

MINUTES

**UTAH
BOARD OF PHARMACY
MEETING**

August 25, 2009

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

Convened: 8:00 a.m.

Conducting: Roger B. Fitzpatrick, Chair conducting until 8:15 a.m.
Dominic DeRose, New Chair conducting after 8:15 am

Bureau Manager: Laura Poe
Board Secretary: Shirlene Kimball

Division Staff: Connie Call, Compliance specialist
Jared Memmott, Investigator

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

Guests: Linda Sandberg, Omnicare
Betty Yamashita, Intermountain Health Care
Greg Jensen, Target
Reid Barker, UPhA
William Baker, PDSI
Nooria Kanishka
Mustafa Kanishka
Darryl Wagner, IHC/UPHA

TOPICS FOR DISCUSSION

**ADMINISTRATIVE BUSINESS:
Election of Chair:**

DECISIONS AND RECOMMENDATIONS

Mr. Garn nominated Dominic DeRose as Board chair.
Mr. Young seconded the nomination. All Board
members in favor. Board members thanked Mr.
Fitzpatrick for the excellent job chairing the Board
since 2006.

Approval of the July 28, 2009 Minutes:

The July 28, 2009 minutes were approved with corrections. All Board members in favor.

Connie Call,
Compliance Report:

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

-Phuong Sheffer: Mr. Sheffer has not submitted any paperwork.

-Diann Millikan: Ms. Millikan has not submitted her paperwork. Mr. DeRose indicated Ms. Millikan has been out of compliance for about 18 months and questioned whether or not the Board should take further action. Ms. Poe stated Ms. Millikan has had major medical problems and is not currently working. Ms. Poe indicated there was a discussion regarding issuing citations to those individuals who are out of compliance due to paperwork, but the Division has not had a chance to develop guidelines and present them to the Board for approval. Ms. Poe stated that since Ms. Millikan is willing to continue with urine screens she does not feel further action is necessary at this time.

-Jennica Bringhurst: Ms. Bringhurst has been sent a surrender document; however she has not responded to the surrender request. Board members recommend Ms. Bringhurst be referred for an Order to Show Cause Hearing.

The following individuals are in Compliance with the terms and conditions of their Order: Alfonzo Montano (has been in compliance for three months in a row); Thomas Strebels; Kenneth Nielson (new Order); Kurtney Stirland/Zion Pharmacy (new Order); Scott Harris; Trent Decker and Rich Wright.

Follow up to last month's compliance report: Ms. Call reported Richard Lowe was listed as being out of compliance last month; however he was in compliance because his paperwork is due quarterly, not monthly as reported.

Alfonzo Montano,
Quarterly interview:

Mr. Fitzpatrick conducted the interview and thanked Mr. Montano for coming into compliance. Mr. Montano was reminded he must remain in compliance and to continue submitting all paperwork by the due date. Mr. Montano stated he understands and

indicated he is working hard to remain in compliance. Mr. Montano reported he continues to look for employment; however, he is discouraged and feels the reason why he can not find work is because of his probationary status. He reported things are good in his personal life. Mr. Montano indicated his charges from 2005 have been dismissed and he will submit this documentation to Ms. Call. He questioned why he needs to submit copies of his prescriptions. Ms. Poe reviewed the Order and it indicates copies of prescriptions may be required. Board members stated Mr. Montano will not need to submit copies of his prescriptions; however, he was informed that the Division will continue to monitor the controlled substance data base to see what controlled substance prescriptions he is receiving. **Mr. Montano is in compliance with the terms and conditions of his Order.**

Thomas Strebel,
Quarterly interview:

Mr. Garn conducted the interview. Mr. Strebel stated everything is going well and indicated he continues to work at 4 Care Pharmacy approximately 40 hours per week. He stated he takes care of the cash part of the practice and does not fill prescriptions for Medicare or Medicaid patients. He stated there is a pharmacist on duty with him at all times. **Mr. Strebel is in compliance with the terms and conditions of his Order and his next meeting with the Board will be scheduled for December 15, 2009.**

Kenneth Nielsen,
New Order:

