

MINUTES

UTAH PHARMACY BOARD MEETING

May 26, 2009

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

Convened: 8:02 a.m.

Conducting: Roger B. Fitzpatrick, Chair

Bureau Manager: Laura Poe
Board Secretary: Shirlene Kimball

Division Staff: Connie Call, Compliance specialist
Mitchell Jones, Assistant Attorney General
Jared Memmott, Investigator

Board Members Present: Roger B. Fitzpatrick
Derek D. Garn
Betty Yamashita
Edgar Cortes
Dominic DeRose, Jr.
Kelly Lundberg

Board Members Excused: David Young

Guests: Linda Sandberg, Omnicare
Greg Jensen, Target Pharmacy
Reid Barker, UPhA
Judy Nielsen, Walgreens Pharmacy
Robert Wallace, attorney

TOPICS FOR DISCUSSION

ADMINISTRATIVE BUSINESS:

April, 2009 Minutes:

Connie Call,
Compliance Report:

DECISIONS AND RECOMMENDATIONS

The April 28, 2009 minutes were tabled and will be reviewed next month.

Ms. Call reported the following probationers were in compliance with their Order: Kami Creer and Thomas Strebel. The following probationers were noncompliant with their Order: Alfonso Montano and

Alfonso Montano,
Probation Interview:

Kathryn Irons.

Ms. Yamashita conducted the interview. Mr. Montano stated he continues to look for employment as a pharmacy technician. Mr. Montano indicated he was late in submitting his paperwork because of a death in the family and he was out of state for a period of time. He stated he saw his counselor on Wednesday and is working on anger management issues. He stated the counselor has not submitted a report because she had been out of the office on medical leave. Mr. Montano reported the outcome of his court case and indicated he pleaded guilty to violating a protective Order.

Mr. Fitzpatrick firmly explained to Mr. Montano that he has been on probation for one year and has never been in compliance with his Order. Mr. Fitzpatrick stated for the minutes, that if Mr. Montano is not in total compliance with his Order by August 1, 2009, the Board will make a motion to move forward with an Order to Show Cause Hearing to revoke his license. Mr. Montano stated he understands the Board's position, however, stated he does not feel he is out of compliance every time he meets with the Board. **Mr. Montano is out of compliance with the terms and conditions of his Order because he was late submitting reports and has not submitted a counselor report.**

Kami Creer,
Probation interview:

Mr. DeRose conducted the interview. Ms. Creer reported she is doing very well. She has submitted a letter requesting early termination of her probation. Mr. DeRose indicated Ms. Creer has made excellent progress since the first meeting with the Board. Ms. Call reported Ms. Creer has been in compliance with the terms and conditions of her Order. Mr. Fitzpatrick questioned what she feels she has learned in this process and what measures are in place to prevent her from relapsing. Ms. Creer stated her problem was stress and perfection. She stated she has learned she can not be perfect and has learned to balance her time. She stated she has learned to enjoy the things she has chosen to focus on. She also stated she has learned that the little stuff doesn't need so much attention. She stated she takes more time for herself. She indicated her sobriety date will be five years in

January. Mr. DeRose made a Motion to terminate probation. Ms. Yamashita seconded the Motion. All Board members in favor. **Ms. Creer is in compliance with the terms and conditions of her Order.**

Thomas Strebel,
Probation interview:

Mr. Garn conducted the interview. Mr. Strebel reported he has completed six sessions of the Thinking Errors Course and has to complete six more sessions. Dr. Lundberg questioned what he has learned in this course. Mr. Strebel stated most of the individuals in these courses are there for drug related offenses and it has been a wake up call for him. He stated he has learned that each decision you make has an effect on what you do every day and there is a response for every action.

Mr. Strebel indicated he has found employment at 4 Care Pharmacy and stated the job fits perfectly for him. He indicated he contacted an OIG attorney who stated that as long as he is working with other licensed individuals who fill prescriptions for Medicare and Medicaid, he can work at the pharmacy and fill all other prescriptions. He stated he can not supervise those who do fill prescriptions for federal reimbursement. Board members requested he check his contract again to make sure this is correct. It is the understanding of Board members that he can not work at all in the pharmacy if the pharmacy receives federal reimbursement.

