

**MINUTES**

**UTAH  
PHARMACY  
BOARD MEETING  
October 27, 2009**

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

**Convened:** 8:05 a.m.

**Conducting:** Dominic DeRose, Chair

**Division Director:** Mark Steinagel  
**Bureau Manager:** Laura Poe  
**Acting Board Secretary:** Connie Call

**Board Members Present:** Dominic DeRose Jr.  
Roger B. Fitzpatrick  
Derek D. Garn  
David C. Young  
Kelly Lundberg  
Andrea Kemper  
Jan Bird

**Division staff:** Laura Poe, Bureau Manager  
Connie Call, Acting Board Secretary

**Guests:** Michael Rognon, University of Utah student  
Matt Higley, University of Utah  
Megan Glenville, Student U of U  
Heidi Ulrich, Walmart  
Greg Jensen, Target  
Linda Sandberg, Omnicare  
Betty Yamashita, IHC  
Mike Brown, U of U  
Judy Nielsen, Walgreens  
Larry Prettyman, Walgreens  
Kort Delost, Medicine Shoppe

**TOPICS FOR DISCUSSION**

**ADMINISTRATIVE BUSINESS:**  
September 22, 2009 Minutes:

**DECISIONS AND RECOMMENDATIONS**

Dr. Lundberg made a Motion to approve the minutes with corrections. Mr. Garn seconded the Motion. All

September 22, 2009 Pharmacy Licensing Board/Osteopathic Physician and Surgeon's Licensing Board/Physicians Licensing Board:

New Member Introduced:

Connie Call,  
Compliance Report:

**Discussion items:**

Kim Moore, R.Ph and Ranch Pratt to discuss prescription preparation practices.

Board members in favor.

Dr. Lundberg made a Motion to approve the minutes with corrections. Mr. Garn seconded the Motion. All Board members in favor.

Jan Bird was issued the Oath of Office by Laura Poe and welcomed as the new Pharmacy Technician Board member.

Ms. Call presented the compliance report. The following probationers were in compliance with their Order: Andrea Lowry, Mary Jo Cates, Thomas Strebel, Alfonzo Montano, Scott Harris, Kenny Nielson, David Barrow and Trent Decker.

Ms. Call reported the following probationers were out of compliance with their Order: Sheryl Ledet, Mike Hodges, Phuong Sheffer, Michael Jarman and Zion's Pharmacy.

Mr. Moore and Mr. Pratt, 4 Care Pharmacy, requested a meeting with the Board to discuss the possibility of opening a second closed door pharmacy in Southern Utah. Mr. Pratt stated they would like to receive medications in the Layton 4 Care Pharmacy, send the medications to the Southern Utah office where they would be re-packaged and shipped back to Layton. He indicated there would be a pharmacist and a pharmacy technician at the facility in Southern Utah.

Dr. Young indicated the second office would have to be set up as a pharmacy and questioned how a PIC would supervise both offices at the same time. Mr. Fitzpatrick said there is a problem with the technician working without supervision. Mr. Garn asked why not contract with another company to re-package the medications? Mr. Moore stated contracting with someone else to re-package would create other problems, and if they handle it as part of their business it will avoid some FDA issues.

Linda Sandberg with Omnicare commented that repackaging is an FDA issue and a pharmacy has to package at the site where medications are dispensed.

The FDA does not allow you to re-package medications and send to another location. Their proposal would not work if they split the process between the two offices. Mr. Fitzpatrick said they would have to do the entire process at one office and would not be allowed the fill prescriptions at one location and sell them at another location.

Mr. Moore discussed with Board members a request his pharmacy received from a small hospital. This hospital has locked vials that are pre-filled with oral medications and the pharmacist checks these vials and enters the information into a proprietary software program for dispensing. These vials are in a locked cabinet in the medication room and each vial has a combination lock. The vials are not patient specific and are in small, dispensable quantities and forms. The hospital would log into the software system and create an entry which would then be sent to 4 Care Pharmacy. The pharmacist at 4 Care Pharmacy would review the prescription, complete all checks and balances and once approved, would notify the doctor it was approved. The doctor or nurse could then log into the system and the system would provide the combination or serial number to obtain the medication. Mr. Moore stated the pharmacist at this hospital is overwhelmed and asked for help. Mr. Moore questioned whether or not the Board would approve this process. Mr. Fitzpatrick stated the pharmacist-in-charge at the hospital would be the one to take full responsibility. The doctors and pharmacist must review the prescription before it is given to a patient. Mr. Fitzpatrick stated the Board cannot make a recommendation that they proceed with this proposal; but if they do, make sure 4 Care Pharmacy is following Health Department Rules and Regulations, JCAHO standards and State law. The Board does not endorse any product.

