

## MINUTES

### UTAH BOARD OF PHARMACY MEETING

July 28, 2009

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

**Convened:** 8:03 a.m.

**Conducting:** Roger B. Fitzpatrick, Chair

**Bureau Manager:** Laura Poe  
**Board Secretary:** Shirlene Kimball  
**Division Director:** Mark B. Steinagel  
**Division Staff:** Connie Call, Compliance specialist

**Board Members Present:** Roger B. Fitzpatrick  
Derek D. Garn  
Dominic DeRose  
Kelly Lundberg  
Andrea Kemper

**Board Member Excused:** David Young

**Guests:** Linda Sandberg, Omnicare  
Betty Yamashita  
Jared Memmott, investigator (10:50 a.m.)  
Nina Ivnova, U of U Pharmacy student

#### TOPICS FOR DISCUSSION

##### **ADMINISTRATIVE BUSINESS:**

**Introduction and Welcome Mark B. Steinagel, Division Director:**

**Swearing in and introduction of Andrea Kemper, New Board member:**

#### DECISIONS AND RECOMMENDATIONS

Ms. Poe introduced Mr. Steinagel as the new Division Director. Mr. Steinagel provided the Board with a brief review of his work experience and stated he is looking forward to working with the Board. Board members welcomed Mr. Steinagel.

Ms. Kemper was sworn in by Mr. Steinagel. Ms. Kemper introduced herself and presented a brief background history. Mr. Fitzpatrick will be assigned as her mentor and Ms. Poe will conduct the orientation.

Approval of the June 23, 2009 Minutes:

The June 23, 2009 minutes were approved with corrections. All Board members in favor.

Follow-up Discussions:

Ms. Poe reported Division staff followed-up on the positive urine screen for Aidee Torres as requested by Board members. Ms. Poe indicated the urine screen had been positive for Ethanol but the ETG was negative. Ms. Poe reported ETG is more indicative of alcohol consumption, whereas Ethanol can be produced by the body and not ingested. CVI indicated the positive urine screen for Ethanol could result from Ms. Torres being pregnant with borderline gestational diabetes or because she had a urinary tract infection at the time of the collection. Ms. Poe indicated Ms. Torres had contacted her employer after the Board meeting and explained the Board's concerns regarding the positive urine screen. Ms. Poe indicated she has spoken with Ms. Torres and the employer and no further action is required.

Ms. Poe indicated a draft of the minutes is posted to the Division's web site within two weeks of the meeting. The draft is identified as "awaiting approval". Once the minutes are approved and corrections made, the approved minutes are posted.

Connie Call,  
Compliance Report:

Ms. Call reported the following individuals are out of compliance with the terms and conditions of their Order:

-Sheryl Ledet. Ms. Ledet has not submitted paperwork, had a positive urine screen for low level ETG, missed calling into CVI and needs to submit copies of three prescriptions.

-Jennica Bringhurst. Ms. Bringhurst has not submitted any paperwork. At the last meeting Board members requested Ms. Bringhurst consider her options, either she must come into compliance with the terms and conditions of her Order; or surrender her license; or have the Division, in collaboration with the Board, proceed with further disciplinary action to revoke the license. Board members stated if she does not surrender her license she will be referred for an Order to Show Cause Hearing for non-compliance to the terms and conditions of her Order.

-Diann Millikan: Ms. Millikan is out of compliance with the terms and conditions of her Order. She has missed calling into CVI and has not submitted her therapist report.

-Phuong Sheffer: Mr. Sheffer is considering surrendering his license and would like to discuss his options with the Board. He has not submitted the required paperwork for this month.

-Richard Lowe: Mr. Lowe has not submitted his self assessment report

The following individuals are in Compliance with the terms and conditions of their Order:

-R. Jay Bawden: Mr. Bawden is requesting early termination of probation. Ms. Call reported he has been very compliant to the terms and conditions of his Order.

-Kathryn Irons: Ms. Call indicated Ms. Irons will be leaving the State for the remainder of the year. She will need to provide in writing the date she will leave the State and the date she will return.