Mr. Strebel questioned the start date of his probation. Ms. Poe indicated we will consider his employment beginning May 1, 2009 and his probation will begin on that date. Mr. Strebel stated he is not working full time, but will not work less than 16 hours per week. He stated he is working four to five days a week. He will meet with the Board again August 25, 2009. **Mr. Strebel is in compliance with the terms and conditions of his Order.**

Kathryn Irons,
Probation Interview:

Mr. Fitzpatrick conducted the interview. Ms. Irons stated she was attending counseling as required and is currently looking for employment. She indicated she does not have experience in retail pharmacy but is at the point where she will start applying for a position in

this area. Ms. Irons was hesitant in answering questions regarding her therapy and her family and support system. Mr. Fitzpatrick explained that Board members ask these questions to help them determine her progress in the probation. Mr. Fitzpatrick stated the Board understands therapy is confidential and the Board is not requesting a detailed report, but want to know if she feels therapy is helpful (or not helpful). He also indicated individuals with a support system in place seem to do better on probation. Ms. Irons then stated she finds therapy helpful and that progress is being made. Mr. Fitzpatrick indicated Ms. Irons needs to complete the physical exam to be in compliance with her Order. **Ms. Irons is out of compliance with the terms and conditions of her Order until she submits the physical evaluation.**

James Ammon,
Re-licensure request:

Ms. Poe reviewed with Board members the circumstances for Mr. Ammon surrendering his pharmacist license. She indicated Mr. Ammon plead guilty to 3 counts of health care fraud in September 2008. One term of the agreement was for Mr. Ammon to surrender his pharmacist license. Mr. Ammon stated he requested a meeting with the board to discuss his eligibility to reinstate his license. Ms. Poe indicated the Rule reads that an individual can not apply for licensure until 5 years after discharge of all probation/fines associated with a felony. However, if the felony is reduced, then the Board would look at it on a case by case basis. Mr. Ammon is still on probation for the felonies. Present for the interview was assistant attorney general Mitchell Jones, investigator Jared Memmott and Mr. Ammon's previous attorney, Robert Wallace. Mr. Fitzpatrick conducted the interview. Mr. Ammon explained that in 2004 a joint task force from the federal and state government seized his computer based on a complaint of improper insurance billing. Mr. Ammon stated he cooperated with the investigation and the investigation process took three years. During that time he stated he still owned and operated the pharmacies and continued to practice. He stated he sold the pharmacies in 2007. He stated the grand jury was not involved in his case and he pleaded guilty to improperly billing the federal government. He stated he dispensed prescriptions for a different strength than he billed for and most

prescriptions were for antipsychotic medications. He stated he takes full responsibility for his actions, but the state wanted his license and brought in the federal government to get what they wanted. He stated he has to pay back a total of \$250,000.00. Mr. Ammon stated he surrendered his license so he would not go to prison. Mr. Ammon stated he feels the surrender was done in a coercive manner and it was not the intent of the federal court to include the state's administrative document. Mr. Jones stated there has been no new Order received from the Judge which would indicate the state's action does not apply. Ms. Poe indicated the Board/Division would need a document from the Judge indicating the Administrative Order had been vacated. Mr. Ammon stated he disagrees because of the circumstances. Mr. Fitzpatrick stated that without an order from the court vacating the document, the Board can not return the license. Mr. Fitzpatrick stated that as long as he remains on court probation for the felonies, his application for re-licensure can not be considered. Ms. Poe questioned whether or not the Board stands by the Order. All Board members stated yes.

Ms. Poe summary: Mr. Ammon and Mr. Wallace provided court transcripts and their interpretation of what happened. Ms. Poe indicated she has read the transcripts and does not feel it is clear cut. The bottom line is at what point in time can Mr. Ammon reapply for licensure? Board members indicated the date would be June 28, 2012. After that date, there still would be no guarantee of licensure because he would have to meet the qualifications in place at the time he applies. Mr. Fitzpatrick stated Mr. Ammon needs to understand that the Board is advisory to the Division. There is a signed Stipulated agreement, and the Board does not have any control over that document. He stated he agrees with Ms. Poe that unless there is a document from the court vacating the Order, Mr. Ammon is bound to a suspension of a minimum of five years.

Discussion items:

Children's Health Connection Branch
Pharmacy application:

Mr. Fitzpatrick stated that Midtown Community Health Center and McKay Dee Hospital sponsors a two day event to provide health care to children

without access to health care. During this two day event, antibiotics, fluoride and other non-controlled prescription medications will be dispensed if needed. Mr. Fitzpatrick stated last year Ms. Taxin granted the license for a short period of time and waived the application fee. Mr. Fitzpatrick stated the medications will be well controlled, the pharmacist and pharmacy technician will be there all the time, and the medications will be locked up overnight. The medications will be counted at night upon closing and then counted the next morning. Dr. Lundberg made a Motion to approve the application for a specific period of time. Mr. DeRose seconded the Motion. All Board members in favor.

