

NEBRASKA BOARD OF PHARMACY
MEETING MINUTES
March 6, 2023

ROLL CALL

Charles Tomlinson, R.P., Chair, called the meeting of the Board of Pharmacy to order at 9:00 a.m. in the Husker Room at the Hampton Inn & Suites, located at 7343 Husker Circle, Lincoln, Nebraska. The agenda and a revised agenda were provided to Board members, posted on a public bulletin board in the Nebraska State Office Building, posted on the Department's website, and e-mailed to the "interested parties" list prior to the meeting. The following Board members answered roll call:

Charles Tomlinson, R.P., Chair
Sabrina Beck, R.P., Vice-Chair
Todd Larimer, R.P., J.D., Secretary
Kenneth Kester, R.P.
Darrell Klein, J.D. (via WebEx)

A quorum was present, and the meeting convened.

Also present were: Dean Willson, R.P., Pharmacy Inspector; Melissa Pollard, R.P., Pharmacy Inspector; Jesse Cushman, Program Manager; Vonda Apking, Health Licensing Coordinator; Mindy Lester, Assistant Attorney General; Jeanne Burke, Assistant Attorney General; Jennifer Miralles, Department Attorney; Teresa Hampton, Department Attorney (via WebEx); Anna Harrison, RN, BSN, Compliance Monitor (via WebEx); and Jeff Newman, Investigator.

Tomlinson announced that there is a copy of all the public documents being reviewed at this meeting available in the meeting room pursuant to the Open Meetings Act.

REVIEW OF AGENDA

Adoption of Agenda

Larimer moved, seconded by Beck, to approve the agenda as presented with the Chair having the authority to rearrange agenda items as needed. Voting aye: Beck, Kester, Klein, Larimer, Tomlinson. Voting nay: none. Motion carried.

Additions, Modification, Reordering

The Board requested that the following applications be removed from the consent agenda:

Jamie Weinrich – Pharmacy Technician Application
Aarika Roberts – Pharmacy Technician Application
Kohls Rx – Pharmaceutical Care Agreement
Hastings Family care – Pharmaceutical Care Agreement
Nebraska Medicine Diabetes CPA 2021 – Pharmaceutical Care Agreement
NE Medicine 7th Addendum to CPA – Pharmaceutical Care Agreement

Adoption of Consent Agenda

Larimer moved, seconded by Kester, to approve the consent agenda as amended. Voting aye: Beck, Kester, Klein, Larimer, Tomlinson. Voting nay: none. Motion carried.

LEGISLATION UPDATE

Name: Marcia Mueting, PharmD, CEO
Address: 6221 S 58th Street, Suite A, Lincoln, Nebraska 68516
Business: Nebraska Pharmacists Association (NPA)

Dr. Mueting explained that there was a legislative hearing held to discuss pharmacy technician administering immunizations and a legislative hearing to discuss increasing pharmacist intern/pharmacy technician ratio from 3 to 1 up to 4 to 1. There will be discussion on white bagging and pharmacy benefit managers on March 21, 2023.

LETTER OF SUPPORT TO REQUEST DHHS TO COVER IMMUNIZATIONS FOR INDIVIDUALS 18 YEARS OLD OR YOUNGER AT

THE COMMUNITY PHARMACY LEVEL

Dr. Mueeting explained that she received a letter from Kevin Bagley and there is nothing prohibiting reimbursement to pharmacies regarding vaccination of children and there are 34 states receiving reimbursement. This is not a Medicaid issue but maybe falls under the Vaccines for Children program. The letter should be addressed to this program. Dr. Mueeting explained that Medicaid will not reimburse for vaccinations covered under the Vaccine for Children program. Dr. Mueeting explained that pharmacies cannot pick and choose which immunizations to administer, and providers must choose to participate. Mr. Cushman and Dr. Mueeting will meet to discuss. Larimer emphasized that the pharmacy community should be allowed to participate.

Mindy Lester joined the meeting at 9:38 a.m.

USING "EMERGENCY USE" AS PATIENT'S NAME ON PRESCRIPTIONS

"Emergency Use" started with trying to get epi-pens into schools. Statutes were changed at that time but now that naloxone came along there are additional labeling requirements for labeling with a patient's name could be a hinderance. There was a work-around to enter "emergency use" as the patient's name. Tomlinson questioned whether this was just for certain drugs or a formulary of acceptable drugs. Mr. Cushman mentioned that a statutory change would be beneficial. Klein mentioned that there was previous discussion regarding "emergency use" and conjunction with appropriate use according to the manufacturer's instructions for use.

