seconded by Jim Spoon to approve the April 15, 2009 minutes with corrections. Motion passed on roll call vote.

Motion was made by Bill Osborn and seconded by Jim Spoon to approve claims #2314-#2388, H0131996-H0132001, H0134426-H0134431, March, April and May payroll and any accrued expenses of the Executive Director. Motion passed on roll call vote.

Cancellation of Pharmacies, Pharmacists, Technicians, and Facilities:

After a review of the cancellation lists of pharmacies, pharmacists, technicians and facilities, a motion was made by John Lassiter and seconded by Gordon Richards to cancel the license of those that did not renew within the renewal time period. Motion passed on roll call vote.

Duplicate certificate request approved:

Motion was made by Jim Spoon and seconded by Bill Osborn to approve the duplicate certificate request of Lesley Neff Gladd, D.Ph. #13068. Motion passed on roll call vote.

Board discusses Auditor's report:

The Board reviewed the Auditor's report. The Executive Director discussed his meeting with the auditor staff and explained the new method they are using to determine the cost of an audit to state agencies. The Executive Director answered several questions, and noted that the auditor had also reviewed items which were not directly financial, but could have an impact on the financial aspects of the agency. One of the recommendations was the implementation of an agency ethics statement and policy. The Executive Director stated that policy has been implemented.

Board discusses flavorings being a compound:

The Board discussed information from different companies and states regarding adding flavoring to a prescription if that would be considered compounding.

Motion was made by John Lassiter and seconded by Gordon Richards to table the discussion until the next meeting and directed Executive Director, John Foust to contact the National Association of Boards of Pharmacy (NABP) for more information. Motion passed on roll call vote.

Board discusses request from Brennan Fulkerson of MedImmune:

The Board held a brief discussion on the request of Brennan Fulkerson. It was determined that there wasn't enough information to present and asked the Executive Director to invite Mr. Fulkerson to attend the next meeting for a more detailed discussion.

Board discusses request from June Jordan:

The Board held a discussion on the request of June Jordan. Ms. Jordan had sent in a request asking that the Board consider waiving the rule that requires a technician to have a high school diploma or G.E.D. Ms. Jordan did not graduate from high school nor did she have a G.E.D. but wanted to become a licensed technician.

The Board felt that they could not wave their own rule and therefore denied the request of Ms. Jordan.

Board discusses "patients right to choose" and "electronic medical records":

Board member, Bill Osborn brought this discussion before the Board. A discussion was held on the topic of the "patient right to choose" a pharmacy in a long term care environment. Mr. Osborn noted that one company had presented a plan to the Board in the past and he had further questions. The Board felt that they needed more information before making a decision. The Executive Director will invite the company to return to a Board meeting for more discussion on the matter.

Executive Director gives Agency Report:

Required Technician Certification: NABP has approved a change in the model practice act which encourages Boards to work toward a required certification for pharmacy technicians by 2014. The Board does not have a plan of action on this at this time.

Two Committees being organized: After discussion on the topics of Collaborative Drug Therapy Management and Long Term Care Emergency Boxes, President Dorothy Gourley appointed Dr. Tom Davis as the chair of a committee to promulgate rules for Collaborative Drug Therapy Management. President Gourley also appointed Dr. Gary Porter as chair of a committee to promulgate rules for the newly-enacted legislation regarding emergency boxes in long term care facilities.

New Law-online renewal requirements: By July of 2010, all agencies have been mandated to have an online license renewal process implemented. The Board has been working toward this

goal for several years. Presently, implementation of online renewals for pharmacist licenses is awaiting final software revisions and approval for implementation. The Board has already written informational guidelines to help guide registrants through the online process.

Meetings attended: The Executive Director and several board members attended the Oklahoma Pharmacists Association annual meeting in early June. The Director was a panelist at a question-answer session and reviewed the new Ryan Haight Act requirements.

Inspection in Duncan, information to hospitals: The Executive Director inspected three registrants in Duncan in June. He is spending time with hospital pharmacists/drug room supervisors during the visits to help educate the staff on prevention of drug diversion.

Multiple renewals for D.Ph. for future: The Executive Director discussed beginning plans for future implementation of multi-year renewals for pharmacists. Several surrounding states have implemented a biennial renewal cycle. A specific proposal will be presented at a future time after the agency has implemented online renewals.

Scanning beginning July 1st / Back-up: The Executive Director reported that a contract has been signed with OCI to optically scan archived documents, in both active and inactive files. The contract covers approximately 400,000 pages of documents. The digital files will be backed up both on-site and remotely for security.

Scanned mailbags: The Executive Director reported that two of the Board members had received their monthly information mailing via PDF email, rather than by mailing printed copies. Mr. Osborn and Mr. Spoon reported no problems associated with the emailed information. The entire Board will receive their monthly information mailing via email in the future.

Building/Land Acquisition: The Executive Director reported that the Board is awaiting further information from DCS regarding new office space. He will update the Board as information becomes available.