Report from David Young regarding the NABP Annual Meeting:

Mr. Fitzpatrick stated Mr. Young had contacted him and indicated that NABP is still debating the pharmacy technician issues and no decision regarding the accreditation process has been made. He indicated Mr. Young will give his report next month.

Discussion regarding temporary pharmacist license:

Ms. Poe indicated the temporary pharmacist license would be for those individuals who have completed the pharmacist program and are waiting for full licensure. These individuals have completed the program and are not eligible to extend or renew the intern license. Ms. Poe indicated an individual on a temporary license would have to be counted in the pharmacist supervision ratio because they would still be under the supervision of the pharmacist. Mr. Fitzpatrick questioned where these individuals currently fall. Ms. Poe stated they are not an intern and they are not a student and do not count in the ratio. It is a grey area that is not currently addressed, but if the ratio is changed, they would be included in that ratio.

Board members also discussed whether or not to count clerks in the 1 to 6 ratio. If the clerk has access to patient profiles, they would be considered part of the ratio. However, if they are not behind the pharmacy counter and are not being supervised by a pharmacist, they would not be counted as part of the ratio. It was questioned whether or not those individuals who do the billing are counted in the ratio. Board members indicated that if the individual doing the billing is

supervised by the billing department, they do not fall under the ratio.

Pharmacy Technician Program requests:

Mr. Cortes reported on the following pharmacy technician program requests:

Smith Rexal Drug: Mr. Cortes reviewed the additional information submitted by Smith Rexal Drug. Mr. Cortes stated the power point law exam was very nicely done. The program is approved.

Gatlin: Before approval can be granted, the following needs to be addressed: The curriculum does not include a Utah law section; the exam did not include federal law, Utah law, or OTC questions. They also need to add more calculation problems in the community, compounding and hospital settings. The program only mentions 120 hours rotation in the pharmacy and 60 laboratory hours (which are part of the didactic training). There needs to be a minimum of 180 hours in the pharmacy environment. Documentation is needed regarding how supervision will be handled online and during the pharmacy experience. They need documentation of the guidelines to determine completion of the online modules, tasks, and functions performed in the pharmacy by the student in training. The curriculum does not mention that the individual must complete an approved training program and successfully pass the examination within one year of beginning the program.

Mr. Cortes indicated there are no guidelines in place for approving online programs. Board members indicated that if the program meets the standards and state specific information, it could be approved. Any college or pharmacy could purchase the program, but that would be up to the online program and the college. If it meets the standards, the method of delivery doesn't matter. Mr. Cortes stated it may be a great delivery method, but someone needs to follow the student and there should be an advisor and some oversight of the student. Mr. Cortes also questioned how the student completes 60 hours of lab online. A letter will be sent outlining the deficiencies, and include questions on how personal data is secured and

how they verify the student is doing the work.

Rules Hearing:

The Rule Hearing is scheduled for 9:00 a.m. June 23, 2009. Ms. Poe indicated the rules address the following: correction of minor drafting errors, reflect the current practice of recognizing two certification examinations for pharmacy technicians; establish a temporary license for new graduates from pharmacy school who are no longer in school and eligible for licensure with the exception of sitting for the examinations. Add to definitions the ExCPT certification; eliminates the Board equivalent and adds the ExCPT certification; take out the equivalent credentialing agency under the education section for foreign educated pharmacists. Add in temporary licensure; take out that the individual must pass the NAPLEX and MJPE within 6 months of graduation. Take out the language regarding intern license extension. Add under continuing education approval of training offered by the Division. A name change for the pharmacy will not require a new application if only the name has changed and nothing else has changed. A change of location, change of ownership etc will need to have a new application submitted. Ms. Poe indicated she does not think there are any changes that are controversial.

Report of the Task Force on standardized
Pharmacy Technician Education and Training:

Report reviewed.

Discussion led by Edgar Cortes regarding the regulation of pharmacy technicians – where do we go from here:

Mr. Cortes stated it is important to make changes in the pharmacy technician education training and he feels the Board should work toward meeting or exceeding the national standard of the profession. He stated he feels standardization of programs is necessary. A wide range of training programs currently are approved and the length of the program varies from a one month course to an associate's degree. Mr. Cortes also stated he would like to see a license category for "certified pharmacy technician." Ms. Poe indicated this type of change would have to go before the Legislature.