Mr. Fitzpatrick conducted the interview. Mr. Nielsen explained the circumstances that brought him before the Board. Mr. Nielsen explained he had fallen behind in submitting paperwork to the controlled substance data base; had received a DUI; and a Division investigator reported he smelled of alcohol during an interview and proceeded to give him a breathalyzer test. Mr. Nielsen stated he understands the terms and conditions of the Order. Mr. Nielsen questioned how the Board defines direct supervision. Mr. Fitzpatrick indicated direct supervision means that he must work with another pharmacist in the pharmacy. Mr. Nielsen stated he has not practiced for the last two years, but has completed continuing education. He indicated he has scheduled the required evaluations and will have the reports submitted as soon as

possible. Board members indicated he will need to submit a practice plan when he returns to work. Mr. Nielsen submitted the name of his primary prescribing practitioner and primary pharmacy. Mr. Nielsen questioned whether or not he could attend PIR meetings in lieu of 12-step meetings. Ms. Poe indicated if he works the steps and attends four PIR meetings per month, this would be acceptable. Mr. Nielsen's next meeting with the Board will be December 15, 2009. If he finds employment prior to that date he will need to submit a practice plan and meet with the Board. **Mr. Nielsen is in compliance with the terms and conditions of his Order.**

Kurtney Stirland
Zion Pharmacy,
New Order:

Mr. DeRose conducted the interview. Mr. Stirland explained the circumstances that brought him before the Board. Mr. Stirland stated he was cited for poor recordkeeping and allowing pharmacy technicians to fill prescriptions while he was out of the pharmacy. Mr. Stirland stated he admits he was not up to date on his record keeping; however, he stated he never allowed the pharmacy technicians to dispense medications while he was out of the pharmacy. Mr. Stirland stated he is required to complete six hours of continuing education related to law, rule and ethics. He stated he is having a problem finding the law continuing education. Board members indicated they would extend the deadline to obtain the continuing education until November 20, 2009. Mr. Stirland stated he understands the terms and conditions of the Order. Mr. Fitzpatrick stated he would like to see the policy and procedures manual submitted for review by October 15, 2009. Mr. Stirland requested his quarterly meetings be reduced and allow him to meet on a less frequent basis. Mr. Fitzpatrick stated the Board would not reduce the number of meetings at this time, but the Board could contact him by telephone. **Mr. Stirland is in compliance with the terms and conditions of his probation.**

Scott Harris,
Telephone Interview:

Mr. Garn conducted the telephone interview. Mr. Harris stated he has not had time to look for a pharmacist position and indicated his trip to Nepal is also on hold due to the economic downturn. Board members indicated they do not need to contact Mr. Harris until he has found a pharmacist position. Mr.

Patrick Baker,
Discussion regarding concerns and possible
solution to the current shortage of nuclear
medicine supplies:

Harris stated he would contact the Board as soon as he has found employment. **Mr. Harris is in compliance with the terms and conditions of his Order.**

Mr. Baker stated he requested a meeting with the Board to express his concern regarding the current shortage of nuclear medicine supplies used for MRI, CT/CAT scan and angiography/fluoroscopy diagnostic tests. Mr. Baker stated the shortage has caused a shift in the way these supplies are distributed and he expressed concern that the quality of patient care will be at risk.

Mr. Baker stated there are only five nuclear reactors in the world that produce the isotopes necessary for nuclear medicine. He stated there are none in the United States and the primary source for the US is from Canada. Mr. Baker reported there is currently a world wide shortage of the isotope used to make imaging drugs and indicated the medical isotopes that can be produced are distributed globally by demand and based on population density. He indicated Utah and the Wasatch front is the 125th largest city in the United States. This means that there are at least 125 other cities that receive the isotopes before Salt Lake City and the Wasatch front.

Mr. Baker stated his company takes the stance that the supply goes to the most critical patients first. They distribute to the ER, then inpatient and then outpatient settings. He indicated that a major hospital lost ER patient diagnostic coverage because outpatient clinics were given priority over ER patients when the limited supply of the isotope was distributed. Mr. Baker stated these issues are not unique to Utah and his company receives requests for the isotopes from Wyoming, Montana, Idaho and Nevada.

