

**ARKANSAS STATE BOARD OF PHARMACY
101 East Capitol, Suite 218
Little Rock, AR 72201**

The Arkansas State Board of Pharmacy met for a special meeting on August 16, 2005. The meeting was held at the Board of Pharmacy office, 101 East Capitol, Suite 218, Little Rock, Arkansas.

Tuesday, August 16, 2005

The meeting was called to order by Larry McGinnis, Pharm.D., President. Members present were Buddy Bowden, P.D.; Sharon Capps, R.N.; Bob Dufour, P.D.; Ross Holiman, B.S., H.Ed.; Lenora Newsome, P.D.; Ronnie Norris, P.D; and Benji Post, P.D. Staff members present were Charles Campbell, Pharm.D., Executive Director; John Kirtley, Pharm.D., Assistant Director; Margaret Lincourt, Chief Fiscal Officer; Lana Whitmore, Administrative Assistant; Ron Ewing, P.D.; Rusty McSpadden, P.D.; and Jim Myatt, P.D.

BOARD ACTION:

Mr. Holiman made the motion that the minutes of the June 2005 Board Meeting be approved as presented. Dr. Newsome seconded the motion. The vote for the motion was unanimous.

Jane Gault, P.D., Tina Minden, P.D., and Jane Polman appeared before the Board to request a Permit for Pilot Program for Donated Prescription Medication for **River City Medical Clinic, North Little Rock, AR**. Dr. Gault told the Board that this is a secure facility. She said only the pharmacist and medical director have the combination to the lock. Dr. Gault explained that they would contract with Arkansas Veterans Home, which is a state operated nursing home for veterans. After answering questions by the Board, it was discovered that the prescriptions from this nursing home are in open vials, not blister packs. Dr. Ewing said the integrity of the medication would be compromised and they would need to contract with a nursing home that uses blister packs. Dr. Gault said she did not believe that would be a problem. Ms. Polman discussed the 200% of poverty level issue. She said the patient's income is verified by tax statements or pay stubs. She said if the patient does not meet the guidelines, then he/she would not receive these medications.

BOAD ACTION:

Dr. Newsome made the motion to approve the request for a Permit for Pilot Program for Donated Prescription Medication for River City Medical Clinic, North Little Rock, AR, pending the approval of the contract by the Executive Director and inspection by Board staff. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Dr. Campbell told the applicants that the Board of Pharmacy will need written information regarding this pilot program for a report to the legislature. He said that records would be needed regarding the inventory, dispensed medications, and outdated medication.

Tom Gay said that he had a copy of a contract that could be used as a template. He said the contract was approved by himself and the attorney for the Nursing Home Association.

Ellen Lamb, P.D., appeared before the Board to request a Permit for Pilot Program for Donated Prescription Medication for **Westside Free Medical Clinic, Little Rock, AR**. Dr. Lamb told the Board that she has contacted England Manor Nursing Home to provide the medication to the clinic. She said that she will pick up the medications herself. Dr. Lamb said that the clinic purchases medication from St. Vincent and this program will help with the drugs that they cannot purchase. She said that they screen patients over the phone in order to determine if they meet the 200% of poverty level required for the program. She told the Board that they have a variety of patients, but that they are mostly seniors.

BOARD ACTION:

Dr. Dufour made the motion to approve the request for a Permit for Pilot Program for Donated Prescription Medication for Westside Free Medical Clinic, Little Rock, AR, pending the approval of the contract by the Executive Director and inspection by Board staff. Dr. Bowden seconded the motion. The vote for the motion was unanimous.

Dr. Norris discussed actions taken by the Board in violations of Board regulations occur, specifically with regard to the 200% of poverty level requirement. Dr. Campbell said these clinics will undergo routine inspections by Board staff and will be brought before the Board if violations occur.