Zion's Pharmacy – Kurtney Stirland  
Probation Interview

Mr. DeRose conducted the interview. Mr. Stirland submitted continuing education hours for 2007. However, he only submitted documentation of completion of twenty-eight of the thirty hours that were required for that renewal period. Mr. DeRose stated that since he had indicated on his renewal that he meet the renewal requirements, a citation may be

issued. Mr. Stirland stated he is aware of the number of hours he needs for the next renewal period and indicated he will have them completed by September 30, 2011. He also indicated he will complete the 6 additional hours of continuing education in Pharmacy law as required in his Order. Mr. Stirland submitted the policies and procedures for the pharmacy as required in the Order. **Zion Pharmacy is now in compliance with the terms and conditions of the Order.**

Mary Jo Cates Interview:

Mr. DeRose conducted the interview. Ms. Cates had received some unfavorable comments on her employer evaluation and she explained the reasons for those comments. Ms. Cates stated she is currently under a lot of stress and walks 4-8 miles per day, eats right and gets plenty of sleep to help her deal with the stress. **Ms. Cates is in compliance with the terms and conditions of her Order.**

Sheryl Ledet Interview:

Dr. Lundberg conducted the interview. Ms. Ledet stated she has been working since July. She requested she be allowed to submit her reports on a monthly basis instead of quarterly and Board members agreed to have her submit the reports on a monthly basis. Ms. Ledet appears to have missed calling into CVI and she stated she has been calling everyday. She indicated she will check her phone record to check the days CVI has indicated she missed calling. **Ms. Ledet is out of compliance with the terms and conditions of her Order for failing to call CVI everyday.**

David Barrow Probation Interview

Dr. Lundberg conducted the interview. Mr. Barrow indicated as of October 6, 2009, he will be attending outpatient treatment at A&D Psychotherapy and individual therapy with Robert Rosenblatt. He stated he is making some behavior changes. The Board informed Mr. Barrow he will need to find a new therapist because Mr. Rosenblatt's credentials do not meet the criteria outlined in the Order. Mr. Barrow stated he would like to return to work, but he wants to check with his therapist and physician first to see if they think he is ready to return. Board members stated they would defer to the therapist and physician's recommendations on whether he should return to

work. Mr. Fitzpatrick reminded Mr. Barrow he will need to submit a practice plan for approval before returning to work and accepting a position. **Mr. Barrow is in compliance with the terms and conditions of his Order.**

J. Michael Hodges Interview:

Mr. Hodges was excused. He will meet with the Board in December 2009.

Kenneth Nielson Probation Interview

Ms. Kemper conducted the interview. Mr. Nielson was instructed to attend AA & PIR meetings once a week and to have the attendance cards signed. Mr. Nielson stated he feels he is receiving good information from the PIR and AA meetings. He indicated these meetings provide him with something to do at night with people with similar problems. Mr. Nielson still needs to find a therapist. Mr. Nielson questioned whether or not he would be allowed to work with his brothers, who are also pharmacists. Mr. Fitzpatrick explained they would be expected to submit meaningful employer evaluations on the date they are due and if he returns to work, he must submit a practice plan for approval. Mr. Nielson questioned whether or not he could work for a temporary agency. Board members indicated the Order does not allow him to work for a temporary agency. **Mr. Nielson is in compliance with the terms and conditions of his Order.**

Mark Akagi,  
Initial Probation Interview

Mr. Garn conducted the interview. Mr. Akagi explained the circumstances that brought him before the Board. Mr. Akagi asked for clarification regarding the term “unburdensome” in his Stipulation and Order. Ms. Poe explained that the Order requires him to work as a pharmacist in order to count toward the probation. He can not sit out the period of probation without working and then have the license returned unencumbered. He must demonstrate practice while on probation and be monitored for the time to count. Mr. Garn explained if Mr. Akagi can find employment as a fill-in pharmacist on a regular basis, he could bring that information to the Board and the Board would consider lowering the hours required to keep his probation going. **Mr. Akagi is in compliance with the terms and conditions of his Order.**

Cami Cooley  
Renewal Application Review

Ms. Cooley was requested to meet with the Board to explain her criminal history during the last renewal period. Ms. Cooley explained the circumstances and indicated she has a plea in abeyance. She stated she has been working for Pharmacy Services the last 1 ½ years and they are aware of her history. Mr. Fitzpatrick made a Motion to renew her license unencumbered for the next two years. Mr. Garn seconded the Motion. All Board members in favor.