Bill vetoed allowing Director to speak to individuals: The Executive Director reported that the bill passed by the legislature, which would have prevented the Director from speaking with registrants about pending legislation, was vetoed by the Governor.

Umbrella Board recommendations: A legislative study committee has been recommended to review formation of a type of "umbrella Board" which would be responsible for license applications and renewals of all types issued by the State. The Board members discussed some of the problems agencies in other states have encountered using the umbrella board concept.

Appointments for Long Term Committee: Dr. Gary Porter was appointed by President Gourley to serve as chair of this committee.

OSBP vs. Sandra K. Decker, Technician #1102 – Case No. 914:

President Gourley called the Board to order to hear the case of Sandra K. Decker. Ms. Decker was not present but had signed an Agreed Order admitting guilt and accepting revocation of her technician permit.

Motion was made by Jim Spoon and seconded by John Lassiter to accept the Agreed Order. Motion passed on roll call vote.

Dr. Hampton arrived at 9:20 a.m. President Gourley brought her up to date on all previous information. She reviewed the signed Agreed Order of Sandra Decker.

Board interviews Reciprocity and NAPLEX applicants:

The Board met with 4 Reciprocities and 8 NAPLEX candidates. All were accepted upon passing the Oklahoma Law and the NAPLEX if necessary.

Reciprocities:

Jayson Mikel FisherNM
Suzanne McClelland.....NY
Prestina J. Thompson-Mayberry ..NC
Nhien M. TranTX

NAPLEX:

Casey Bray
Melissa Covington
Donald Frost
Christopher Knight
Hemali Patel
Valerie Pham
Amy Vaughan
Jared Wagner

OSBP vs. Dallas Nimsey, D.Ph. #13774 – Case No. 916:

The Board was called to order to hear the case of Dallas Nimsey. Mr. Nimsey was present with his wife and infant daughter.

Mr. Nimsey had created fraudulent patient profiles to obtain drugs. He then sold some the drugs he diverted to individuals that he knew. Assistant Attorney General, Brinda White presented the Board with an Agreed Order. Before the Board accepted the Agreed Order, they asked Mr. Nimsey questions concerning life situations. Oklahoma Pharmacist Helping Pharmacist (OPHP) representative, Kevin Rich, testified that Mr. Nimsey had signed a contract with OPHP in January 2009, and was compliant with the contract.

If the Board accepts the Agreed Order, Mr. Nimsey would agree to the following. Mr. Nimsey admits guilt to 9 counts. His license would be suspended indefinitely. He must enter into and abide with an OPHP contract for 10 years. He may request probation after January 1, 2011 only with the support of OPHP. If probation is granted by the Board, a fine defined in the Agreed Order will be implemented. Mr. Nimsey must attend a law seminar for the next 3 years in addition to the 15 hours of continuing education required.

Motion was made by Jim Spoon and seconded by Diana Hampton to accept the Agreed Order. Motion passed on roll call vote.

OSBP vs. William Chad Smithey, D.Ph. #12619 – Case No. 924:

President Gourley called the Board to order to hear the case of William Chad Smithey. Mr. Smithey was present and chose to appear without Counsel. Kevin Rich of Oklahoma Pharmacist Helping Pharmacist (OPHP) testified for Mr. Smithey.

Mr. Smithey had diverted generic Ambien to himself without a prescription. He eventually obtained a prescription for Ambien from his physician, but had continued to divert more than allowed on the prescription from the pharmacy.

Brinda White, Assistant Attorney General, presented the Board with an Agreed Order. If the Board accepts the Agreed Order, Mr. Smithey would agree to the following. Mr. Smithey would admit guilt to 4 of the 9 counts. The other 5 counts would be dismissed. His license would be suspended and immediately placed on probation for 10 years until 6/17/2019. He must enter into and abide by an OPHP contract for 10 years. Mr. Smithey must pay a fine defined in the Agreed Order. He must attend a law seminar in the years 2009 & 2010 in addition to the required 15 hours of CE.

Motion was made by Bill Osborn and seconded by John Lassiter to accept the Agreed Order. Motion passed on roll call vote.

OSBP vs. Carl Aven, D.Ph. #9706 – Case No. 922:

The case of Carl Aven was continued until the next meeting.

Dan Luce of Walgreen appears before the Board:

Mr. Dan Luce, representing Walgreens Company, presented an overview of Walgreens remote prescription data entry review process. The process was implemented a few years ago to help balance workload through managing information processing and review at pharmacies in Oklahoma which may not be as busy. Mr. Luce described the process in detail, and asked the Board to review the assessment of responsibility for each step in the processing and filling of a prescription. The Board asked Mr. Luce several questions to help clarify the responsibilities of each individual in the

process. Dr. Hampton noted that the date, June 17, was national time-out day, recognizing the importance of a stop-and-review process to assure the correct surgery was being done on the correct patient. Dr. Hampton observed how important this final check was to patient safety, and was concerned with any process involving filling a prescription where the pharmacist certifying the prescription at the final state did not have the responsibility of reviewing the prescription. Mr. Luce reiterated that their company had data which showed that their workload management process reduced overall errors. Cindy Hamilton reviewed Board's historical position on the placement of responsibility on registrants involved in filling prescriptions. After discussion, the Board held that in the case of an error in filling a prescription, any registrant in the process may be held accountable depending upon the specific situations involved.