Discussion regarding Citation Authority:

Ms. Poe stated the intent of the OSC Hearing was to have an expedited hearing for those individuals who are out of compliance with the terms and conditions of their Order. Ms. Poe reported it is taking a longer period of time than anticipated for an OSC Hearing to be scheduled. The Pharmacy Practice Act and Rule allows the Division, in collaboration with the Board, to issue a citation for unprofessional conduct. A violation of a disciplinary Order is unprofessional conduct. A major problem with the probationers is getting them to submit their paperwork on time. Ms. Poe indicated she hesitates to issue an OSC Hearing to revoke a license because the individual is late in submitting paperwork. However, if we issue a citation, it would likely get the probationer's attention and stress the importance of compliance. Ms. Poe indicated she has talked with Mr. Holman and Mr. Gooch in investigations who have stated they would be willing to work with the Board to issue citations. Ms. Poe stated the amount of the citation could be between \$100.00 and \$500.00, but would most likely be around \$200.00 for a lack of noncompliance due to missing paperwork. Mr. Fitzpatrick stated he likes the idea of issuing citations and questioned whether or not

the money collected could be used for education or travel to national meetings for Board members. Ms. Poe indicated the Department's policy is not to allow travel at this time. Dr. Lundberg stated she agrees it is a good idea, but expressed concern for those individuals who are not working and may not be able to pay the citation.

Ms. Poe stated the Board could determine internal guidelines for issuing the citation for consistency. Ms. Poe stated she will work with the Compliance Unit to develop a proposal for the Board's review. Mr. Fitzpatrick stated that new probationers should be given a period of time to adjust to the terms and conditions of the Order before issuing a citation for non-compliance. He indicated a period of six months would allow the individual time to adjust to the probation and to understand what will happen if they are out of compliance with the terms and conditions of the Order.

Nannette Berensen,  
Discussion regarding volunteers in outpatient  
pharmacies:

Ms. Berensen requested a meeting with the Board to discuss the hospitality program at IMC hospital pharmacy. Ms. Berensen indicated the physician writes a discharge prescription, the prescription is filled at the hospital pharmacy and the prescription is delivered to the patient's room prior to discharge from the facility. Ms. Berensen stated the campus is very large and delivering the prescription medications in a timely manner is a challenge. Ms. Berensen indicated they would like to improve the speed that deliveries are made and have been looking at delivery alternatives. She indicated they would like to use volunteers to deliver the medications and she questioned if this process would be acceptable. Mr. Fitzpatrick questioned how counseling is conducted and documented. Ms. Berensen stated that counseling is provided by the pharmacist on the floor. Mr. Fitzpatrick questioned what would happen if the medications are lost. Ms. Berensen stated the pharmacy can run a log of the sale, the time of sale, who made the sale, who delivered the prescription and the time of delivery. Ms. Berensen stated there are procedures in place if a patient's medication is not delivered or is missing in transit. Mr. Steinagel read the definition of dispensing and stated it does not

appear to be a violation of the Rule. Board members agree it would be acceptable to have the volunteers deliver the medications.

Ms. Berensen also questioned how many paid interns, externs and pharmacy technicians a pharmacist can supervise. Mr. Fitzpatrick indicated the intent of the Board is a 1 to 2 ratio. The Rule needs to spell out maximum ratio of paid or unpaid individuals who can be supervised and let the pharmacist-in-charge decide what is best for the specific pharmacy. Ms. Poe stated compensation is not the bottom line, but we need to look at the maximum number a preceptor can safely supervise on a given shift. Ms. Berensen stated she believes a preceptor can supervise a paid intern and an unpaid individual. The Board will continue to discuss this issue in upcoming Board meetings.

Diann Millikan,  
Interview:

Mr. Fitzpatrick conducted the interview. Ms. Millikan indicated she is still recovering from the June 10, 2009 surgery on her leg. She reported she has been non weight bearing until this week. She stated she wanted to meet with the Board in person so that the Board could see how well she is doing. Mr. Fitzpatrick questioned why she has missed calling into CVI. Ms. Millikan stated she has been at home and does not understand why the records indicate she missed calling CVI. However, Ms. Millikan reported she was taking prescription pain medications at the time and may not have realized she missed calling in. Ms. Millikan stated her physician is aware of her addiction problem and indicated she will provide the Board with a copy of her prescriptions. Ms. Millikan reported she has been non weight bearing since June 10, 2009 and has not attended 12-step or group support meetings. She indicated she is now weight bearing and will attend the required meetings. She indicated her sponsor had a relapse and she will find a new sponsor. Dr. Lundberg indicated Ms. Millikan has been out of compliance for 16 months. She encouraged Ms. Millikan to get all her paperwork in and come into compliance by her next meeting. Ms. Millikan stated she wants to be in compliance and will find a sponsor, attend her meetings, and will call CVI everyday. **Board members indicated Ms. Millikan is making progress but continues to be out of compliance with**

Katherine Irons,  
Interview:

**the terms and conditions of her Order.**

Mr. Fitzpatrick conducted the interview. Ms. Irons stated she requested a meeting with the Board because she planned on leaving the state for the rest of the year and wanted to inform the Board she was leaving. Mr. Fitzpatrick indicated she will need to notify the Board in writing with the date she is leaving and the date she will return. Mr. Fitzpatrick also indicated she will still need to comply with the terms and conditions of her Order. Ms. Poe explained several options Ms. Irons has available if she moves out of state. If she moves and does not work in that State, she may want to surrender her license. Upon her return to Utah, she would reapply for licensure, document six months of clean urine screens and a probationary license could be issued with the terms and conditions outlined in her current Order. Another option would be to sign an indefinite suspension where she would complete continuing education and continue to renew the license. Upon returning to Utah, she would request termination of suspension and the license would be placed on probation with the same terms and conditions of the Order.