Rodger Foust, P.D., and Chris Cooper appeared before the Board to request a Permit for Pilot Program for Donated Prescription Medication for **Conway County Christian Clinic, Morrilton, AR**. Dr. Foust told the Board that patients are screened for the 200% of poverty level requirement by requiring pay stubs and/or income tax records. He said that these records are filed in the patient's file, and that they are currently developing a re-certification process for patients to complete annually. Dr. Foust said that this clinic is run by volunteers and that they have no paid staff. He said they plan to contract with three nursing homes.

BOARD ACTION:

Dr. Dufour made the motion to approve the request for a Permit for Pilot Program for Donated Prescription Medication for Conway County Christian Clinic, Morrilton, AR, pending the approval of the contract by the Executive Director and inspection by Board staff. Dr. Bowden seconded the motion. The vote for the motion was unanimous.

Clyde Frazier, P.D., from the Arkansas Department of Health spoke to the Board regarding the Pilot Program for Donated Prescription Medication. He said that his department is also required to report to the legislature regarding this program. He said that he believes that some problems will arise from this program because it is a pilot program, but they can go to the legislature and get them corrected. Dr. Frazier told the Board that this is a big step for pharmacy and that it is very important.

Dr. Kirtley discussed issues of criminal arrests and/or convictions involving current license holders with the Board. He said that there are guidelines that the Board staff follows if an applicant is arrested or convicted, but that there is nothing in place for a current licensee if a conviction (ie., two DWI's) is discovered. The Board discussed this issue with Tom Gay. Mr. Gay said that the standards are different for an applicant than they are for a licensee, in the regulations.

Ed Henley, P.D., Bettye Thurman, and Linda Stringfellow appeared before the Board to request a Permit for Pilot Program for Donated Prescription Medication for **Interfaith Clinic, El Dorado, AR**. Ms. Thurman told

the Board that the patients of Interfaith who would receive the donated medications meet the 200% of poverty level requirement. She said they are required to show a pay stub or income tax statement as proof of income. Ms. Thurman said the facility is not currently enrolled in a 340B program, but they would like to check into it in the future. Dr. Campbell informed Ms. Thurman that there are different requirements with regard to this program and she should check with the Board staff before enrolling. Dr. Henley explained that there are five or six nursing homes in their area that they would like to contract with. He also said that he appreciates all the work done by Dr. Ewing and Dr. Campbell on this program.

BOARD ACTION:

Dr. Norris made the motion to approve the request for a Permit for Pilot Program for Donated Prescription Medication for Interfaith Clinic, El Dorado, AR, pending the approval of the contract by the Executive Director and inspection by Board staff. Dr. Newsome seconded the motion. The vote for the motion was unanimous.

Dr. Dufour asked the Board staff to send copies of the new pilot program regulations to all of the pilot program applicants.

Margaret Lincourt informed the Board that the reimbursement policy for Board members has changed. She said their stipend will be paid by direct deposit and their other travel expenses will be paid separately by check. She also told them that instead of 1099's they will receive W-2 forms at the end of the year.

Danny Ponder, P.D., and Maureen Brand appeared before the Board to request a Permit for Pilot Program for Donated Prescription Medication for **Mountain Home Christian Clinic, Mountain Home, AR**. Dr. Ponder told the Board that he has contacted two nursing homes that are interested in providing medications. He said the clinic requires proof of income to determine that the patient meets the 200% of poverty level requirement. He also said that facility is computerized and they do daily printouts.

BOARD ACTION:

Dr. Norris made the motion to approve the request for a Permit for Pilot Program for Donated Prescription Medication for Mountain Home Christian Clinic, Mountain Home, AR, pending the approval of the contract by the Executive Director and inspection by Board staff. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Dr. Kirtley discussed disciplinary actions for pharmacy technicians. He reminded the Board that Dr. Dufour asked the staff to obtain a legal opinion as to what type of punitive action the Board can oppose on a technician. Dr. Campbell said that the first concern is to remove a technician who is diverting drugs from the pharmacy. He said most of the technicians admit to the charge(s) and voluntarily sign an affidavit of surrender, which is the same as a revocation. Dr. Campbell said that if the technician agrees to appear in front of the Board, or at an informal conference, then a suspension and fine could be imposed. It was determined that it would be difficult for the Board to ever receive a monetary penalty from a technician. The Board discussed this issue at length and determined that technicians should appear at the informal conferences on a trial basis.

