

MINUTES

**UTAH
PHARMACY
BOARD MEETING**

July 27, 2010

**Room 474 – 4th Floor – 8:00 A.M.
Heber Wells Building
Salt Lake City, UT 84111**

Convened: 8:07 a.m.

Conducting: Dominic DeRose, Chair

Bureau Manager: Ray Walker
Board Secretary: Laura Poe
Compliance Specialist: Shirlene Kimball
Connie Call

Board Members Present: Derek Garn, R.Ph.
Dominic DeRose, R.Ph.
Kelly Lundberg, PhD public member
Jan Bird, pharmacy technician
Andrea Kemper, Pharm D
David C. Young, R. Ph (telephone 10:30–11:00 am)
Gregory Jones, R.Ph

Guests: Linda Sandberg, Omnicare
Betty Yamashita, IHC
Reid Barker, UPhA
Camane Brinkerhoff, Walgreens
Rebekah Hutchins, Career Step
Greg Jensen, Target
Richard Ensign, IHC
Jerry Petersen, UPhA
Darryl Wagner, UPhA
Paige Patterick, Smiths

TOPICS FOR DISCUSSION

ADMINISTRATIVE BUSINESS:

June 22, 2010 Minutes:

Swearing in and Welcome of new Board member, Gregory Jones:

DECISIONS AND RECOMMENDATIONS

The June 22, 2010 Board minutes were approved with corrections. All Board members in favor.

Mr. Jones was sworn in by Ms. Poe. Board members welcomed Mr. Jones to the Board.

Connie Call,
Compliance Report:

Ms. Call explained the compliance and interview process to Mr. Jones.

Ms. Call reported the following individuals were out of compliance with the terms and conditions of their Orders: Sheryl Ledet and Susan Macon.

Dr. Lundberg stated Ms. Ledet is consistently late on submitting her paperwork. She questioned whether or not the Board would like to make a recommendation to the Division to issue a citation to Ms. Ledet for non-compliance to the terms and conditions of her Order. Ms. Poe stated the Board has the authority to have a citation issued; however, she indicated she thought the Board was going to continue to monitor Ms. Ledet for a period of time. Dr. Lundberg stated Ms. Ledet has made significant progress but she has been out of compliance for the last two years and it is time she came into compliance or further action needs to be taken.

Susan Macon is out of compliance for not calling CVI July 7, 8 or 9, 2010. She also had a dilute urine screen which is considered a positive screen.

Ms. Call reported Kenneth Nielson signed an indefinite suspension.

Michael Jarman failed to sign a surrender document and he is scheduled for an Order to Show Cause Hearing in August.

Zion's Pharmacy -Kurtney Stirland,
Telephone Interview:

Mr. Stirland reported the DEA issued a very heavy fine to the pharmacy but he does not think there will be any further DEA restrictions. He stated he has made significant changes in the pharmacy. He submitted a copy of the compounding policies and he stated he has been in 100% compliance with those policies. He stated he has not done any sterile compounding. **Zion's Pharmacy and Mr. Stirland are in compliance with the terms and conditions of the probation and Mr. Stirland will be contacted by telephone again on October 26, 2010.**

Mark Akagi,

Mr. Akagi indicated he did not follow through with

Telephone Interview:

looking for volunteer work as discussed at the last meeting. He stated he has not found employment but will continue to look for a pharmacist position. Board members stated since Mr. Akagi is not employed, he will not need to meet with the Board quarterly. Mr. Garn indicated Mr. Akagi will be contacted annually for his interview unless he becomes employed as a pharmacist. **Mr. Akagi is in compliance with the terms and conditions of his Order.** He will be contacted again in July 2011.

Mary Jo Cates,
Quarterly Probation Interview:

Ms. Cates reported she has had a number of stressors lately, but reported things are going well. Dr. Lundberg questioned how she was dealing with the stressors. Ms. Cates reported she is taking one day at a time and has learned that using drugs to address her stress just causes more complications. She submitted a copy of the drug inventory which indicated there were some problems with the pharmacy drug counts. She reported the pharmacy is working on those problems. Ms. Cates requested termination of direct on-site supervision and to allow her to order drugs. Ms. Call reported Ms. Cates has been extremely compliant and her urine screens have all been negative. Mr. Garn made a Motion to terminate the direct on-site supervision and allow her to work under general supervision and to allow her to order medications. Dr. Lundberg seconded the Motion. All Board members in favor of the Motion. **Ms. Cates is in compliance with the terms and conditions of her Order and she will be seen October 26, 2010.**