Break for Lunch  
Reconvened:

Patrick Baker, follow-up discussion regarding nuclear medicine shortages:

Mr. Baker indicated the nuclear medicine field is seeing some backlashes from the shortages of nuclear medicine. These backlashes include increased costs to the providers and providers bending rules to stay in business. Mr. Baker stated he is concerned with the effect this shortage has on the quality of patient care. He also indicated there are companies that are shipping non-FDA approved medications into Utah. Mr. Baker indicated he is still concerned with the company Advanced Isotopes of Idaho that is shipping non-sterilized products into Utah. He indicated the Wyoming Board was concerned with this pharmacy and issued a cease and desist Order until they met the conditions set forth in the Wyoming Rule and obtained a Wyoming Pharmacy license. Mr. Baker stated he would like to see this company meet the requirements of R156-17b-602 and meet USP 797 requirements and be JCAHO compliant. He stated these standards are being violated by this company. He indicated Idaho does not require the pharmacy to be compliant with US 797. He requested that the Utah Board of Pharmacy follow the Wyoming Board and hold the Idaho company to the standards outlined in Utah Rule. Ms. Poe questioned whether or not the company is shipping to a hospital or to a specific patient. Mr. Baker indicated some of the drugs have a patient name and others only indicate a date of the procedure. Ms. Poe indicated that Utah Rule does not require an out of state wholesale distributor/manufacturer to be licensed in Utah if they are not shipping to the end user (i.e. the patient). Mr. Baker stated that if an out of state company is buying non-FDA approved drugs, and are

not USP 797 compliant, the Board is not protecting Utah citizens. Mr. Fitzpatrick stated if they are shipping into Utah with a patient name, it would fall under mail order pharmacy and would require a license. Mr. Baker stated he also feels it is misuse of a prescription grade drug because there is no NDC number; however, only approved drugs have an NDC number. Board members questioned whether or not the hospital administrators are aware of this situation. Mr. Baker stated he has not approached them and does not know if they are aware. Mr. Fitzpatrick stated the licensed facility should know how nuclear drugs are being dispensed, especially if they are JCAHO accredited. Ms. Poe stated the company in question is licensed by Idaho as a wholesale/distributor pharmacy. As such, DOPL and the Board do not have jurisdiction. Ms. Poe stated she could speak with an assistant attorney general and an investigator to see what can be done. Mr. Fitzpatrick indicated it may be helpful for him to go to the Hospital, Pharmacy and Radiology Associations to discuss this issue.

Discussion regarding Controlled Substance application for Paul Lund:

Mr. Lund submitted a controlled substance application for re-licensure. He passed the MPJE examination, and his pharmacist license was re-issued. He completed probation without applying for the controlled substance license. Mr. Fitzpatrick stated Mr. Lund was given several chances to have the controlled substance license returned while he was on probation, however, he chose not to. Board members indicated they would like to meet with him to discuss his request and to see what his plans are and how his sobriety is going.

David Philip Redden  
Renewal:

Mr. Redden is licensed in Oregon and Idaho. According to the Division's records, he took antidepressants for self treatment from his employer for a period of six months. He reported he has made full restitution, received help and appears to be doing well. Oregon placed him on probation for a period of 3 years. The Oregon Board only required that he obey the laws and rules of the state, report convictions or arrests and that he can not be a preceptor. Oregon later amended the Order to allow him to work as a preceptor if he is not working in Oregon. Ms. Poe reported the Division conditionally renewed his

license until the end of October to allow for the Board to review his information and make a determination regarding the renewal. Ms. Poe reported Mr. Redden is currently working in Utah as a PIC. Mr. Fitzpatrick made a Motion to renew the license without restrictions. Mr. Garn seconded the Motion. All Board members in favor.