Mr. Baker stated he is concerned that nuclear medicine vendors are taking advantage of shortages to cut corners regarding sterile procedures. He stated there is no medical oversight in the nuclear medicine market and factors other than patient care are driving the market. He then demonstrated why he is concerned by showing a container used to hold sterile isotopes and

explained how the process works. He indicated he is very concerned with the way some companies ship products into the state, especially one company from Idaho. Mr. Baker stated he is concerned with contamination and feels this company should be forced to change their processing and transportation procedures. He stated he feels OSHA violations are taking place. Mr. Fitzpatrick questioned how the hospitals or radiology organizations are addressing the issue. Mr. Baker stated he is unaware of any actions they are taking. Mr. DeRose stated this issue was addressed at one time, but the Board could not take action because the company is not licensed in Utah. Board members suggested he contact OSHA, JCAHO or the hospital risk manager with his concerns.

Mr. Baker requested the Rule require USP-797 standards for nuclear pharmacies. Board members indicated current Rule requires Class A and Class B pharmacies to document an on going quality control program that monitors and evaluates personnel performance, equipment and facilities that follows the USP-NF chapters 795 and 797. However, under the section regarding Nuclear Pharmacies, a hospital nuclear medicine department or a physician office that has a current Utah Radioactive Materials License does not need to be licensed as a Class B pharmacy and Ms. Poe suggested this exception be eliminated. Mr. Fitzpatrick stated we could place in the rule under the nuclear pharmacy section that the company must comply with acceptable standards of practice for nuclear medicine and if there are national standards those standards could be referenced. We could also require that the nuclear pharmacy be OSHA compliant. The rule would only affect those facilities licensed by Utah. It was also suggested that the Board review other state laws regarding this issue. Mr. Baker indicated they would be happy to provide information regarding other states.

Nooria Kanishka,
Application:

Ms. Kanishka indicated she was educated as a pharmacist in Afghanistan. She stated she has a four year bachelor's degree in pharmacy and worked for three years in Afghanistan as a pharmacist. She reported she moved to the US and entered a masters program in pharmacy and toxicology. Ms. Poe

reported the Division issued Ms. Kanishka an intern license and she completed 700 intern hours in Utah. The Division then received a verification of intern hours from a pharmacy in New York. According to NABP records, Ms. Kanishka has taken and failed the NAPLEX exam while in New York. Ms. Poe indicated Ms. Kanishka did not go through the Foreign Pharmacy Graduate Examination Committee of the National Association of Boards of Pharmacy Foundation; but rather, had her credentials evaluated by a different agency. Ms. Poe questioned whether or not the Board would accept the credentials evaluation as equivalent to the FPGE. Mr. Fitzpatrick made a Motion to accept the education credentials and intern hours and allow Ms. Kanishka to sit for the NAPLEX and MPJE examinations. Mr. DeRose seconded the Motion. Mr. Young questioned the pathway. He stated the Master's degree she earned is not the practice of pharmacy. Mr. Young stated the University of Utah pharmacy toxicology students would not be allowed to sit for the examinations. Ms. Poe indicated a license here would be based on licensure by endorsement from Afghanistan and based on qualifications at the time she was licensed in Afghanistan. Board members also questioned whether or not she should take the FPGE examination. Ms. Poe indicated the rules do not require foreign educated individuals take the FPGE examination. Ms. Yamashita indicated the reason for the equivalent was that for a period of time, the FCPE examination and certification were not given. All Board members were in favor of allowing Ms. Kanishka to sit for the NAPLEX and MPJE examinations.

Lunch Recess 12:30 p.m.
Reconvened: 1:30 p.m.

Discussion regarding e-mail questions to the Division:

Ms. Poe indicated she received an e-mail from a home health agency that would like to have a nurse pre-fill a syringe with insulin and place the syringe in the refrigerator until it is administered. Ms. Poe indicated there would be a label attached, but it is not a pharmacy label. Ms. Poe questioned whether or not this would be considered the practice of pharmacy. Board members expressed concern that insulin in a plastic syringe is not as stable as in the bottle. Board

members also questioned why the agency would want to pre-fill the syringe when an insulin pen is available. Board members stated this request is comparable to med boxes, which are acceptable, but feel this practice may be creating more problems than they are solving.

