

## MINUTES

### UTAH PHYSICIAN ASSISTANT LICENSING BOARD MEETING

March 14, 2011

Room 210 – 2<sup>nd</sup> Floor – 8:30 A.M.  
Heber Wells Building  
Salt Lake City, UT 84111

**CONVENED:** 8:30 A.M.

**ADJOURNED:** 10:30 A.M.

**Bureau Manager:**

Noel Taxin

**Board Secretary:**

Karen McCall

**Compliance Specialist:**

Susan Higgs

**Board Members Present:**

Gordon L. Day, PA-C, Chairperson

Larry Reimer, MD

Jeffrey Coursey, PA-C

J. Paul Clark, MD

Shari Bloom, PA-C

**Board Members Absent:**

David Schmitz, MD

Maria K. Skedros

**Guests:**

Bob Bunnell, Utah PA Association

Alex Leeman, Attorney

#### TOPICS FOR DISCUSSION

#### DECISIONS AND RECOMMENDATIONS

#### ADMINISTRATIVE BUSINESS:

#### MINUTES:

The minutes from the January 10, 2011 Board meeting were read.

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

#### APPOINTMENTS:

#### 8:45 am

Susan Higgs, Compliance Update

Ms. Higgs updated the Board regarding the compliance or non-compliance of probationers.

Ms. Higgs reported **David E. Pontious** is currently out of compliance with his Stipulation and Order based on several reasons. She stated his supervision and employer reports for February and March were not received when due, he has had no approved supervisor since about February 16, 2011 and he did not submit the required Notification of Change form in a timely manner after Dr. Sharp's employment was terminated even though he had been reminded by Ms. Bolinder on March 3, 2011. Ms. Higgs stated Mr. Pontious has had no new controlled substance (CS) prescriptions written since February 14, 2011 but there were some prescriptions filled after that date. Ms. Higgs stated she believes MD Diet has an APRN doing the daily patient appointments.

**Ms. Taxin voiced concerns regarding Mr. Pontious's supervisors not staying with the organization for any length of time and the possible lack of appropriate supervision. She stated she believes Dr. Gerald Lundall, the owner of MD Diet, is a California licensed Physician but is not licensed in Utah and Jared Lundall is Dr. Lundall's son who is not licensed but an owner and is the person who terminated Dr. Sharp.**

**9:00 am**  
David E. Pontious, Probationary Interview

Mr. Pontious met for his probationary interview.

Mr. Pontious introduced Alex Leeman who represents MD Diet as legal counsel. He stated Mr. Leeman is here to answer any questions about Dr. Sharp and the termination of his employment.

Ms. Bloom conducted the interview.

**Ms. Bloom commented Dr. Sharp's employment was termination in February 2011. She asked if Mr. Pontious is currently under an approved Physician supervisor.**

Mr. Leeman responded Mr. Pontious does not make the decision regarding employing an approved Physician supervisor and to date a Physician supervisor is not employed.

Mr. Pontious responded he is not working as a Physician Assistant (PA). He stated he only reviews the main diet information and nutritional purposes. He stated most patients recognize him as the PA and have referred their friends to the center.

**Ms. Bloom asked if patients were notified to see someone else for their medical care.**

Mr. Pontious responded no as there are two (2) APRN's at the clinic and they are seeing the patients.

**Ms. Taxin asked if there were two (2) APRN's at the clinic last time Mr. Pontious met with the Board.**

Mr. Pontious responded no, there was only one (1) and another has now been hired to do his duties.

**Ms. Taxin asked Mr. Pontious what his plan is now.**

Mr. Pontious responded he has been with MD Diet for three (3) years as a PA and for several years prior to that. He stated MD Diet still has him employed as an administrator only but they do have an ad in the paper for hiring a Physician to supervise him.

**Mr. Day asked what the reason was for terminating Dr. Sharp's employment.**

Mr. Leeman responded Dr. Sharp was hired to work a specific number of hours each week as they do not have funding for a full time Physician and he exceeded the number of hours. He stated when administration tried to contact Dr. Sharp he would not return the telephone calls then Dr. Sharp called Jared Lundall and got into a verbal match with him which resulted in the termination of Dr. Sharp's employment. Mr. Leeman stated there were other issues with Dr. Sharp that they were not comfortable with such as confidentiality, conflicts of interest and proprietary protocols for patients. He stated MD Diet is very clear about conflict of interest issues in the interviewing process and Dr. Sharp did not disclose he has a brother

who runs a competitor clinic in Utah County. Mr. Leeman stated if Dr. Sharp had disclosed the information during the interview MD Diet would probably not have had an issue.

