

MINUTES

**UTAH
PHYSICIAN ASSISTANT LICENSING BOARD
BOARD MEETING**

June 3, 2010

**Room 475 – 4th Floor – 8:30 A.M.
Heber Wells Building
Salt Lake City, UT 84111**

CONVENED: 8:33 A.M.

ADJOURNED: 9:50 A.M.

Bureau Manager:

Noel Taxin

Board Secretary:

Karen McCall

Compliance Specialist:

Susan Higgs

Board Members Present:

J. Paul Clark, MD, Chairperson

D. Wain Allen, MD

Gordon L. Day, PA-C

Larry Reimer, MD

J. David Schmitz, MD

Board Members Absent:

Maria K. Skedros

Jeffrey M. Coursey, PA-C

Guests:

Bob Bunnell, U of U PA Program

DOPL Staff Present:

Kent Barnes, Sr. Business Analyst

TOPICS FOR DISCUSSION

DECISIONS AND RECOMMENDATIONS

ADMINISTRATIVE BUSINESS:

MINUTES:

The minutes from the March 1, 2010 Board meeting were read.

Mr. Day made a motion to approve the minutes as read. Dr. Reimer seconded the motion. **The Board vote was unanimous.**

APPOINTMENTS:

8:40 am

Susan Higgs, Compliance Update

Ms. Higgs updated the Board regarding the

compliance or non-compliance of probationers.

Ms. Higgs reported **Alan N. Bybee** is currently in compliance with his Stipulation and Order. She stated she requested the database for a random audit on a couple people as the amounts of prescriptions appeared high. Ms. Higgs requested the Board to clarify the prescriptions with Mr. Bybee.

Dr. Schmitz reviewed the prescriptions and the database list and commented it appears Mr. Bybee is still treating several chronic pain patients and a few are receiving high doses of pain medications. He stated this is the issue that brought Mr. Bybee before the Board. He stated the Board can not say the prescriptions and treating these patients is inappropriate but it appears Mr. Bybee is continuing to make their chronic pain treatment part of his routine practice when there are other options and alternate pain management clinics. He stated it is one thing to treat chronic pain patients for short term but he questioned if it is appropriate to treat for long term.

Dr. Allen commented he has patients coming down from Lander, Wyoming. He stated if these patients have been treated by Mr. Bybee for several years perhaps the charts should be reviewed to be sure Mr. Bybee is managing properly.

Ms. Taxin reminded the Board Mr. Bybee had problems with excess prescribing without proper documentation. She stated the Board reviewed two of Mr. Bybee's charts during his last appointment and both were documented appropriately. She stated it appears Mr. Bybee is on his own in Morgan and may not be receiving the oversight/support he should have.

Dr. Schmitz stated Mr. Bybee needs to ask his supervisor to help monitor. He stated patients need to be evaluated, reviewed and assessed from time to time to be sure the treatment is appropriate.

Dr. Allen suggested someone review Mr. Bybee's records to evaluate if he is treating appropriately.

Dr. Schmitz asked if an investigator or Board member could go out to review some of Mr. Bybee's charts and if the charts are appropriate then the Board should not have any concerns.

Ms. Taxin responded, yes.

Mr. Day suggested Mr. Bybee's supervisor be requested to review the charts of the chronic pain patients and note his findings in his report.

Dr. Schmitz stated the supervision report does not mention anything about monitoring charts or having a process in place. He stated there is one note regarding having discussed some things with Mr. Bybee but no mention of what was discussed or the outcome of the discussion.

Dr. Allen volunteered to contact Mr. Bybee to set up an appointment to review some of his charts and report back to the Board.

Ms. Taxin thanked Dr. Allen and reminded the Board Mr. Bybee asked for early termination at the last Board meeting. She stated the Board could recommend termination of probation if the files are in order or could recommend Mr. Bybee continue to be monitored. She stated the Board had requested Mr. Bybee to meet with Dr. McClellan and request the reports to be more specific regarding any discussions and his review of charts.

Dr. Clark responded he would like to meet with Mr. Bybee again before considering termination of probation.

Dr. Schmitz read Dr. McClellan's letter documenting Mr. Bybee has 13 chronic pain patients and he has reviewed the charts quarterly for appropriate medications. Dr. Schmitz stated if any of those patients are receiving schedule II medications the charts should be reviewed monthly.

Dr. Allen concluded he will visit Mr. Bybee's office,

review charts and report back to the Board.

8:50 am

Alan N. Bybee, Probationary Interview

Mr. Bybee met for his probationary interview.

Dr. Schmitz conducted the interview.

Dr. Schmitz stated the Board received a letter from Dr. McClellan regarding reviewing charts on a quarterly basis on the chronic pain patients. He stated TD patient has been receiving medications for quite some time for chronic pain and additional health issues. He asked if that is correct.