Name: Allison Dering-Anderson, R.P., PharmD
Address: 986120 Nebraska Medical Center Omaha, Nebraska 68198-6120
Business: UNMC, College of Pharmacy

Dr. Dering-Anderson explained that the starting point was allowing albuterol to be available at schools for emergencies. Then this use was extended to epi-pens. Dr. Dering-Anderson said there is an issue when prescriptions for naloxone entered in the Prescription Drug Monitoring Program (PDMP) are issued under the person's name and not for "emergency use". Bias could exist when practitioners see that someone has naloxone on their PDMP. Not many individuals would know to ask for naloxone to be dispensed under "emergency use" and that not all practitioners would ask why the patient has naloxone on their PDMP.

Dr. Mueeting explained that this is an educational issue. Educational materials can be created. There is just the need to know if "emergency use" is a valid name for a prescription.

Name: Amy Holman, Project Coordinator
Address: 6221 S 58th Street, Suite A, Lincoln, Nebraska 68516
Business: Nebraska Pharmacists Association (NPA)

Ms. Holman wished that "emergency use" was valid for the statewide Narcan program because currently the participating pharmacist are asking for the individuals names, and it would be more beneficial for the program to have the ability to use "emergency use" as the patient's name on the prescription.

Name: Kevin Borcher, PharmD, Vice President of PDMP & Pharmacy Programs
Address: PO Box 27842, Omaha NE 68127
Business: CyncHealth

Dr. Borcher mentioned that in the Population Health Information Act under Neb. Rev. Stat. §81-6128 regarding the Health Information Technology Board shall establish criteria for data collection and disbursement of information for the PDMP. This Board has statutory authority on what needs to be reported to the PDMP, and someone should ask this Board to not have naloxone reported on the PDMP.

Dr. Mueeting mentioned naloxone will become an over-counter drug in August. There needs to be clarity on whether it is acceptable to identify "emergency use" as the patient's name on these types of prescriptions. Klein questioned whether the anyone on this Board would have objections if pharmacists filled these types of prescriptions under "emergency use".

Name: Teri Miller, RP
Address: Omaha, NE
Business: Oneself

Ms. Miller said she would want to fill a prescription such as these but would be afraid of being disciplined.

Ms. Holman questioned whether she could tell participating pharmacists in the statewide Narcan program that they can fill these types of prescriptions with the patient's name being "emergency use". Ms. Lester cannot speak on behalf of the Attorney General's office on this issue today.

Ms. Miller explained that the individuals are required to give a name. Tomlinson mentioned that they also must be a Nebraska resident. Individuals do provide bogus names and addresses for these types of prescriptions. Beck mentioned that there is a greater concern that when you continue labeling them under a bogus individual's name lines are blurred with the information contained in the PDMP.

INVESTIGATIONAL REPORTS, DISCIPLINARY REPORTS, CONTROLLED SUBSTANCES AUDIT REPORTS & APPLICATION REVIEW – CLOSED SESSION

Beck moved, seconded by Klein, to go into closed session at 9:56 a.m. for the purpose of review and discussion of investigative reports, licensure applications, and other confidential information, and for the prevention of needless injury to the reputation of the individuals. Voting aye: Beck, Kester, Klein, Larimer, Tomlinson. Voting nay: none. Motion carried.

Anna Harrison left the meeting at 11:15 a.m.

The Board return to open the session at 11:22 a.m.

APPROVAL OF MINUTES

January 9, 2023

Page 1: No changes.

Page 2: No changes.

Page 3: In the title DESIGNATION OF THE METHOD BY WHICH THIS BODY GIVES PUBLIC NOTICE OF IT'S MEETINGS, delete the apostrophe in the word "IT'S".

Page 4: No changes.

Klein moved, seconded by Beck, to approve the January 9, 2023, minutes as corrected. Voting aye: Beck, Kester, Klein, Larimer, Tomlinson. Voting nay: none. Motion carried.

Teresa Hampton, Department Legal, introduced two foundation attorneys from the Center of Disease Control (CDC). Emily Yslas is from Wisconsin and Shanerika Flemings is from Louisiana.