**Mr. Day informed Mr. Leeman and Mr. Pontious that Dr. Sharp e-mailed information to Ms. Taxin and in the e-mail he mentions he did not agree with shots given that were a Vitamin Cocktail and a Vitamin B complex that he did not know the compound ingredients as they were mixed by an MD Diet owner family member. He stated Dr. Sharp also mentioned he was not comfortable with the use of diuretics for excess water weight in or the use of thyroid replacement as an adjunct to weight loss without thyroid function testing. Mr. Day stated Dr. Sharp also mentioned storing syringes in boxes that were not labeled.**

Mr. Pontious responded he also had some reservations about some of the practices until he saw the favorable outcome that using these medications did for patients. He stated he consistently made it clear that Dr. Sharp was the Physician who had the authority to make decisions and if Dr. Sharp told him not to do something he would not do it. He stated Dr. Sharp had reservation about using two (2) specific medications together and they talked about slowly weaning patients off those medications. Mr. Pontious stated Dr. Sharp had no concerns about the other medications prescribed. He stated he believes Dr. Sharp was upset with the clinic due to the way his employment was terminated which was out of his control.

Mr. Leeman commented Dr. Gerald Lundall was the person who originated the medications which would be given to patients. He stated MD Diet does only a specific small portion of medical practice and the clinic does not dictate to the Physician the treatments to be done. He stated the policy is if the treatment is not appropriate for the clinic to provide, the patient should be referred out.

Mr. Leeman explained Dr. Gerald Lundall is a licensed Physician in California where he lives and Mr. Jerald Lundall is the owner of the Utah MD Diet

clinics.

**Ms. Taxin responded Dr. Gerald Lundall is not licensed in Utah, he terminated a Utah licensee's employment and if Dr. Lundall is giving advice and dictating treatment methods to a Utah Physician then he has to be licensed in Utah.**

Mr. Leeman responded Dr. Lundall does not give advice to Utah Physicians in the Utah MD Diet clinics. He stated Dr. Lundall and Dr. Sharp discussed what the clinic does but the treatment regime was up to Dr. Sharp.

**Mr. Day asked if Mr. Leeman was aware of the Delegation of Services Agreement and what was in the agreement.**

Mr. Leeman responded yes, he is aware of what it is but has not reviewed the agreement.

**Mr. Day read the first paragraph of the agreement which reads: "A Delegation of Services Agreement is to be maintained at each practice site and is to be available to DOPL upon request. It consists of written criteria jointly developed by a Physician Assistant's supervising Physician and any substitute supervising Physicians and the Physician Assistant that permits a Physicians Assistant, working under the direction or review of the supervising Physicians, to assist in the management of illnesses and injuries common to the Physician's scope of practice". Mr. Day stated the agreement requires a Physician who is in the same area of practice. He asked how MD Diet will overcome that conflict as they will have another conflict if they do not hire a Physician in the same type of practice.**

Mr. Leeman responded if they hire another weight loss Physician they would need better clarification. He stated the concern regarding Dr. Sharp was more from his failure to disclose the possible conflict. Mr. Leeman stated if the information was known up front they would have clearly discussed the confidentiality of their business. He stated the information was

discovered later and therefore, Dr. Sharp's employment was terminated for failing to disclose.

**Ms. Taxin stated the organization knew Dr. Moody was a diet Physician and they also terminated his employment as Mr. Pontious's supervisor.**

Mr. Leeman explained in the case of Dr. Moody, he was referring patients from MD Diet clinic to his own clinic and elsewhere and had requested Mr. Pontious to work with him at his own clinic.

**Ms. Taxin remarked the work agreement was in the Delegation of Services Agreement. She stated she understands the frustration as there were several Physicians being proposed. She stated the concern of the Board/Division is Mr. Pontious and how he is working with his PA license. She stated the Board/Division have authority over Mr. Pontious's license and do not have authority over MD Diet clinic.**

Mr. Pontious commented he works for MD Diet as the manager and has nothing to do with the decision making processes.