After the options were explained to Ms. Irons, Ms. Irons stated she has found employment in Utah and will not be moving out of state. She indicated she began employment on Friday, July 24, 2009 and is working in a closed door pharmacy. She submitted a letter from the employer. Ms. Irons questioned whether or not she could request early termination of probation. Board members indicated she can make the request; however, she needs to document compliance for a period of time before the Board would consider her request.

Ms. Irons stated she has completed the physical exam, reported she calls CVI daily and has seen a therapist. She submitted her continuing education hours and a therapy report for August. The letter from the therapist indicates no further therapy is required. Ms. Irons stated the therapist indicated her circumstance was situational depression and not biological depression. Dr. Lundberg stated she feels therapy is important and is concerned that the therapist has

indicated therapy is no longer necessary. Dr. Lundberg questioned what process she has put in place so that this does not occur again. Ms. Irons stated the reasons for the situational depression still exist, but the weight she gives them is not the same as in the past. She stated she cannot afford therapy and since she is aware of the warning signs, she feels she can avoid going down the path that brought her before the Board. Mr. Fitzpatrick stated he is concerned that Ms. Irons can not identify any mechanisms she has in place if problems come up. He stated he is reluctant to release her from therapy until she can identify those mechanisms. Ms. Irons stated she misunderstood the question and indicated she has support from friends, she volunteers her time, she is taking continuing education and her therapist has offered help if she feels it is necessary. She stated her friends are aware of her issues and she speaks with them on a regular basis. She stated she feels she has addressed her issues. Ms. Poe indicated the therapist has written a letter to the Board to say therapy is no longer needed at this time. Ms. Poe suggested leaving the Order as written and this leaves the issue of therapy up to Ms. Irons and her therapist. Ms. Irons stated she feels she needs to concentrate and focus on being competent in her new position. She stated if she needs therapy, she will contact the therapist.

Mr. DeRose expressed concern that Ms. Irons came before the Board and stated she was considering leaving the State and after a great deal of discussion, indicated she had found a job and would not be leaving after all. He questioned why she did not indicate at the beginning of the interview she had found a position and had decided to stay in Utah. Ms. Irons stated she felt she needed to explain why she had requested a meeting with the Board. Mr. Garn indicated Ms. Irons will need to submit a practice plan for approval. She questioned whether or not she could request termination of supervision. Board members indicated she needs to practice under supervision for a period of time before making the request. Board members suggested she work under supervision for a period of at least six months before making the request. **Ms. Irons is in compliance with the terms and conditions of her Order.**

Mary Jo Cates,  
Interview:

Mr. DeRose conducted the interview. Ms. Cates reported she is doing well. She reported she is working 20 to 22 hours per week; however, work has been stressful because of a very complicated new computer system. Ms. Cates stated she is considering requesting general supervision instead of direct supervision, but will wait until work is not so busy. She also reported there were medication discrepancies in the pharmacy and all employees were urine screened. She reported her urine screen came up negative. She provided a copy of the pharmacy log. **Ms. Cates is in compliance with the terms and conditions of her Order.**

Sheryl Ledet,  
Interview:

Dr. Lundberg conducted the interview. Ms. Ledet stated work has been very busy and a new computer system has been implemented. She stated she works under general supervision, 40-50 hours per week. She stated she is working on personal issues and has learned not to isolate herself as she has done in the past. She stated she is also taking short vacations to help deal with the stress. She also stated she no longer juggles more than she can handle. Dr. Lundberg stated Ms. Ledet has missed calling CVI and has not submitted an employer evaluation. Ms. Ledet indicated she went camping one week end and did not call CVI while she was away. Ms. Call reminded Ms. Ledet to let her know if she will be in an area where there is no phone reception. Ms. Ledet also indicated her supervisor went on vacation for 5 weeks and she did not get the employer report filled out. Ms. Ledet stated she will have the supervisor submit the report as soon as possible. She stated she personally submitted the 12-step attendance meeting reports. Ms. Ledet stated she feels she is doing very well. **Ms. Ledet is out of compliance for missing paperwork.**