Dr. Kirtley discussed out of state pharmacy requirements for the Arkansas pharmacist in charge. He told the Board that there are several inconsistencies between in state pharmacy requirements and out of state pharmacy requirements, specifically with regard to the number of hours a pharmacist is required to work. Dr. Campbell

said the Board has no way to control the number of hours a pharmacy is required to be opened for a facility that is located out of Arkansas. He told the Board that an out of state pharmacy in Mississippi has requested that the Arkansas pharmacist on the application be allowed to work four hours per week at two different locations, which are right across the street from each other. He said the pharmacist would work four hours at both locations for a total of eight hours per week. Dr. Campbell asked the Board if this would be an adequate amount of time for the pharmacist to determine that Arkansas regulations were being followed for prescriptions sent into Arkansas. Dr. Kirtley said about 200 prescriptions a month were being sent into Arkansas from these locations.

BOARD ACTION:

Dr. Dufour made the motion to not grant the four hour request for this permit. Dr. Newsome seconded the motion. The vote for the motion was unanimous.

Gary Boone, P.D., appeared before the Board to present the DME Committee report. He told the Board that there have been issues raised regarding nursing homes requesting DME permits. Dr. Boone said the committee reviewed the current regulations and compiled a list of minimum required information for licensure and minimum qualifications to add to the regulations. He also said that the committee focused on enterals in particular, and their recommendation is that if the facility is selling only "milk," they do not need a license. However, if they are selling products used to dispense the "milk," (i.e., feeding tubes, etc.) then a permit would be necessary. The committee also feels that facilities cannot be licensed for billing purposes only when they do not meet the requirements.

BOARD ACTION:

Dr. Dufour made the motion that Board staff should not grant a DME license if the applicant does not meet the minimum qualifications, and licenses are not to be granted to for billing purposes only. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

BOARD ACTION:

Dr. Dufour made the motion to accept the DME Committee's recommendations for minimum required information for licensure and minimum qualifications and to amend the current regulation to adopt these new standards. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Dr. Boone said the committee questioned why the need for an alarm was not in the regulations but was on the inspection report, and it was determined that it was not necessary.

BOARD ACTION:

Dr. Norris made the motion to remove the alarm requirement from the inspection report. Dr. Newsome seconded the motion. The vote for the motion was unanimous.

Dr. Campbell told the Board that there are several DME companies that want to function under the same 5% rule as pharmacies with regard to supplying oxygen to physicians and other registrants.

BOARD ACTION:

Dr. Dufour made the motion to allow DME registrants to transact 5% of annual sales to another registrant without requiring them to license as a wholesale distributor. Dr. Norris seconded the motion. The vote for the motion was unanimous.

The Board discussed a recommendation by the DME committee to prohibit a DME from supplying prescription pads with the company's name on the pad, consistent with pharmacy regulations. Tom Gay is researching this issue.

Dr. Campbell discussed the Freedom of Information Act with the Board. He said several issues have been brought up recently regarding communicating with the Board, specifically discussing regulation changes. Dr. Campbell asked Board attorney, Tom Gay, to clarify what is and is not acceptable. Mr. Gay said that if the Board makes a decision it needs to be in the form of a meeting, either in person or by teleconference, so the media and the public has the option of becoming involved. Dr. Campbell asked about emailing regulation changes to Board members. Mr. Gay said sending information is not in violation of the FOI Act, but asking for an opinion is. He said you can send information and then have a conference call if any feedback is necessary.