**Ms. Taxin responded the Physicians have voiced Mr. Pontious does have decision making authority. She stated that is the conflict for the Board/Division.**

Mr. Pontious commented he has had no issues with the APRN's.

**Ms. Taxin stated since Mr. Pontious is the manager over the clinic to explain who oversees the APRN's prescribing practice.**

Mr. Pontious responded he does not know.

**Dr. Reimer again asked Mr. Pontious what he wants to be doing.**

Mr. Pontious responded he is part of the family, has worked at the business, attended PA school, was licensed so he could continue working there and has

seen patient miracles happen with weight loss. He stated he loves working at MD Diet as a PA and wants to continue in that position.

**Dr. Reimer stated Mr. Pontious is in the business. He asked if it is more important to be in the business without practicing as a PA. He asked if Mr. Pontious could run MD Diet or work as PA somewhere else, which would he choose.**

Mr. Pontious responded he is working in the business but as a PA he can pick up on small things like borderline hyperthyroid and can try the patient on a trial thyroid medication. He stated he can also see problems with what he does as an employee and a PA. He stated he would like to choose working as a PA.

Mr. Leeman commented Mr. Pontious's answer to choose working as a PA is an appropriate answer for MD Diet. He stated Mr. Pontious is part of the family and the organization has tried to put him in a role where he can work for the business and still support his family. He stated as a long term solution he is not sure it is in the best interest to retain Mr. Pontious at the clinic and he may need to be a PA elsewhere. He stated he is aware there have been issues recently. He stated the Division concerns were discovered in the interviewing process but Mr. Pontious is the most familiar with the MD Diet protocols for the Salt Lake clinic. He stated the organization has made some changes in their processes in order to address some of the Division's concerns, such as how they screen patients, but there has never been a situation where Dr. Lundall, the PA or the APRN have gone against the Physician's direction.

**Dr. Reimer clarified some of the issues with Dr. Sharp were the proprietary issues and procedures that are done to maintain the clinic. He stated for someone to come in and say it is inappropriate or say they don't want to follow the protocols seems like a conflict, yet Mr. Leeman has stated he or Mr. Pontious would not tell the Physician the appropriate way to practice at the clinic. Dr. Reimer stated now Mr. Leeman is saying Physicians are informed of the protocols and are**

**requested to follow them and if they do not agree with the protocols they can be employed in another practice outside MD Diet.**

Mr. Leeman responded any patients looking for weight loss or any medical need outside the clinic protocols are referred elsewhere for their needs.

**Mr. Day asked about the search for a new Physician supervisor for Mr. Pontious.**

Mr. Pontious responded they thought they had found someone but he has never returned their telephone calls.

**Dr. Clark asked if Dr. Sharp had recommended a patient be taken off a medication and Mr. Pontious took the patient off the medication, would Mr. Pontious later put the patient back on the medication.**

Mr. Pontious responded if Dr. Sharp recommended taking a patient off a medication he would not put the patient back on the medication later.

**Dr. Clark stated Dr. Sharp wrote he recommended a patient be taken off a medication and Mr. Pontious went ahead and put the patient back on the medication.**

Mr. Pontious stated that is not a true statement.

**Ms. Bloom asked if there is a protocol or procedure in place for those patients who do not lose weight.**

Mr. Pontious responded every week when the patients come in the clinic they test the body fat, muscle mass, etc. He stated if the patient is losing muscle mass they are taken off medications for a period of time but you cannot just immediately take them off medications as it takes time to reduce them.

**Dr. Clark commented Dr. Sharp wrote it was “kind of interesting to get counseled by the individual I am supervising”.**

Mr. Pontious responded when a PA and Physician have concerns about a patient they talk about the concerns and the PA asks for advice. He stated he always followed Dr. Sharp's counsel.

**Ms. Taxin stated Dr. Moody had said Mr. Pontious went against his counsel.**

Mr. Pontious responded Dr. Moody was unfamiliar with the medications but he had agreed to wean patients off specific medications then Dr. Moody wanted him to move patients over to Dr. Moody's clinic. Mr. Pontious stated Dr. Moody wanted him to work at MD Clinic and also at Dr. Moody's clinic. He stated he was happy to work with Dr. Moody at his clinic but before they had time to fully discuss the offer and the two (2) medications Dr. Moody's employment was terminated.