Mr. Cortes stated he feels there should be an increase in the number of hours required in the pharmacy technician program and would like to see included

basic pharmacology and basic anatomy and human physiology courses. He stated he would like to have a minimum of 230 didactic hours. He also indicated he would like to see added at least 90 or more hours of pharmacy laboratory experience in the educational setting and require that didactic training is completed before starting the practical training. Mr. Cortes stated he would like to see more effective supervision provided for the 180 hours and require a closer collaboration between the supervising pharmacist and the education instructor for formal programs. Ms. Sandberg, member of the public, stated if we make the technician in training complete didactic hours before obtaining experience, we would eliminate on-the-job training.

Mr. Cortes stated those programs applying for approval should be required to submit an evaluation process and the Board needs to make sure they are following their curricular plan. Ms. Poe questioned how the Board would follow up to determine whether or not a program is following the curriculum. Mr. Cortes suggested having a Board member conduct a site visit to the program. He also suggested the formation of an education committee to review new programs and to re-evaluate currently approved programs. Dr. Lundberg questioned whether or not the type of education factors in for those on probation? Are more pharmacy technicians from on-the-job training programs on probation than those from formal programs and does the length of the program make a difference? Ms. Poe indicated we have not kept track of this information.

Mr. Cortes stated education opens the door to more money for the pharmacy technician. Ms. Poe stated if we raise the educational standards and the pharmacies have to pay more, there will also be an increased cost to the patient. Mr. Cortes stated that the safety of the patient comes first, and if a technician is paid better, it equates to better care from technicians. He stated that higher educated technicians make safer technicians.

Mr. Cortes stated the ASHP National Standard is a minimum of 600 hours of contact time extended over a period of 15 weeks or longer; training must include

time allocated to didactic, laboratory and experiential training. Everest College and Walgreens are the two pharmacy technician programs that have met those requirements.

Mr. Fitzpatrick questioned whether or not the Board would suggest placing in rule that new programs must meet the ASHP accreditation and also provide a date that programs currently approved have to be accredited. Board members indicated this would be a problem for independent pharmacies because of the cost involved. Mr. Garn stated he does not feel the answer is ASHP accreditation. Mr. Fitzpatrick stated he would like to see ACPE be the accrediting body, but it does not appear that will happen.

Mr. DeRose questioned whether or not we could turn over the process of approval to the Board of Education. Ms. Poe indicated this would take a Legislative change. However, the Board of Education would not have a pharmacist reviewing the programs and she does not know if they would accredit an individual pharmacy.

Ms. Poe also stated if the current programs are not producing quality students we may need to raise the total number of hours and have a breakdown between didactic, clinical and lab hours. Approval should be an ongoing process. Board members indicated we could add an age limit; include courses in human physiology and pharmacology; and require an annual review of the programs. Mr. DeRose stated this would be a good starting place. He also indicated that if an online program can meet the criteria, it should also be approved. Mr. Fitzpatrick stated he would contact ASHP to see if we could adopt those standards and not require accreditation. Mr. Cortes stated that would not be the best solution, but it would be an improvement and feels the Board should develop guidelines. Mr. DeRose stated he feels this discussion has been helpful.

Discussion regarding pharmacy technician in training approval process:

Ms. Poe discussed the problems the Division has regarding receipt of technician in training forms. She indicated there are times the Division does not receive a form, or a form was received a year ago and neither

the training program nor the Division has documentation of approval. Ms. Poe questioned rather than keeping track of the tech in training form, could the Division issue a technician in training license? She stated this would require a law change but it would prevent the problems the Division is currently facing. Ms. Yamashita stated a technician in training license would also weed out those individuals who have a background history that would prevent the individual from being licensed as pharmacy technician.

Discussion:

Board members discussed faxed prescriptions. A pharmacy receives a faxed form for a refill without the prescribing practitioner's signature. The pharmacy is faxing it back to the prescribing practitioner to be signed and it is being returned with a rubber stamp, or signed by the physician's agent. The prescription is not being accepted because it must be signed by the prescribing practitioner.

Discussion regarding faxed electronic section of the rule. Board members suggested adding to this section if the physician's agent has access to patient records on a closed system and can see that the prescribing practitioner wrote the prescription the physician's agent signature could be accepted. The controlled substances would still fall under the DEA rule. If the fax comes in, the date at the top of the fax can be accepted as the date; however, there can not be a non-controlled and a controlled prescription on the same fax. Currently, we can not accept a faxed controlled substance prescription without verbal verification.

Adjourned:

1:04 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.

June 23, 2009
Date Approved

(ss) Roger Fitzpatrick
Roger Fitzpatrick, Chairperson, Utah Pharmacy
Licensing Board

June 23, 2009
Date Approved

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