

Approved: February 18, 2008

Date

MINUTES OF THE HOUSE GOVERNMENT EFFICIENCY AND TECHNOLOGY COMMITTEE

The meeting was called to order by Chairman Jim Morrison at 3:40 P.M. on February 11, 2008, in Room 526-S of the Capitol.

All members were present except Representatives Siegfried, Sloan, Tafanelli, Wilk, Frownfelter, and Holland, all of whom were excused.

Committee staff present:

Mary Galligan, Kansas Legislative Research Department
Jennifer Thierer, Kansas Legislative Research Department
Renae Jefferies, Office of Revisor of Statutes
Gary Deeter, Committee Assistant

Conferees appearing before the committee:

Randall Forbes, Attorney, Kansas Board of Examiners in Optometry
Penny Keelan Bowie, Executive Officer, Kansas Board of Examiners in Optometry
Debra Billingsley, Executive Secretary, State Board of Pharmacy

Others attending:

See attached list.

The Chair welcomed Representative Johnson back to the committee after his absence recovering from surgery. Representative Johnson expressed appreciation for members' concerns and thanked his wife Gwen for her faithful attention to his recuperative needs.

The minutes for February 7, 2008, were approved. (Motion, Representative Loganbill; second, Representative Kelley)

Commenting on the hearings by regulatory boards, the Chair noted that the public expects responsiveness regarding any complaint lodged with a regulatory board. He then welcomed Randall Forbes, Attorney, Kansas Board of Examiners in Optometry, who reviewed the statutory status and the complaint process of the Board (Attachment 1). He said the four-member Board (three optometrists and one public member) is appointed by the Governor, may serve up to three successive three-year terms, and is mandated to grant licenses for optometry and administer and enforce the Optometry Act (K.S.A. 65-1517). He traced the complaint process, saying that most disciplinary actions come through complaints from patients or other optometrists. The Board has no separate investigator; when a complaint is received, one of the Board members serves as investigator to determine if there is probable cause that a violation has occurred.

Mr. Forbes said if it appears that a violation has occurred, the investigator works to negotiate a settlement, which is then signed by the parties and reviewed by the entire Board (*sans* investigator). If the Board accepts the settlement, the case is closed. If the Board rejects it, the case goes to a hearing—either by the Board or by a hearing officer employed through the Department of Administration. He noted that none of the proceedings is confidential unless the case involves the Impaired Provider program. Answering a question, Penny Keelan

CONTINUATION SHEET

MINUTES OF THE House Government Efficiency and Technology Committee at 3:40 P.M. on February 11, 2008, in Room 526-S of the Capitol.

Bowie, Executive Officer, Kansas Board of Examiners in Optometry, replied that out of 600 licensees, she receives six to eight complaints per year, or about 1%. Mr. Forbes replied that quality-of-care cases are rare; most deal with billing issues.

Debra Billingsley, Executive Secretary, State Board of Pharmacy, reviewed the activities of the Board (Attachment 2). She said the Board is comprised of six members: five licensed pharmacists and one public member; the Board is charged with protecting the health, safety, and welfare of Kansas citizens, and its members can serve up to two three-year terms. She listed the services of the Board and then outlined the complaint process, noting that the Board receives 70-90 complaints each year. The five investigators include one Board member, who does not participate in Board decisions for cases she has investigated. The investigators meet monthly to review cases; the Board meets quarterly and reviews all cases filed.

Commenting on the disciplinary measures, Ms. Billingsley said 11 pharmacy technician licenses were revoked in 2007, usually for theft of drugs. Each technician is offered a hearing, but most choose not to do so. Regarding the eight impaired pharmacists dealt with in 2007, she said immediate action is taken after a complaint is filed; usually the pharmacist signs a consent agreement not to practice until the Board makes a decision. After an evaluation, most pharmacists are enrolled in the Impaired Provider program and given five-year probation, during which time the pharmacist is not allowed to work alone in the pharmacy. She commented that each pharmacy is inspected annually and, of the 87 complaints, 14 resulted in fines, which range from about \$100 up to \$5000.

Answering questions, Ms. Billingsley said most criminal infractions are handled by the Kansas Attorney General's office. Representative Ruiz read a letter from a constituent regarding the high cost of prescription drugs. Ms. Billingsley said the Board is not constituted to address drug pricing or insurance policies regarding prescriptions. She said often a citizen can contact a drug manufacturer, who can provide certain drugs at minimal cost. She said the Board's greatest challenge is internet pharmacies that function outside the regulatory process. Mr. Forbes noted that legislation was recently introduced to address insurance issues related to prescription drugs; he commented that many states have attempted to regulate internet pharmacies. Ms. Billingsley said one gap in the enforcement statutes is the Board's inability to suspend pharmacy licenses.

The meeting was adjourned at 4:24 p.m. The next meeting is scheduled for Tuesday, February 12, 2008.