Review renewal coupon and information for Richard Anderson:

Mr. Anderson will be invited to meet with the Board in December to discuss his renewal request.

Review proposed bills for the 2010 Legislative Session:

Ms. Poe provided the Board with a copy of a proposed bill that standardizes definitions regarding drugs, prescriptions and prescribing within Title 58. The current definitions are different in the Pharmacy Practice Act, the Medical Practice Act, the Controlled Substance Act, and the Osteopathic Practice Act. Ms. Poe requested Board members review the bill and let her know if there are any questions or concerns regarding the proposed definitions.

Ms. Poe reported there is also a Committee Bill to schedule Soma as a Scheduled IV controlled substance.

Ms. Poe also reported that a bill will be filed that requires anyone with a controlled substance license to complete continuing education specific in pain management in order to renew the controlled substance license.

Review NarcBox-2000:

Board members reviewed the letter explaining the NarcBox-2000. The NarcBox-2000 regulates the amount of medication dispensed to the patient based on a written prescription. It is a lockable device with a timer that dispenses the patient's medications as prescribed. The patient brings the box to the pharmacist and the pharmacist fills the prescription and places the medications in the box and programs the time to dispense. Ms. Poe questioned whether or not there is anything in the law that would prevent this type of device from being sold in Utah? Board members indicated the pharmacist can fill the box, but would have to meet the labeling requirements and could only be for a 30 day supply. Ms. Poe indicated we can not endorse a product, but she would let him

know that as long as the medications dispensed in the device meet labeling requirements, the device should meet the requirements of law.

Continued discussion regarding possible Rule changes including ratios and qualifications of a preceptor:

Mr. Young stated he researched the ratios from surrounding states. He indicated some states do not address ratios. Mr. Young stated he reviewed the ratio for Idaho which is the broadest and he likes the way in which their rule is written. The Idaho rule allows for one pharmacist for six individuals including student pharmacist, pharmacy technicians and pharmacy technicians in training in any practice setting, however, no pharmacy shall require a pharmacist-in-charge or any other pharmacist to operate the pharmacy or allow operation of the pharmacy with a ratio, which, under the circumstances of the particular practice setting, results in an unreasonable risk of harm to the public health, safety and welfare. Mr. Young reported Arizona has a ratio for pharmacy interns by calendar quarter. It states that a preceptor can supervise more than one intern during the calendar quarter not to exceed one pharmacist to 2 interns in a community or limited services pharmacy. The Colorado Board adds in ancillary people. The Nevada ratio is 1 technician to each pharmacist unless approved by the Board. Ms. Poe stated she would not add the support people, if they are stocking the selves, they should not be counted in the ratio. Ms. Poe indicated we just need to make sure that the combination is such that the investigators can figure out who is who. Mr. DeRose stated we might want to use the term "dispensing area" or "in the filling process area". Mr. Fitzpatrick stated if we use the term "in the filling process area" then we would have to define what that area is. This would be difficult because it would be different for hospitals, clinics, or the filling area could be four different areas of a facility. Ms. Poe stated she will draft language of what constitutes the pharmacy as wherever the practice of pharmacy occurs.

Mr. Garn stated he likes a 4 to 1 ratio for technicians, and a 2 to 1 ratio for the interns, have only one technician or intern in training and allow ancillary personnel at the discretion of the pharmacist in charge.

Board members indicated that current Rule state that supportive personnel have to be unlicensed and that the licensed technician can not go back to working as a clerk. Ms. Poe stated it does not make sense to say a pharmacy technician can not be the cashier just because they have a license. The intent of the Rule is not to overload the supervising pharmacist; however, it now prevents a technician from doing supportive work. Ms. Poe suggested that the definition of support personnel be changed and not included in the ratio. Regarding the ratio, the Rule could indicate a pharmacist cannot supervise more than one tech-in-training and two pharmacy interns at any given time, and add in the Idaho language indicating the pharmacist has the ultimate say regarding the number of people being supervised according to specific circumstances. Then at the most the pharmacist has 3 students and he/she could have however many other technicians or support personnel needed. This would allow the pharmacist to be professional, and if the PIC indicates to a district or store manager that they are not comfortable supervising more individuals, there would be support for that decision. Board members suggested adding a fine for a pharmacy if the district or store manager forces the PIC to supervise more individuals than the PIC is comfortable supervising.