**Ms. Taxin stated if Mr. Pontious was not interested in the proposed arrangement he should have talked with Dr. Moody.**

**Mr. Day asked what Mr. Pontious's plan is if he does not find a Physician supervisor within the next couple of months.**

Mr. Pontious responded MD Diet needs a Physician to supervise him. He stated the supervisor would be supervising him to practice medicine and not to discuss diets as that is not medical. He stated it is difficult to bring on a Physician who is not a direct competitor with the clinic.

**Ms. Bloom asked if there is protocol in place if a patient comes in with a medical condition.**

Mr. Pontious responded yes. He stated the clinic manages diabetes with treatments and Metformin.

**Ms. Bloom asked if patients are referred to have their primary care Physician treat and follow them for the diabetes if Mr. Pontious is treating them for weight loss and discovers they are diabetic.**

Mr. Pontious responded MD Diet may diagnose

insulin resistant patients but they do not diagnose diabetes in patients. He stated occasionally he will order a battery of lab tests and typically have the patient follow up with their primary care Physician. He stated if it is found the patient is borderline diabetic he will ask about their lab tests or inform them to get lab tests through their primary care Physician and bring a copy to him to review. He stated MD Diet does not monitor blood sugars. He stated ordering lab tests is not a common practice for him.

**Mr. Coursey commented Mr. Pontious would never know if a patient had borderline thyroid problems without doing lab tests.**

Mr. Pontious responded he started ordering more lab tests when Dr. Moody was supervising and ordered some when Dr. Sharp was supervising. He stated if a patient has all the symptoms of borderline thyroid problems then he tries the patient on a thyroid medication if they have had lab tests.

**Dr. Reimer commented he believes Mr. Pontious is clear that he cannot practice as a PA without a supervising Physician.**

Mr. Pontious responded yes, he is clear that he must have a supervising Physician.

**Ms. Taxin stated Mr. Pontious's probationary time has not counted as he has not had a consistent supervising Physician. She stated when he or the business locate someone to supervise, Mr. Pontious needs to contact Ms. Higgs and he and the proposed supervisor will need to meet with the Board prior to Mr. Pontious resuming practice as a PA.**

Mr. Pontious voiced understanding. He then asked if he obtains employment elsewhere does he still need to have his proposed supervising Physician meet with the Board prior to starting work.

**Ms. Taxin responded yes. She reminded Mr. Pontious that the requirement for the proposed supervisor to meet with the Board is in his Order.**

Mr. Pontious responded telling a Physician he wants a job but they will need to meet with the Board before he can work makes him appear that he is at risk. He stated it would preclude him from obtaining employment.

**Ms. Taxin reminded Mr. Pontious that he is an at risk PA and that is why he is on probation. She stated the Board/Division do not want to keep going through the hiring process of new supervising Physicians. She stated Mr. Pontious needs consistent time working with a supervising Physician as a PA for the Board/Division to know he is a safe practitioner.**

**Mr. Day responded the Board has not seen a PA unable to find employment based on being on probation.**

**Dr. Clark gave the example of one probationer moving from one position to another during his probation and continuing his probation without incident.**

**Ms. Taxin requested Mr. Pontious to fill out the employer form and document the dates he is not working as a PA. She stated if Mr. Pontious still is not working as a PA within a few more months then the Board will need to discuss his license and probation. She stated if he locates a position or a supervision Physician the Board will do their best to schedule a meeting prior to June, 27, 2011.**

**The Board determined Mr. Pontious is out of compliance at this time with his Stipulation and order based on the following:**

- 1. The employer reports for February and March were received late.**
- 2. The supervision reports for February and March were received late.**
- 3. The prescription copies for February and March were received late.**
- 4. Mr. Pontious no longer has a supervising Physician as of February 16, 2011 and did not submit the required Notification of Change form until March 9, 2011 despite**

**being contacted by Julie Bolinder, licensing specialist, and Ms. Higgs.**

- 5. Mr. Pontious dispensing medications prepared by a family member.**
- 6. Mr. Pontious admitting he is still counseling patients at times without prescribing medications.**
- 7. Patients not receiving any written correspondence regarding Mr. Pontious not practicing as a PA and making a referral.**

**An appointment was made for Mr. Pontious to meet again June 27, 2011.**

Mr. Pontious left the meeting.

**Ms. Taxin clarified to the Board that APRN's who are writing CS's must have an agreement with a Physician regarding their prescriptive practice.**

Mr. Coursey commented Dr. Sharp has reported Mr. Pontious never informed him of the ingredients in the cocktail concoction made by the family member and he voiced concern.