BOARD RECOMMENDATIONS ON APPLICATIONS FOR LICENSURE AND REGISTRATION

Pharmacy Technician Application(s) (5)

Klein moved, seconded by Beck, to postpone a recommendation on the pharmacy technician registration of Jamie Weinrich for additional information. Voting aye: Beck, Kester, Klein, Larimer, and Tomlinson. Voting nay: none. Motion carried.

Beck moved, seconded by Klein, to recommend denying the pharmacy technician registration of Aarika Roberts. The basis of this denial is misrepresentation of material facts in procuring a credential pursuant to Neb. Rev. Stat. §38-178(1). Voting aye: Beck, Kester, Klein, Larimer, and Tomlinson. Voting nay: none. Motion carried.

Ratification of E-Mail Ballots Since the Last Meeting

Staff read the e-mail ballot since the last meeting on January 9, 2023, into the record as follows:

- The Mail Service Pharmacy license of Everwell Specialty Pharmacy (#1260) was reinstated to active status on 2/1/2023.
- A pharmacy technician registration was issued to Chandler Briggs on 2/9/2023. His registration number is 13774.
- A pharmacy technician registration was issued to Kimberly Weiss on 2/9/2023. Her registration number is 13775.
- A pharmacy technician registration was issued to Tracy Brewer on 2/9/2023. Her registration number is 13776.
- A pharmacy technician registration was issued to Crystal Malcom on 2/9/2023. Her registration number is 13777.
- A pharmacist license was issued to Michaela Slaughter on 2/10/2023. Her license number is 17778.
- A pharmacy technician registration was issued to Johnnetta Griffin on 2/13/2023. Her registration number is 13798.

REVIEW OF PHARMACEUTICAL CARE AGREEMENT(S) (15)

The Board noted that following:

- Kohlls Rx had no pharmacist(s) signatures.
- Hastings Family Care included a physician assistant.
- Nebraska Medicine Diabetes CPA 2021 included a physician assistant.
- NE Medicine 7th Addendum to CPA included a physician assistant.

Mr. Cushman and Dr. Mueting will work on the template for pharmaceutical care agreements.

REGULATIONS UPDATE

The Board reviewed the hearing summary on 172 NAC 131 which had no comments.

Klein moved, seconded by Kester, to adopt the regulations titled 172 NAC 131 Wholesale Drug Distributors. Voting aye: Beck, Kester, Klein, Larimer, and Tomlinson. Voting nay: none. Motion carried.

The Board reviewed the hearing summary on 172 NAC 134 one at a time. Dr. Dering-Anderson questioned whether being responsible for training means that they can hire someone to provide the training. Mr. Cushman mentioned that the intent was the delegating pharmacist has a responsibility that training is available, and that the person attended the training. The statute says the delegating pharmacist "shall conduct" the training. Mr. Cushman mentioned that clarification in the regulations will be that the delegating is responsible for providing the training if Department Legal is satisfied with this change. The next comment on the hearing summary regarding renewal language in section 007 was reviewed and the Board recommended removing the language if it is not considered a substantive change and leave it if it is considered a substantive change. The next comment regarding reinstatement language in section 008 was reviewed and the Board recommended removing the language if it is not considered a substantive change and leave it if it is considered a substantive change. The next comment on the hearing summary regarding drug product selection in section 009 was reviewed by the Board and Mr. Cushman explained that individuals other than pharmacists can dispense under the delegated dispensing permit than a change will not be made.

Klein moved, seconded by Kester, to adopt the regulations titled 172 NAC 134 Delegated Dispensing Permits with the recommended changes if they are not deemed substantive by Department Legal. Voting aye: Beck, Kester, Klein, Larimer, and Tomlinson. Voting nay: none. Motion carried.

Mr. Cushman explained that the Department is still working on both 172 NAC 128 and 175 NAC 8 regulations.