Mr. Bybee responded it is correct. He stated the patient sees another practitioner for the additional health issues and sees him for her lower back pain. He stated there is documentation in the patient chart.

Dr. Schmitz reviewed another name with Mr. Bybee and requested him to explain his treatment.

Mr. Bybee responded the patient uses 2 different medications for knee pain. He stated the patient is also seeing a Podiatrist and neurosurgeon and has been taken off one medication. Mr. Bybee stated he read a book which says patients should not be on Darvocet and he is trying to get the patient off that medication. He stated the patient is seeing another Physician in September.

Dr. Schmitz asked if Mr. Bybee is utilizing other sources besides Dr. McClellan.

Mr. Bybee responded he has not used other sources. He stated he usually refers the patients to a pain clinic in Ogden but has not consulted with anyone. He asked if it is appropriate to send a patient for consultation and review.

Dr. Schmitz responded it is appropriate. He stated the Board has discussed sending a Board member to Mr. Bybee's office to randomly review some charts to be sure the documentation is appropriate before considering Mr. Bybee's request for early termination of probation.

Mr. Bybee stated Dr. McClellan signs off on all his charts so a Board member is welcome to come out and conduct a review.

Ms. Taxin stated Mr. Bybee's request for early termination is being considered. She stated the Board wants to be sure he is referring patients out if appropriate or is managing their health appropriately.

Mr. Day asked if a signed release is necessary for a Board member to review charts.

Ms. Taxin responded while the Division and Board are monitoring they would not need a release but to be cautious Mr. Bybee could write up a statement for Dr. Allen to sign giving him authority to review the patient files for probationary requirements and include a statement such as: "I, Dr. Allen, will not share any patient information for reasons other than probationary review and monitoring" and then have a space for Dr. Allen's and Mr. Bybee's signatures.

Mr. Bybee responded he will write a statement for Dr. Allen to sign.

Dr. Schmitz stated it would be helpful if Dr. McClellan would document in his report that he is reviewing Mr. Bybee's patient charts on a regular basis.

Ms. Taxin requested Dr. McClellan include a statement regarding his being aware there are several patients on high doses of medications and he is reviewing the charts and monitoring the treatment of the patients.

Mr. Bybee responded he will talk with Dr. McClellan. He stated he read "How to Prescribe Opioids" and found it to be very educational. He stated the book stressed the goal is not for the patient to be pain free but functional.

Mr. Day requested Mr. Bybee to clarify he has

implemented having Dr. McClellan co-sign all charts.

Mr. Bybee confirmed all charts are now being co-signed by Dr. McClellan.

Dr. Reimer asked if Mr. Bybee had the option of not writing any controlled substance, prescriptions, would Dr. McClellan give his support.

Mr. Bybee responded it would be difficult not to write any CS's in Heber and less convenient for his patients but if the Board is making the request he could do it and believes Dr. McClellan would give his support. He stated he currently writes a lot of prescriptions for schedule II medications as his practice is in primary care. Mr. Bybee stated he has a patient who came in a few months ago with neck pain and headaches. He stated he referred the patient out and she returned to him saying she was referred back to her primary care provider. He asked what the Board recommended in cases like this.

Dr. Schmitz responded as the primary care provider there are things they are trained to do and skills and expertise developed. He stated Dr. McClellan should be as comfortable managing Mr. Bybee's patients as Mr. Bybee is and the chronic pain patient should be managed in conjunction with the primary practitioner. He stated if this is happening then the Physician supervisor is doing his job to supervise. He stated Mr. Bybee should always do what is best for the patient.

Dr. Clark stated Mr. Bybee can obtain the Division database report on his patients and should have the report for at least the chronic pain patients.

Mr. Bybee responded he has requested the report from the database but not on a regular basis.

Ms. Taxin stated there is a new Law that requires each practitioner to be registered on the database and if they are not registered by renewal date their licenses will not be renewed. She stated new legislation requires there is an examination for

prescribing opioids that will have to be passed along with registering for the database.

Mr. Bybee thanked Ms. Taxin for the information.

Dr. Schmitz referred Mr. Bybee to another patient and stated it appears the medications are excessive as they are being filled more frequently than every 10 days. He stated if Mr. Bybee wants a patient to take a specific number of pills a day then the next prescription cannot be filled prior to a specified date.

Ms. Taxin asked if the patients call in to say they need more and Mr. Bybee writes the prescription or calls it in to the Pharmacy.

Dr. Schmitz asked if Mr. Bybee pulls the patient chart each time a refill is requested.

Mr. Bybee responded sometimes patients do call him and he pulls the chart each time before writing or calling in a refill.

Dr. Clark thanked Mr. Bybee for being in compliance with his Stipulation and Order.