**BEFORE THE KANSAS HOUSE GOVERNMENT EFFICIENCY
AND TECHNOLOGY COMMITTEE**

BY: Randall J. Forbes of Frieden & Forbes, 555 S. Kansas Avenue, Topeka, KS 66603
Attorney for the Kansas Board of Examiners in Optometry

RE: Kansas Board of Examiners in Optometry

As the Committee knows, the Kansas Board of Examiners in Optometry is a state agency. The Board is comprised of three optometrists and one public member – all appointment by the Governor. K.S.A. 74-1501. The Board members serve for three-year terms with a maximum of three successive three-year terms K.S.A.74-1501. The Optometry Board’s primary functions are to grant and discipline licenses to practice optometry in this State, as well as, administer and enforce the provisions of the Optometry Law. K.S.A. 74-1504. The basis on which a license to practice optometry may be disciplined are established by statute K.S.A. 65-1517. In addition, the Optometry Board has authority to seek a court order enjoining any person, including non-optometrists, from violating the Optometry Law.

Disciplinary matters typically begin with a complaint received by the Board from a patient or another optometrist. The matter is then assigned to one member of the Board for investigation. That member is referred to as the “Investigation Member”. If, as a result of the investigation, it is determined that there is not probable cause to believe a violation of the Optometry Law has occurred, the matter is terminated and the case closed. If it is determined that there is probable cause to believe a violation of the Optometry Law has occurred, typically the Investigation Member will attempt to reach a settlement of the matter with the optometrist. If a settlement is reached, it is reduced to writing and presented to the other Board members for approval or rejection. The settlement is not final unless it is approved by the majority vote of the other Board members. Those members do not take part in the investigation and the Investigation Member does not participate when the other members vote to accept or reject the settlement. If a settlement cannot be reached, the matter proceeds to hearing in accordance with the requirements and procedures of the Kansas Administrative Procedures Act. Any necessary hearing would be conducted either before the Board or a hearing officer obtained through the Department of Administrative Hearings. At any hearing or review conducted by the Board, the Investigation Member would not participate in the decision making process.

Historically, the Optometry Board has received very few complaints against optometrists and therefore has conducted very few hearings. The last time a disciplinary action of the Optometry Board was appealed occurred in 2000. Both the District Court and the Kansas Supreme Court upheld the decision of the Optometry Board.

Attachment 1
HGE7 2-11-08



KANSAS

KANSAS BOARD OF PHARMACY
DEBRA BILLINGSLEY, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

Government Efficiency and Technology Committee
Presented by Debra Billingsley
On behalf of
The Kansas State Board of Pharmacy
February 11, 2008

Mister Chairperson, Members of the Committee:

My name is Debra Billingsley, and I am the Executive Secretary for the Kansas State Board of Pharmacy. Our Board is created by statute and is comprised of six members, each of whom is appointed by the Governor. Of the six, five are licensed pharmacists and one is a member of the general public. The current members of the Board are Michael Coast, R.Ph., Cimarron; Dr. Shirley Arck, Pharm.D., Manhattan; JoAnne Gilstrap, R.Ph., Kansas City; Frank Whitchurch, R.Ph., Kansas City; Karen Braman, R.Ph., M.S., Lawrence; and Nancy Kirk, Public Member, Topeka. They are charged with protecting the health, safety and welfare of the citizens of Kansas and to educate and promote an understanding of pharmacy practices in Kansas.

The Board licenses and registers the following: Pharmacists, Interns/Students, In-state pharmacies, Non-Resident Pharmacies, Wholesale manufacturers, Prescription Drug Distributors, Non Prescription Drug Distributors, Research and Teaching personnel, Ambulances/EMS, Analytical Labs, County Health/Non Profit Clinics, Institutional Drug Rooms, Retail Dealers, and Pharmacy Technicians.

The Board provides many services to the licensees and to the public. Some of the services provided by the agency include:

- Information source for the public
- Resolve complaints from the public against licensees and registrants
- Serve as a source of information for all pharmacists
- Test new pharmacists
- Provide an avenue for licensure transfer from other states
- Discipline pharmacists and other licensees and registrants
- Share information with other agencies to improve healthcare
- Promulgate regulations to address new areas of public concern

The Board receives approximately 70-90 complaints a year. They come from patients, physicians, family members, other state agencies, or other pharmacists, etc. The Board has a complaint form and it is provided via the Internet or can be mailed. We also accept letters from individuals or other information such as phone calls or email. From January 1, 2007 through December 31, 2007 the Board received 87 complaints. Every complaint receives a case number and a file.

The Board has 5 inspectors around the state of Kansas and they each have a territory. If a complaint comes in that is in their territory the complaint is assigned to that inspector. The inspector may interview individuals and obtain documentation based on the type of complaint received. Once the complaint has been investigated the inspector provides a report to the Board office. The Vice-President of the Board is the investigative member. We meet on a monthly basis and review the complaints and the inspector's report. The inspector also attends the monthly meeting. If the investigative member wants additional information the inspector is directed to obtain more information. Otherwise, a decision is made by the investigative member as to whether a violation of the Pharmacy Act has occurred. If a violation has occurred the case is referred to the Attorney along with a recommendation for the penalty phase. The Assistant Attorney General can negotiate the penalty recommendation but if the licensee/registrant does not agree with the recommendation then a Petition is filed and a hearing scheduled on the matter.

The Board meets quarterly throughout the year. They hear all cases filed by the Board. If the Assistant Attorney General provides a Consent Agreement the Board must give it final approval. Otherwise, the Assistant Attorney General holds a hearing and the case is heard by the Board.

If you have any questions pertaining to the Board's complaint process or other duties provided by the Board I would be happy to stand for questions.