DISCUSSION ON THE MULTISTATE JURISPRUDENCE EXAMINATION QUESTIONS

Mr. Cushman mentioned that Nebraska is in the top end of passage rates for their jurisprudence examination. The pharmacy inspectors submit questions for the Nebraska jurisprudence examination. The failure rate for UNMC is 13% which is under the national failure rate which is 16%. Dr. Dering-Anderson explained that there is no incentive to make it a quality examination because the requirement to pay again for each time an individual is required to take and re-take the examination. Discussion would need to take place with the testing entity regarding changing requirements for the jurisprudence examination. Dr. Dering-Anderson mentioned that maybe there should be a discussion amount how to measure an entry level jurisprudence examination. Mr. Cushman mentioned that he is not sure, if test questions that are not scored are just those regarding Nebraska laws. Dr. Dering-Anderson wants to understand want content the candidates are failing on. Tomlinson mentioned whether there are other models to follow. Dr. Dering-Anderson mentioned that the Ohio Board model and maybe even the open book jurisprudence examination required by the Nebraska Board of Dentistry. Ms. Miller mentioned that having recently taken another State's jurisprudence examination that there are disparities amongst all states and suggest a small committee to address these concerns. Larimer mentioned having Nebraska law as a requirement for renewal. Mr. Cushman will investigate our relationship with NABP regarding the MPJE. The Board discussed creating a work group and Kester volunteered to be Chair. Kester moved. Seconded by Beck, to create a work group to address these concerns and Kester will Chair. Voting aye: Beck, Kester, Klein, Larimer, and Tomlinson. Voting nay: none. Motion carried.

DISCUSSION ON DELEGATED DISPENSING FORMULARIES

The Board discussed the formulary currently designated for public health clinics with a delegated dispensing permit. Mr. Cushman mentioned that the Department is looking into an intern program and maybe this might be a good project for that. Dr. Dering-Anderson mentioned that statutes on delegated dispensing that the Board must approve every drug dispensed under a delegated dispensing permit. The public health clinic formulary is discussed separately in the statutes. Teresa Hampton, Department Legal suggested creating a guidance document on how to pick the appropriate drug for delegated dispensing. Dr. Dering-Anderson mentioned delegating the dispensing for other things. Ms. Hampton mentioned having an additional guidance document for those things.

Larimer moved, seconded by Beck, to approve the CDC 2021 Sexually Transmitted Disease Guidelines as the formulary for the Delegated Dispensing Permits for Public Health Clinics.

CLARIFICATION REGARDING TELEMEDICINE PRESCRIPTIONS AND APPROPRIATE LICENSURE

Larimer explained that during the pandemic VerifyRx started doing work with Wal-Mart looking for irregularities and the came up with prescriptions considered as tele-medicine the pharmacist needs to verify if the prescriber can be licensed here. Larimer looked up in statues the definition of prescriber and practitioner. Larimer looked at Neb. Rev. Stat. §38-2025(7) which discusses a pharmacist can

fill prescriptions of out-of-state practitioners on an occasional basis. Larimer wonders if this gives an insurance company the ability to come back and say the prescribing practitioner is not a valid prescriber in Nebraska. Mr. Cushman mentioned that the Board cannot take care of the insurance issue. The issue has more to do with out-of-state practitioner that are sending in prescriptions. Tomlinson explained his view on audits and insurance copies may not feel it is worth going after but they could. Dr. Dering-Anderson questioned what “notwithstanding any other provision of law to the contrary” means. Klein explained that specific statues prevail over general. Larimer mentioned that whether the pharmacies need to be worried about and pharmacists need know how to handle this situation. Klein would recommend that the Board of Pharmacy can take the position that Neb. Rev. Stat. §38-2867 means what it says. Ms. Hampton mentioned that the Department would not disagree, but it still does not take care of the insurance issue.

REQUEST TO ADD OTHER HEALTHCARE PROVIDERS TO THE DEFINITION THAT RELATES TO NEB. REV. STAT. §28-929.01

The Board discussed and determined that adding pharmacist to Neb. Rev. Stat. §28-929.01 would require a legislative change.

NATIONAL ASSOCIATION OF BOARDS OF PHARMACY (NABP) – ANNUAL MEETING – MAY 2023 – NASHVILLE, TN

Kester, Beck, and Larimer expressed interest in attending the NABP Annual meeting in Nashville, TN. Staff will submit travel authorizations. Larimer moved, seconded by Kester, to nominate Beck as the voting delegate and Kester as the alternate voting delegate. Voting aye: Beck, Kester, Klein, Larimer, and Tomlinson. Voting nay: none. Motion carried.

NATIONAL ASSOCIATION OF BOARDS OF PHARMACY (NABP) – DISTRICT V MEETING (AUGUST 2024) - PLANNING

Beck informed the Board that she is forming a committee and has reached out to Lloyd Jessen for guidance.

The next Board of Pharmacy meeting is scheduled for May 15, 2023.

ADJOURNMENT

The Board adjourned the meeting at 1:36 p.m.

Respectfully submitted,

(signature on file with the Department)

Todd Larimer, R.P., Secretary
Board of Pharmacy