Sheryl Ledet,
Probation Interview:

Ms. Ledet reported she is doing well. She had a dilute urine screen and Board members questioned why the urine screen would have been dilute. Ms. Ledet stated she doesn't know, but she does drink a lot of liquid while at work. She reported her five year sobriety date was July 13, 2010. Ms. Ledet stated she knows she is late in submitting paperwork. She reported she had requested the Board allow her to submit her reports monthly thinking it would help her be compliant, but that has not worked. Board members indicated she missed calling CVI twice last month. Ms. Ledet stated she has not missed calling and will look up the phone records and submit them to the Board. She stated she would like to return to submitting all her reports on a

quarterly basis. Board members indicated Ms. Ledet has made significant progress in her recovery, but she needs to come into compliance and submit all paperwork on time or further action may be taken. Board members stated she could go back to submitting quarterly reports, but they will need to be submitted between the 25th day of the prior month and the 1st day of the month she meets with the Board. If the reports are received on the 2nd day of the month, she will be out of compliance. Ms. Ledet stated she understands. Ms. Ledet submitted the controlled substance audit and Board members requested the audit include any discrepancies and how the discrepancies are addressed. **Ms. Ledet is out of compliance with the terms and conditions of her Order. She will be seen October 26, 2010.**

Phuong Sheffer,
Probation Interview:

Mr. Sheffer reported things are going well. He indicated he continues to volunteer at the 4th Street Clinic twice a week for 6 to 9 hours per day and on-call. His supervisor reports have been excellent. The supervisor requested the Board require employer reports quarterly instead of monthly. Board members recommend that Mr. Sheffer's reports be moved to quarterly instead of monthly because he has been compliant for six months. The reports will be due October, January, April and July. Mr. Sheffer also questioned when he could petition to have his probation terminated. His Order was signed in 2008. He was placed on probation for three years and he has only completed four months of the probation because he was not working as a pharmacist. Board members indicated they would like to continue to monitor him under supervision for a period of at one year, however, he can request termination of probation at any time. He will be seen again October 26, 2010. **Mr. Sheffer is current on all reports and is in compliance with the terms and conditions of his Order.**

Susan Macon,
Probation Interview:

Ms. Macon reported things are going well. She missed calling CVI July 7, 8 and 9, 2010. She was reminded that she needs to call everyday, even if she is on vacation. Ms. Macon had a dilute urine screen on June 19, 2010 and she indicated she drinks a lot of water. Ms. Macon stated she is not on probation due to alcohol use and does not see why she has to do urine

screens. Dr. Lundberg stated the Order does require urine screens and she is not allowed to ingest alcohol if she wants to remain in compliance with the Order. Ms. Macon stated she understands. Ms. Call indicated the reports have been moved from monthly to quarterly. **Ms. Macon is out of compliance with the terms and conditions of her Order.**

Rebekah Hutchins,
Application review:

Ms. Hutchins submitted a pharmacy technician application; however, she let her Texas license expire in 2006 and has not worked the 1000 hours in the last two years. Ms. Poe indicated she wanted the Board to review the application to see if Ms. Hutchins would be required to complete an additional 180 hours.

Ms. Hutchins explained she worked in Texas as a pharmacy technician full time for three years, then went on a mission. When she returned in 2006 she worked part time for a short period of time. She stated in 2008 she moved to Virginia where she worked for a short period of time and then moved back to Texas. Ms. Hutchins stated she moved to Utah from Texas in January 2010 and has been working for Career Step, an online pharmacy technician program. She reported she works in a support role. Students complete courses online and she answers their questions. She stated her PTCB certificate is current. The Rule requires that an individual coming in by endorsement provide documentation of working at least 1000 hours as a pharmacy technician in that state and be currently licensed in good standing. Ms. Poe questioned how many hours she has worked in the last two years as a pharmacy technician. Ms. Hutchins stated she thinks she worked at least 1200 hours in the last two years. She stated she teaches at the pharmacy technician program and keeps up with writing the exam for the pharmacy technician program. She reported she also completes continuing education. Mr. DeRose stated her training should be acknowledged, however, she has not worked for a period of time and we require the 180 hours of training in an approved program. She must either be licensed in a state and have worked at least 1000 hours in the previous two years, or complete the 180 hours in an approved program. Ms. Hutchins stated since she is not living in Texas, she would not be able to obtain a Texas license. Dr.