Dr. Dufour presented the Board with the Central Fill Committee report. He discussed the current central fill regulation and said it has been in affect for a while. He said that the current regulation requires the final prescription to be sent from the central fill pharmacy to the local pharmacy, but there has been a request to allow the final prescription to be sent directly to the patient if the local pharmacy agrees to this option. He said the Arkansas Pharmacist Association has some concerns regarding this procedure. Jan Hastings, with the APA Board of Directors appeared before the Board to discuss these concerns. She said the Board is concerned about the final check of the medication not being done by the local pharmacy, the medication sitting in a mailbox for hours, and the loss of face-to-face patient counseling. Dr. Dufour said the committee recommends that the Board delay amending the current regulation, but is not opposed to a pilot project with both those who are in favor of the amendment and opposed to it to be involved. The Central Fill Committee will convene to develop criteria for participation in the central fill pilot project allowing prescriptions to be mailed from the central fill pharmacy directly to the patient.

BOARD ACTION:

Mr. Holiman made the motion to follow the recommendations of the Central Fill Committee. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Dr. Dufour also presented the Board with the Pedigree Committee Report. He said the committee recognizes the need for a pedigree and the general consensus is setting the bar high on application requirements in order to deter non-serious applicants. He said the committee submits the following recommendations to the Board:

- Need regulations that allow for certification followed by pedigree
- Endorse strict wholesale license requirements
- Need appropriate funding and staffing to be effective
- Look at downstream liability
- Concerns with fraud and conflict of interest with VAWD inspections
- Concerns with the bond issue
- Determine financial impact of implementation to small businesses
- Determine the cost for wholesalers

- Examine the process of manufacturers supplying authorized distributors and how this affects the pedigree
- Limit the number of times for drug redistribution

Dr. Dufour said the next step will be to draft a Bill. Dr. Campbell told the Board that Dr. Dufour did a great job as chairman of both the Central Fill and Pedigree Committee.

Dr. Kirtley gave a report on prescription scanning technology. He told the Board that he received a request from a pharmacy to allow non-licensed personnel (pharmacy clerks) to scan prescriptions into the computer system. Dr. Kirtley, along with Jim Bona from the Department of Health, went to two stores that had incorporated this technology to witness the operation of the scanning system. Dr. Kirtley said his main concern was that a clerk would not recognize an altered prescription. He said he scanned several documents using different ink pens and that it was very hard to determine which was the originally scanned document. He also examined prescriptions that had been scanned with different types of security backgrounds which showed inconsistent results when scanned. He asked the Board if clerks could scan prescriptions or if it was part of the duties that only licensed personnel such as pharmacy technicians, pharmacists, and interns could perform.

BOARD ACTION:

Mr. Holiman made the motion that only licensed personnel could scan prescriptions into the computer, not a clerk. Dr. Norris seconded the motion. Dr. Dufour opposed. The motion passes.

Dr. Campbell told the Board that there are several issues regarding nursing home consultants that needs to be discussed. He said that when he and Dr. Kirtley appeared before the legislature to present the recent regulation changes, they had some questions regarding the bed limit. Dr. McGinnis said he visited with Senator Malone and they both agreed that they did not want to increase the workload of the Board staff. He said their recommendation was to leave the 1500 limit but to change certified beds to annual census. The Board also discussed the five day notification deadline that was tabled at the last minute. Dr. Dufour asked if it was possible to require the consultants to notify the Board staff of the number of beds they consult for by having them list it on their renewal form, similar to the way a pharmacist lists continuing education. Dr. Campbell said that sounded like a good idea. The Board decided to do away with the notification deadline and change the certified beds to the state average for occupancy.

Dr. Kirtley presented the Board with an Agreed Temporary Order for **Kylie Ann Marshall, Pharmacy Technician #89411**. Ms. Marshall signed the order, and agreed not to perform pharmacy technician duties in Arkansas or be physically present in the prescription department of a pharmacy until approved by the Board.

BOARD ACTION:

Dr. Newsome made the motion to accept the Agreed Temporary Order for Kylie Ann Marshall, Pharmacy Technician #89411 as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Dr. Campbell welcomed Benji Post, P.D., to the Board.

The meeting was adjourned.

Prepared By:

Approved for the Board:

Lana Whitmore

Larry McGinnis, Pharm.D., President