**Ms. Taxin stated Dr. Lundall can own the business but if Dr. Lundall is telling a Utah licensed Physician what the protocols are then he is practicing medicine in Utah without a Utah license.**

**Ms. Taxin stated the Board has not yet addressed the cosmetic procedure issues with MD Diet. She stated she believes Mr. Pontious and his proposed supervisor need to meet with the Board even if Mr. Pontious is working at a different clinic.**

Dr. Reimer recommended the Board meet in June and not treat Mr. Pontious different than other probationers by scheduling him earlier than the planned date.

Ms. Bloom commented even if MD Diet is just doing diet and weight loss programs they would need to address medical issues of their patients.

**Ms. Taxin stated she believes Mr. Pontious should submit a completed Delegation of Services**

**Agreement for the Board to review when he obtains a new supervising Physician.**

Dr. Reimer commented Mr. Pontious may have an agreement that he cannot work as a PA in weight loss outside MD Diet.

Ms. Bloom voiced concern regarding Mr. Pontious's lack of medical language when he was questioned during the interview.

**DISCUSSION ITEMS:**

FYI

Ms. Taxin informed the Board that she anticipates there being another probationer with similar issues as Mr. Pontious regarding practicing medicine and not being appropriately supervised.

Review Suggestions for Changes on  
Delegation of Services Agreement

Mr. Coursey commented he does not believe the Delegation of Services Agreement needs to be changed in any way. He stated he agrees with Mr. Bunnell's letter he sent to the Division that the current form has been used for a long time and there have been no problems and UPA does not recommend any changes.

**Ms. Taxin responded she updated the current form when she became the Bureau Manager for this profession a few years ago as there were some problems with the questions as they were written which required clarification. She stated the Division changes forms all the time to update them and to try to make them more clear to those completing the forms. She stated her staff receives questions frequently regarding the primary Physician and substitutes filling out and signing the form.**

Dr. Clark asked what happens if the Physician does not have a CS license or DEA registration.

**Ms. Taxin responded if the Physician does not have a Utah CS or DEA then the PA cannot prescribe controlled substances.**

Mr. Day commented the PA must be supervised by a

Physician who practices in the same specialty based on the language in the Law.

**Board members and Ms. Taxin agreed.**

Mr. Coursey recommended Ms. Bloom's suggestion made to the committee to include in the form the language from the Law regarding practicing in the same specialty would be appropriate.

**Dr. Clark made a motion to include in the first paragraph of the Notification of Change Agreement the specific language from the Law, 58-70a-501: Scope of practice. (1) (b) *provide services within the usual scope of practice of the physicians assistant's supervising physician; and (2) (b) provide the prescription or administration of the controlled substance which is within the prescriptive practice of the supervising physician and also within the delegated prescribing stated in the delegation of services agreement.***

**Ms. Bloom seconded the motion.**

**The Board vote was unanimous.**

Ms. Bloom suggested the form also request the telephone number and e-mail address for the supervising Physician(s).

The Board concurred.

Mr. Day stated he recently received a letter from the DOPL Pharmacy Board informing him they will be conducting audits. He stated a similar mailing might be helpful to send to the PA's.

Mr. Bunnell commented the Association sent a letter to all PA's to remind them to review their Delegation of Services Agreement frequently and to update the agreement as necessary.

Mr. Coursey commented Ms. Bloom also suggested a note be sent to the PA's with the renewal notice regarding reviewing and updating the Delegation of Services Agreement. He stated there may be PA's

who have questions and it would give them the chance to talk with their supervising Physicians. Mr. Coursey stated it can help the practice and also remind people that the level of their relationship should be close.

Mr. Coursey asked if PA's are going to be required to submit a copy of their Delegation of Services Agreement.

Dr. Reimer suggested the Delegation of Services form include "define additional procedures".

**Ms. Taxin stated she will revise the Notification of Change form and the Delegation of Services Agreement.**

**NEXT MEETING SCHEDULED FOR:** June 27, 2011

**ADJOURN:** The time is 10:30 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.*

January 23, 2012  
Date Approved

(ss) Jeffrey Coursey, PA-C  
Chairperson, Utah Physician Assistant Licensing Board

March 29, 2011  
Date Approved

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