Lundberg made a Motion that Ms. Hutchins must complete the 180 hours of an approved program in Utah. Mr. Jones seconded the Motion. All Board members in favor.

Break at 10:50 a.m.
Reconvened at 11:00 a.m.

Discussion regarding Rule Comments:

David Young participated by telephone. Ms. Poe indicated additional comments were received by the Division after the Rule Hearing. The comments have been provided to Board members for review. Mr. DeRose questioned whether or not a Board member would like to reconsider his/her vote regarding the pharmacist to pharmacy technician ratio. If there are no Board members who want to reconsider the vote, the recommendation to the Division will be to move forward with the rule as written. Mr. DeRose stated if changes are made, the Board will need to go through the rule making process again. Ms. Poe stated UPhA submitted a letter offering to establish a Committee to review other states' statutes and rules and to review recommendations from other organizations. UPhA indicated this process would take approximately three months.

Mr. Young stated he just read a 2009 workforce services national survey that indicated there has been an increase in the number of pharmacists returning to the work force. He indicated the number of part time pharmacists increased and the number of full time pharmacists decreased. He reported the survey indicated that pharmacists feel 55% of their time is spent dispensing; 16% of the time is talking with patients; 15% of the time is management; and 5% of the time is with other duties. He also reported 68% rated their workload as high or excessive which was a huge increase since 2004. Mr. Young indicated the reasons given for the high workload were restructuring in the pharmacy and mandatory reduction of hours. He reported the changes in the pharmacy were not related to the number of pharmacy technicians. Mr. Young stated that due to the concern expressed by the profession, the Board could consider taking a moderate approach by listing a ratio in rule and providing a waiver for those pharmacies that wanted

an increase in the ratio. Ms. Poe stated that approval criteria would have to be developed and from the administrative side, approving all the exceptions would be full time work for the Board. Ms. Poe stated that technically, the ratio now is 5 to 1 (three technicians, 2 interns) and many of the comments received were to make the ratio 4 to 1.

Mr. Garn indicated the Board has reviewed and considered the information for over a year. The Board does not want to micromanage the practice of pharmacy and decided to put the control in the hands of the pharmacists. Ms. Poe stated she agrees, and doesn't see what forming another Committee would accomplish. Mr. Young stated the Board hears the concerns of pharmacists who feel the employer will take advantage. However, the rules give the pharmacist the control.

Mr. DeRose questioned if any Board members present would like to change their vote from last month regarding the pharmacist to pharmacy technician ratio. All Board members indicated they were confident in their decision and no changes to the proposed rule language were made. Mr. Walker indicated the Division will move forward with the rule making process. Mark Steinagel, Division director will make the determination whether or not to adopt the rule as filed. Mr. Walker indicated the rules could be adopted as of today, or at the latest, September 28, 2010.

Board members indicated this will allow the pharmacist to focus on what goes on in the pharmacy rather than counting heads. If it is found that the ratio is too high, the Board can revisit the issue. The Board and the Division will be looking at standard of care. Mr. DeRose stated for a point of clarification the rule does not read an unlimited ratio. The pharmacist to pharmacy technician ratio is pharmacist driven and on a case by case basis.

Mike Hodges,
Request termination of probation:

Mr. Hodges' probation is scheduled to end April 2011. He is requesting termination of probation. Ms. Call reported Mr. Hodges is in compliance with the terms and conditions of his probation. Dr. Lundberg made a Motion to approve the request and terminate

probation. Mr. Garn seconded the Motion. Mr. Jones abstained. All other Board members in favor.

Tom Harper
Controlled Substance Database Training:

Mr. Harper gave a presentation on the controlled substance data base. Mr. Harper explained that the Legislature is concerned regarding the number of deaths due to prescription drug abuse/overdose. He requested the Board's input on the types of pharmacies that should be reporting to the database. Mr. Harper indicated he would like to meet with the Board next month to discuss these issues further.

Adjourned for lunch at 12:25 p.m.
Reconvened at 1:00 p.m.

Order To Show Cause Hearing,
Jeremy Boyle:

Mr. Boyle did not appear for the scheduled Hearing and a Default Order will be issued.

Remote Order Entry Rules:

Board members indicated the rule language presented last month regarding Remote Order Entry looks good. Ms. Poe indicated these rules will be filed within the next several months.