Review and discuss most current Rule draft regarding limited on line prescribing:

Ms. Poe reviewed with Board members the October 26, 2009 Rule draft regarding limited on line prescribing. She indicated section R156-1a-304 Drugs approved to be prescribed online was changed from brand name to the generic name of the drug. She indicated brand names were originally used for public recognition; however there was a discomfort using these names because of new drugs that may appear. Ms. Poe also discussed the issue that the medications need to be FDA approved and used for the purpose for which they were approved, i.e. no prescribing off label. Dr. Young stated many medications have a black box warning. The rule could indicate that any additional black box warnings issued or a new warning about any of these drugs and the drug would be taken off the list.

Language changes suggested include: subsection (2) if a drug listed in (1) is issued a new warning after July

1, 2009 from the FDA, a limited online prescribing practitioner shall immediately cease to prescribe the drug until the Division conducts an emergency rule hearing to determine if the drug should be removed from the list. The intent would be for the drugs listed, if a black box warning is issued after July 1, 2009 for a different clinical issue, there would be a hearing held to see if the drug should be removed from the list. Similar language would be added to the unprofessional conduct section.

Discussion regarding compounding: Ms. Poe stated she heard at the meeting that the Board would like to have the drugs used for the reasons they were approved and the method approved. There are some drugs on the list that have been approved for one use, are being compounded and the compounding changes the drug from the way it was approved. Mr. Stillings and Mr. Delost questioned if a physician is comfortable with the way the drug is compounded and feel it is more helpful to the patient, why can't the pharmacy compound the medication? Mr. Stillings stated the Code of Ethics for Pharmacist is for the optimum benefit of the patient. If a pharmacist believes that the compounded drug is a benefit to the patient, it is allowed ethically and professionally, why would it be prohibited in the rule? The powder is available, it has a NDC number and any pharmacist can compound an approved drug with a NDC number. There is nothing to prohibit the pharmacist from compounding.

Mr. Stilling suggested leaving (3) out of the rule. The majority of Board members agree with taking out #3.

Section 306 Contractual Pharmacy. Originally the proposed rule indicated the limited online prescribing practitioner may utilize the services of a Contractual Pharmacy. The proposal is to change the wording from "may" to "shall" utilize the services of a Contractual Pharmacy. Mr. Steinagel stated it is the patient's choice and the change to "shall" takes away the patient's choice. He stated that absent patient choice, could the prescribing practitioner have one or more contractual pharmacies? Mr. Young stated that when a physician writes a prescription, he/she does not

tell you where you have to go to have the prescription filled. Mr. Fitzpatrick stated that we have come down on clinics where the patient feels the only place they can fill their prescriptions is at that clinic. By adding “shall” it would be easier for regulatory tracking, but “may” is more in keeping with patient’s choice. We would need to justify why we were placing a burden on the patient if we say “shall”. After discussion, it was determined that the wording will remain as “may”.

501(14) unprofessional conduct, will be modified regarding the back box.

Change section 302(1)(c): submit an outline of the proposed online assessment diagnosis and prescribing tool and (ii) demonstrate the proposed online assessment, diagnosis and prescribing tool to the Division and appropriate board and that the utilization of the assessment tool does not compromise the public’s health, safety or welfare and (d) include measures that will be taken to ensure the age and other identifying information of the person completing the online questionnaire is accurate.

Ms. Poe reported the other changes were regarding the URL address. Add to this section: The Internet Facilitator uses only one URL address that does not link to any other sites. Only the patient can view or obtain a copy of the patient’s own records. The Internet Facilitator is prohibited from advertising to any pornographic site or sites that may promote any illegal activity or allowing links to or from the approved URL by any such sites.

Mr. Steinagel stated the changes will be made and another copy will be sent out.

2010 schedule

The 2010 meeting scheduled was reviewed. Mr. DeRose stated that the November meeting is usually canceled and the November 2010 meeting will be canceled.

Adjourned:

4:15 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.*

December 15, 2009  
Date Approved

(ss) Dominic DeRose  
Dominic DeRose, Chairperson, Utah Pharmacy  
Licensing Board

December 15, 2009  
Date Approved

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