Ms. Poe questioned the use of a remote automated pharmacy system and licensure requirements. The pharmacy must be licensed in the state in which it is physically located. The rule requires the pharmacist to be licensed but doesn't specify where. Some states require the PIC to be licensed in that state. Mr. Fitzpatrick stated the rule is very clear that there must be a PIC and the PIC is responsible. If we required the PIC to be licensed in Utah, the pharmacy would have to notify us of any changes in PIC and we would need to keep a record.

Discussion items:

Controlled substance data base:

Mr. Fitzpatrick questioned what is happening with the real time reporting to the controlled substance data base. Ms. Poe indicated this is still being developed.

Consent Agreement Process and Draft Rule Language:

Ms. Poe updated the Board regarding the Consent Agreement process and the online prescribing of limited medications. Ms. Poe provided the Board with a draft copy of the Rule regarding limited online prescribing. This Rule will be discussed next month at the meeting with the Pharmacy, Physicians and Osteopathic Physicians Boards. Ms. Poe explained several years ago a consent agreement was signed with KWIK Med for limited online prescribing. During the Legislative session, the Legislature agreed that a prescribing practitioner could be approved to prescribe limited drugs over the internet without a face-to-face assessment with approval from DOPL. A number of physicians have requested a consent agreement to prescribe online. The Division decided that a Rule needed to be written to address these requests and the process by which limited online prescribing may occur. Ms. Poe stated she understands that many Board members disagree with this concept, but it is in Statute and the Division wants to provide a strong structure by which such prescribing can occur.

Mr. Fitzpatrick questioned if there is a contractual

pharmacy and questioned how the process works if the patient wanted to fill the prescription at their chosen pharmacy. Mr. Fitzpatrick also suggested including in the Rule demographic information as required in patient profiles. Mr. Fitzpatrick agreed that if the process is outlined in Rule, there is more control and it takes the momentum away from the internet pharmacy and places the responsibility on the practitioner. Mr. Young questioned what happens if the contractual pharmacy is an online pharmacy. Ms. Poe indicated the pharmacy would have to be licensed in Utah.

Ms. Poe requested Board members review the draft, and submit any input prior to the meeting next month. Mr. Young questioned if antibiotics would be added to the list of allowable drugs to address the partner therapy issue. After discussing the recent changes made to partner therapy it was decided that including such drugs for online prescribing was not necessary.

Vaccine Protocol discussion:

Board members questioned whether or not H1N1 vaccine is allowed under the protocol. Ms. Poe stated the vaccine protocol lists influenza vaccine and does not specify type. Therefore, H1N1 is covered under the influenza vaccine protocol.

Mr. Fitzpatrick stated he would like the age limit changed on the protocol. Mr. Young stated that the age limit should be lowered for the influenza vaccine, but should be left at age 13 for other vaccines on the list. It was suggested the addition of an exception to read: except influenza vaccine may be administered to all appropriate ages (6 months and up). Ms. Poe indicated she will present this request to the Physician's Board for their review.

Discussion:

Mr. Fitzpatrick questioned whether or not the Division requested continuing education audits for this renewal period and whether or not self inspection requests were sent out to pharmacies. Ms. Poe indicated the Division did not request CE audits and she will check to see if the self inspection reports were sent out. Mr. Fitzpatrick indicated he would like to have the ability to have each professional enter continuing education information into the renewal system before they can renew the license. He stated he would be willing to

work with the Division to add this to the online renewal system.

Mr. Fitzpatrick reported he was approached by a Boy Scout leader who had concerns regarding parents sending medications to scout camp without labels. He stated other states require the medications to be labeled but Utah does not have this requirement. Ms. Poe indicated schools have a similar experience and have put in place a student plan signed by the parent, school representative and school nurse. The parents provide the medications. Mr. Fitzpatrick suggested this topic be placed as a parking lot issue to be discussed.

Stansbury High School Pharmacy Technician Program:

Mr. Fitzpatrick indicated he needs additional information before the program can be approved. He indicated he will contact them for further information.

Central Valley Pharmacy – Fountain Green Branch Pharmacy application:

Mr. Fitzpatrick stated he is in contact with the Fountain Green Branch Pharmacy and as soon as the additional information is received, he will let the Division know.

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.

September 22, 2009
Date Approved

(ss) Dominic DeRose
Dominic DeRose, Chairperson, Board of Pharmacy

September 22, 2009
Date Approved

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