There was discussion regarding what type of license needs to be obtained if a pharmacist is doing remote order entry from home. Board members indicated the pharmacist should have a contractual agreement with a pharmacy, and that pharmacy would have to be licensed as a Class E pharmacy if not currently holding another type of pharmacy license. Ms. Poe indicated there will be two pharmacies working together and the first pharmacy may out-source to another pharmacy. Ms. Poe questioned whether or not the pharmacy needs to let the Division know they are providing these services to one another? Board members indicated, no, they only need to be licensed.

Ms. Poe indicated another area for possible rule change is 58-17b-307 regarding background checks for the most senior person responsible for facility operation of pharmaceutical wholesaler or manufacturer. Ms. Poe stated she discussed this issue with an assistant attorney general who indicated the term "applicant" is very broad and when narrowed down, it has been limited to pharmacist, pharmacy intern, and pharmacy technician. The AAG indicated he does not feel we have the authority to require

background checks for the owners.

Review E-Mails received by the Division:

Ms. Poe questioned whether or not an individual can use the driving privilege card for picking up prescriptions. Board members indicated the Statute and Rule only require positive ID. Anything with a picture ID is acceptable.

Ms. Poe stated NABP sent an e-mail regarding an applicant who has taken the NAPLEX three times and has requested approval to sit for the fourth time. Ms. Poe stated that the Pharmacy Practice Act and Rule don't address how many times an applicant can sit for the examination. Ms. Poe questioned whether or not the Board is concerned regarding an unlimited number of attempts to pass an examination. Board members requested Ms. Poe contact NABP to find out how other states handle this issue. Board members also requested information regarding the number of applicants that repeat the examination and the average number of attempts it takes to pass the NAPLEX and MPJE examinations. Ms. Poe indicated she will obtain this information; however, currently there is no basis to deny the request to allow the individual to sit for the NAPLEX examination for a fourth time. Ms. Poe stated Board members may want to address this issue in rule.

Ms. Poe stated she received an e-mail from Sanpete Family Pharmacy and Sanpete Hospital questioning whether or not it is lawful for the pharmacist at the retail pharmacy to supervise the pharmacy technician at the hospital pharmacy. The pharmacist will be located in the retail pharmacy and would like to have the pharmacy technician working without a pharmacist directly present. Board members indicated this is not acceptable; it would be like having the pharmacy technician open and close a pharmacy without the pharmacist present. The only exception would be if the Pharmacy is licensed as a Branch pharmacy and the pharmacist is watching by web cam.

Ms. Poe questioned whether or not a pharmacist can provide a take home pack of meds for a hospital patient going home from the hospital on a weekend. The question was whether or not the pharmacist could

pre-pack enough medication for a three day period in one packet. Board members questioned how the physician wrote the prescription. Board members also questioned whether or not the pharmacist would be doing this for all patients. They also questioned whether or not this is through the emergency room? Ms. Poe indicated she will clarify the question and continue the discussion after she has received the clarification.

Ms. Poe also discussed partial fill of a controlled substance medication. Board members indicated a Schedule II cannot be partially filled unless filled by Hospice in accordance with the rules. Schedules II can only be done if the pharmacist doesn't have enough to fill the prescription. The patient cannot come and ask for a partial fill because they don't have enough money to pay for the full prescription and then come back in a couple of days and get the rest.

Collection for disposal: Board members indicated that the state does not regulate the disposal of medications for the individual. If it is for the pharmacy, they need to go through a reverse distributor and if a controlled substance, fill out the appropriate DEA form. The only time a pharmacy can take medication back is if the pharmacy made a mistake and gave the wrong medication. Mr. Walker indicated when there are questions and the Board is not sure of the answer, it needs to be clarified in Rule. This is a huge issue and people keep their old medications because they do not know what to do with them. This topic will be discussed in-depth during a future board meeting.

December Board meeting:

Board members discussed whether or not to move the meeting to December 21, 2010. It was determined that the meeting will remain on December 14, 2010.

Adjourned:

2:15 p.m.

Note: These minutes are not intended to be a verbatim transcript but are intended to record the significant features of the business conducted in this meeting. Discussed items are not necessarily shown in the chronological order they occurred.

August 24, 2010
Date Approved

(ss) Dominic DeRose
Dominic DeRose, Chairperson, Utah Pharmacy
Licensing Board

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August 24, 2010
Date Approved

(ss) Laura Poe
Laura Poe, Bureau Manager, Division of Occupational
& Professional Licensing