Board discusses Pay for Performance Plan and Personnel Salaries:

Motion was made by Jim Spoon and seconded by Bill Osborn to go into Executive Session for discussion on the Pay for Performance Plan and personnel salaries. Motion passed on roll call vote.

Motion was made by Jim Spoon and seconded by Bill Osborn to return from Executive Session and to recess for lunch. Motion passed on roll call vote.

Board recessed for lunch

Board makes motion on Pay for Performance Plan and Personnel Salaries discussion:

Motion was made by Jim Spoon and seconded by Diana Hampton to approve the Pay for Performance Plan of \$32,000 for the period July 1, 2009 to June 30, 2010 to be paid to the Board staff (excludes the Executive Director) on December 1, 2010; and increase the Executive Director's salary to the average pharmacist's salary as noted in the NCPA Pharmacy Digest but not to exceed a 10% increase over current salary. Motion passed on roll call vote.

OSBP vs. Tonia Morris, D.Ph. #9795 – Case No. 921:

The Board was called to order to hear the case of Tonia Morris. Ms. Morris was present with Counsel Larry Derryberry and Walgreens District Manager, Ryan Walker. Ms. Morris had received two warning notices within a twelve month period.

Assistant Attorney General, Brinda White presented the Board with an Agreed Order. If the Board accepts the Agreed Order, Ms. Morris would agree to the following. Ms. Morris would agree to guilt on one count. She must watch the medical error video. Ms. Morris will pay a fine defined in the Agreed Order. She would also attend a law seminar in the year 2009 in addition to the required 15 hours of CE.

Motion was made by Bill Osborn and seconded by Gordon Richards to accept the Agreed Order. Motion passed on roll call vote.

OSBP vs. Cardinal Health #88-W-1116, Cardinal Health 109 dba Oklahoma State University Medical Center #2-5135, Cardinal Health Solutions dba Oklahoma State University Medical Center #2-5190, and Terrell Moorhead, D.Ph. #8615 – Case No. 926:

President Gourley called the Board to order to hear the case of registrants Cardinal Health, Cardinal Health 109 dba Oklahoma State University Medical Center, Cardinal Health Solutions dba Oklahoma State University Medical Center, and Terrell Moorhead, PIC. Mr. Moorehead was present with Counsel Robert McCampbell. Mr. Gary Cacciatore appeared for Cardinal, along with Counsel Larry Derryberry. The registrants were charged with failure to have and/or implement policies which would prevent and/or detect diversion of federally controlled drugs.

Assistant Attorney General, Brinda White presented the Board with an Agreed Order. After a review of the Agreed Order, motion was made by John Lassiter and seconded by Jim Spoon to accept the Agreed Order for all respondents. The Agreed Order obligates Cardinal to put in place effective controls to prevent and detect diversion. Cardinal Health, Cardinal Health Solutions and Mr. Moorehead would be required to pay fines described in the Agreed Order. Mr. Moorehead received a letter of reprimand for failure to establish effective controls against diversion of prescription drugs. The reprimand will remain in his file for a period of 2 years. Motion passed on roll call vote.

OSBP vs. Cardinal Health #88-W-1116, Cardinal Health 109 dba Hillcrest Medical Center #2-5007, Cardinal Health Solutions dba Hillcrest Medical Center #2-5189, and Edward Everett Hildebrand, D.Ph. #7494 – Case No. 927

President Gourley called the Board to order to hear the case of registrants Cardinal Health, Cardinal Health 109 dba Hillcrest Medical Center, Cardinal Health Solutions dba Hillcrest Medical Center, and Edward Everett Hildebrand, PIC. Mr. Hildebrand was present with Counsel Richard Mildren. Mr. Gary Cacciatore appeared for Cardinal, along with Counsel Larry Derryberry. The registrants were charged with failure to have and/or implement policies which would prevent and/or detect diversion of federally controlled drugs.

Assistant Attorney General, Brinda White presented the Board with an Agreed Order. After a review of the Agreed Order, motion was made by Jim Spoon and seconded by Diana Hampton to accept the Agreed Order for all respondents. The Agreed Order obligates Cardinal to put in place effective controls to prevent and detect diversion. Cardinal Health, Cardinal Health Solutions and Mr. Hildebrand would be required to pay fines described in the Agreed Order. Mr. Hildebrand received a letter of reprimand for failure to establish effective controls against diversion of prescription drugs. The reprimand will remain in his file for a period of 2 years. Motion passed on roll call vote.

Board adjourned at 2:45