Mr. Bybee responded his goal is to help his patients but to also help teach others on what to do and not to do in their practice. He stated he will write up a letter for Dr. McClellan and Dr. Allen to sign.

Dr. Allen stated he will call Mr. Bybee to set up an appointment to visit and review some charts after he receives and signs the letter Mr. Bybee sends to the Division.

Ms. Taxin requested a copy of the letter be faxed to Ms. Higgs also for Mr. Bybee's file. She stated it is probably better for Mr. Bybee to over document in patient charts than to under document. She stated if the charts are appropriate the Board may consider Mr. Bybee's request for early termination of probation.

Mr. Bybee responded he will send a fax to Ms. Higgs.

He stated he agrees with Ms. Taxin's comment that it is probably better to over document than under document in patient charts and he has been trying to over document.

Dr. Schmitz stated the Board does not want to say Mr. Bybee should not treat any chronic pain patients but he needs to be sure he is treating appropriately with supervision from Dr. McClellan. He stated he believes there are people in Morgan who require the care.

Ms. Taxin suggested Mr. Bybee bring a patient chart with him to his next appointment.

Mr. Bybee responded he was going to bring one today but Dr. McClellan had not yet reviewed the chart and signed it. He asked if his reports will be due by August 20, 2010.

Ms. Higgs responded Mr. Bybee is correct, the reports need to be received by August 20, 2010 for the September meeting.

Mr. Bybee thanked the Board for their input and stated it has been very helpful to him in his practice.

An appointment was made for Mr. Bybee to meet again September 13, 2010.

DISCUSSION ITEMS:

New Physician Assistant Law

Ms. Taxin reminded the Board of their discussion at the March 1, 2010, meeting regarding the proposed changes in the Physician Assistant (PA) Law. She informed the Board the Law did pass and the Board composition will now go to 3 PA's, 3 MD's and 1 public member, the education accreditation portion was expanded to include the current accrediting body name, the PA will be allowed to supervise students on a temporary basis and the PA may now own the business but must have an agreement in place which allows the supervising Physician to have independent control over the supervision. Ms. Taxin stated based on the Law changes the Rules have been amended which include a change in Rule from two to four FTE

PA's that the supervising Physician may supervise. She stated she discussed this issue with Mr. Bunnell and the UMA and both were supportive of the proposed Rules.

Ms. Taxin stated she sent copies of the proposed Rules to the Board to review and received comments from several Board members.

Dr. Clark asked if there is currently anyone supervising more than four FTE PA's.

Ms. Taxin responded there are several who supervise more than four people but not more than four FTE's.

Dr. Schmitz stated a new clinic has opened and how does the Division know how many PA's are being supervised at the clinic.

Ms. Taxin responded the Notification of Change form notifies the Division how many PA's are being supervised by each Physician. She stated some Physician's who own the business and just supervise have requested more PA's.

Dr. Allen asked if the Delegation of Services agreement and the Notification of Change document how many PA's are being supervised.

Ms. Taxin respond Dr. Allen is correct. She reminded the Board to be sure the Notification of Change forms are submitted anytime there is a change. She stated there were quite a few PA's out of compliance, many who did not have an appropriate supervisor and many with legal issues that were discovered at renewal time. Ms. Taxin stated there will probably be several new probationers based on this renewal.

FYI

Ms. Taxin informed the Board that the Rule Hearing will probably be July 20, 2010, and the Rule should become effective 15 days after the hearing. She stated the Division will have to continue enforcing the Rule as it is currently written until the change is approved.

FYI

Ms. Taxin stated in regard to lasers, the Cosmetology Practice Act Rule does not allow for PA's to supervise

other practitioners doing laser treatments. She stated that section is to be updated to allow PA's to supervise. Ms. Taxin stated there are concerns about fillers, who are doing the injections and the lack of supervision. She stated some spa centers are designating the PA's as the medical directors without having a Physician supervisor. Ms. Taxin stated the Division is working on this issue by proposing a 58-1 Rule.

Mr. Day offered to assist Ms. Taxin.

Mr. Bunnell asked if a Physician requests more than two PA's does Ms. Taxin review the request or does it have to wait for the Board to meet.

Ms. Taxin responded she reviews and acts on requests as they are received. She stated there are times she has to request an investigator to go out to the location before she can approve but normal requests are processed with a day or two. She stated the request will go to the Board if a concern arises.

NEXT MEETING SCHEDULED FOR: September 23, 2010

ADJOURN: The time is 9:50 am and the Board meeting is adjourned.

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.

September 13, 2010
Date Approved

(ss) J. Paul Clark, MD
Chairperson, Utah Physician Assistant Licensing Board

June 28, 2010
Date Approved

(ss) Noel Taxin
Bureau Manager, Division of Occupational & Professional Licensing