Jennica Bringhurst,  
Interview:

Ms. Bringhurst did not appear for her scheduled interview. Board members recommended Ms. Call and Ms. Poe meet with Ms. Bringhurst to see if she would like to surrender her license. If not, she will be referred for an Order to Show Cause Hearing. **Ms. Bringhurst is out of compliance with the terms and conditions of her Order.**



Jay Bawden,  
Interview:

Mr. Garn conducted the interview. Mr. Bawden is requesting termination of probation. He has been in compliance throughout the probationary period. Ms. Call reported he has very favorable employer reports and has been obtaining continuing education hours. He stated he has implemented support mechanisms to help him avoid those issues that brought him before the Board. **Mr. Bawden is in compliance with the terms and conditions of his Order.** Mr. Garn made a Motion to terminate probation. Dr. Lundberg seconded the Motion. All Board members in favor.

Kenneth Nielson,  
Interview:

Mr. Nielson's interview was canceled and he will be re-scheduled for next month.

Scott Harris,  
Telephone Interview:

Mr. Garn conducted the telephone interview. Mr. Harris stated he feels his pharmacy career is over and reported there are no pharmacist positions available in the area. He stated he is currently working on his farm and has considered moving on to another career. He stated he would like to continue to work in pharmacy, but can not find a position with the current restrictions on his license. He stated it would be difficult for him to relocate his family and he will not consider looking for work outside his geographic area. Mr. Fitzpatrick indicated the Board could amend the Order if he finds a position where he has to float to several different stores to cover for vacations. Mr. Harris stated if he finds this type of position, he would contact the Board and request the amendment. Mr. Harris stated he is currently working for a non-profit organization installing hydroelectric plants in Nepal. Dr. Lundberg questioned why he is unwilling to relocate to find pharmacy employment, but will leave the country for a period of 5-6 months to volunteer his time. Mr. Harris stated it is a matter of priority. Mr. Fitzpatrick stated Mr. Harris was placed on probation for issues other than substance abuse and the Board could consider amending the Order to allow for general supervision instead of direct supervision, but he will need to make the request. Board members indicated he will be contacted again next month to see how he is doing. **Mr. Harris is in compliance with the terms and conditions of his Order.**

Phuong Sheffer,

Mr. DeRose conducted the interview. Mr. Sheffer

Interview:

stated he is having a hard time finding employment as a pharmacist and requested a meeting with the Board to discuss his options. He reported he has received only two responses from his applications for employment. He stated he doesn't believe he can fulfill the terms and conditions of the Order. Mr. Sheffer stated the felony criminal conviction can not be reduced for a period of three years. Ms. Poe indicated even if the Board were to lift the probation, he still could not get a job because of the Medicaid/Medicare problems associated with the felony conviction. The options for him would be an indefinite suspension, surrender, or continue with probation. If he surrenders the license, he may not be able to reapply for a period of 5 years and Ms. Poe indicated surrender would not meet his needs. Ms. Poe explained he may want to consider an indefinite suspension, which would require completion of continuing education hours and paying a renewal fee. The indefinite suspension would place the license on hold, but he would maintain his property right. Board members indicated it does not appear he is on the OIG list. Dr. Lundberg suggested Mr. Sheffer apply in person for positions rather than applying over the internet. He needs to inform them of the probationary license but he needs to indicate he can work under supervision. Board members indicated his remorse is clear and suggested he needs to be more positive when presenting his situation to a prospective employer. Mr. Sheffer stated the question that is holding him up is the one that asks "have you ever been convicted of a felony". He has been charged and convicted of a felony, but it has been reduced to a misdemeanor. Ms. Poe indicated the Division will make a correction to the HIPDB data base to reflect that the felony was reduced to a misdemeanor and this may help him. Ms. Poe indicated Mr. Sheffer will also need to contact the Bureau of Criminal Identification and have them inform the FBI that he has a misdemeanor not a felony. Mr. Garn suggested that once this has been completed, he continue with his search for a pharmacist position. If in a couple of months he still has not found a position, he can contact the Board.

**Mr. Sheffer is out of compliance due to paperwork.**

Lunch Recess at 11:50 a.m.

Reconvened at 1:05 p.m.

Clell Fowles,  
Request for licensure interview:

Dr. Lundberg conducted the interview. Mr. Fowles met with the Board and explained the circumstances surrounding the indefinite suspension and why he let his license expire. Mr. Fowles indicated he entered into a Diversion agreement in the mid 1990's after abusing drugs for approximately 6 to 8 months. He indicated he completed an inpatient treatment program and successfully completed the three year Diversion program. He indicated he suffered a relapse in 1997 or 1998 and his employer terminated his employment. He stated he went through an outpatient treatment program and then went to work at Nature Sunshine Products in Utah Valley. He indicated he has continued to work since that time as a consultant and manager of the Health Sciences Division. He stated he has been sober since 1998 or 1999. He indicated he has no access to medications at his current place of employment.

Mr. Fowles stated he has had several injuries over the past ten years and has used the prescribed pain medication without incident. He stated his physician is aware of his addiction problem. He stated he attends 12-step meetings. He indicated he feels it is time to request the license be reinstated. He indicated he would like to work in a nuclear pharmacy. Dr. Lundberg questioned what conditions he would put in place to prevent a relapse. Mr. Fowles stated he would have internal checks and balances in place. He stated he has found religion and attends 12-step meetings once a week. He indicated he has a supportive family. Mr. Fitzpatrick questioned how he has kept up to date with the changes in pharmacy. Mr. Fowles indicated he reviews home study continuing education and is professionally involved with the American Diabetes Association. He stated it has been 12 years since he practiced pharmacy; however, he stated he feels he is ready to go back into pharmacy. A Motion was made to have Mr. Fowles take and pass the MPJE, obtain 180 hours of direct on site supervised intern hours and complete 60 hours of continuing education within 6 months. After the completion of the 180 hours, continuing education and passing the MPJE, he would be issued a license on

probation under general supervision with the standard terms and conditions. The Motion was seconded by Dr. Lundberg. All Board members in favor.

Christine Dewey,  
Interview:

Mr. DeRose conducted the interview. Ms. Dewey indicated she was originally licensed in 1982 and last worked as a pharmacist in 1991. Ms. Dewey has completed 60 hours of continuing education in the last two years and just recently passed the MPJE examination. Board members indicated there have been tremendous changes in pharmacy over the last eighteen years and feel that in order to demonstrate competency, she must complete 300 supervised intern hours. Ms. Dewey stated she feels 300 hours would be excessive. Mr. DeRose stated the Board needs to protect the public and the Board wants to make sure she understands the new medications and the changes that have occurred over the last 18 years.

Dr. Lundberg made a Motion to issue a temporary pharmacist license under supervision for a period of six months and that she must obtain 300 hours of supervised intern hours. Once the hours are completed and documentation of completion is received, she would be issued a full license. Mr. Garn seconded the Motion. All Board members in favor.

**Discussion items:**

Granite Technical Institute,  
Pharmacy Technician Program requests:

Mr. Fitzpatrick made a Motion to approve Granite Technical Institute pharmacy technician program. Mr. DeRose seconded the Motion. All Board members in favor.

Stansbury High School Pharmacy Technician  
Program:

Mr. Fitzpatrick will review the documents and report back to the Board.

Review Practice Plan submitted by Trent  
Decker:

Mr. Fitzpatrick made a Motion to approve the practice plan as submitted. Dr. Lundberg seconded the Motion. All Board members in favor.

Ms. Call informed the Board that the PIR group in St. George is no longer available. Mr. Fitzpatrick made a Motion to amend the Order to allow Mr. Decker to attend four 12-step meetings per month. Dr. Lundberg seconded the Motion. All Board members in favor.

Central Valley Pharmacy – Fountain Green  
Branch Pharmacy application:

Mr. Fitzpatrick reviewed the application. The formulary submitted is only a summary, and additional information is needed before the application can be approved. Clarification is requested regarding the following: submit quantities of each medication listed; provide details regarding how medications will be transported; how prescriptions will be labeled; how prescriptions will be reordered; how the medications will be stored, who has access, temperature control, etc; how counseling will be provided; how outdates are handled, how formulary changes/additions are made; how often inspections are completed and how “stock” medications for administration are handled. Ms. White can contact Mr. Fitzpatrick if she has any questions.

Discussion:

Mr. DeRose discussed problems with prescriptions written by physicians. He indicated it is becoming harder to complete all the necessary checks and balances because the prescribing practitioner is not writing prescriptions correctly. The pharmacist spends a lot of time contacting the practitioner to make sure the prescriptions are legally written. Mr. DeRose stated if the pharmacist sends the prescription back, the prescribing practitioner becomes upset. He also indicated that electronic software companies are selling their software and indicating their product is acceptable when it does not meet the requirements in Statute. Mr. DeRose stated the Pharmacy Board, the Physicians Board and the investigators need to meet to discuss this issue. Mr. DeRose stated that if the prescription comes in and it is not written correctly, the physician should be written up.

Adjourned:

2:25 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 25, 2009  
Date Approved

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

August 25, 2009  
Date Approved

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