

**MINUTES**

**UTAH  
PHYSICIAN ASSISTANT  
LICENSING BOARD**

**BOARD MEETING**

**December 3, 2009**

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

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

**ADJOURNED:** 10:29 A.M.

**Bureau Manager:**

Noel Taxin

**Board Secretary:**

Karen McCall

**Compliance Specialist:**

Susan Higgs

**Board Members Present:**

J. Paul Clark, MD, Board Chairperson

J. David Schmitz, MD

Maria K. Skedros

D. Wain Allen, MD

Gordon L. Day, PA-C

Jeffrey M. Coursey, PA Education

Larry Reimer, MD

**Guests:**

Bob Bunnell, Utah PA Association

**DOPL Staff Present:**

Kent Barnes, Sr. Business Analyst

**TOPICS FOR DISCUSSION**

**DECISIONS AND RECOMMENDATIONS**

**ADMINISTRATIVE BUSINESS:**

**MINUTES:**

The minutes from the August 27, 2009 Board meeting were read.

Dr. Allen made a motion to approve the minutes as read. Mr. Coursey seconded the motion. **The Board vote was unanimous.**

**BUSINESS FROM PREVIOUS MEETING:**

Further Discussion of Legislative Changes

Ms. Taxin stated Mr. Bunnell gave her a final copy of

the proposed Law changes just prior to the meeting today. She explained she and Mr. Bunnell have talked back and forth and he has been coordinating with the UMA on the proposed Law changes. Ms. Taxin suggested the Board review each revised section and discuss it to be sure they are comfortable with the language and intent prior to giving an opinion.

**Mr. Bunnell commented the first section has been crossed out as that area has not yet been finalized.**

The Board reviewed 58-70a-201(1), Board composition changes the Board members from 3 Physicians to 2 Physicians and from 2 Physician Assistants to 3 Physician Assistants, one of whom is associated with an accredited Physician Assistant education program.

**The Board agreed with this change.**

The Board reviewed 58-70a-302(4), Qualifications for licensure, changes the accreditation name from the Commission on Accreditation of Allied Health Education Programs to the Accreditation Review Committee on Education for the Physician Assistant or, prior to 2001, by either the Committee on Allied Health Education and Accreditation or the Commission on Accreditation of Allied health Education Programs. This change was necessary as the name of the accrediting body has changed.

**Mr. Day requested the language be generic and not use the specific names.**

**Ms. Taxin explained the specific names, dates and years must be used according to the Law writing guidelines.**

**The Board agreed with this change.**

**Dr. Schmitz asked what the definition is of good moral character.**

Ms. Taxin referred Dr. Schmitz to R156-1-302 as good moral character is defined by Division Rule.

The Board reviewed 58-70a-305(1) and (2), Exemptions from licensure. Number 1(b) will read: that are conducted under the direct supervision of a physician or a physician may delegate on a temporary basis under certain circumstances to a licensed PA the supervision of the student. Number 2 (a) will read: “is working under the direct supervision of a physician or physician assistant as set forth in the delegation of services agreement. Number 2 (c) will read for whom the supervising physician or physician assistant accepts responsibility as set forth in the delegation of services agreement.

**The Board agreed with this change.**

The Board reviewed 58-70a-306(2) (b). Temporary license which will read: The temporary license shall be issued for a period of time for the PA to pass the Physician Assistant National Certifying Examination not to exceed 120 days. The temporary license shall not be renewed.

**The Board agreed with this change.**

Ms. Taxin stated it is difficult to define temporary basis of delegation. She stated the goal is allow delegating specific duties.

**Dr. Allen commented students are not allowed to practice as a PA and his PA is currently supervising his student.**

Ms. Taxin responded Dr. Allen also mentioned at the last meeting that his PA was supervising a student. She stated currently a PA is not allowed to supervise students.

**Mr. Coursey stated he believes the Physician should have the authority to delegate to the PA supervision of a student.**

**Mr. Bunnell responded he is currently working on language based on the Board’s suggestions and comments. He stated the UMA is reviewing the proposed language today but including it the proposed Law may be delayed at the Legislature**

**this year.**

Ms. Taxin asked if the PA Association would put through the majority of the proposed changes this year and do the delegation of supervision later.

**Mr. Bunnell responded the Utah PA Association is too small an organization to be able to make changes more than once.**

**Mr. Day asked what would hold up opening the Law in 2010.**

Mr. Bunnell and Ms. Taxin responded temporary licensure and circumstances for the temporary license would have to be defined.

**Dr. Reimer commented he believes defining a student being a student and not a provider is also important. He stated the U of U Medical School might have some language Mr. Bunnell could use.**

**Dr. Allen asked for the training supervision to also be defined.**

**Dr. Allen referred to 58-70a-305(1) (b) and stated it allows for a delegated representative to temporarily supervise. He stated he could delegate for a nurse in his office to supervise students.**

Ms. Taxin asked if he would have a nurse supervise or train PA students.

**Dr. Allen responded he would.**

**Mr. Bunnell commented it is becoming hard to find training sites and if the Law is more restrictive it will be harder.**

Ms. Taxin asked if PA's are supervising medical assistants.

**Dr. Allen responded a PA should be allowed to supervise a medical assistant.**

**Dr. Clark asked how often the PA is allowed to**

**take the examination.**

**Mr. Coursey responded the examination is now given daily but if an examination is failed the candidate must wait 90 days to retake.**

**Dr. Clark commented if the candidate has 120 days with a temporary license they could have 2 attempts to pass the examination.**

**Dr. Schmitz voiced concern in issuing a temporary license and recommended there be no temporary license offered but require the examination to be passed to issue the license.**

Ms. Taxin stated the proposed language clarifies and will be better for applicants.

**Dr. Schmitz made a motion to support the proposed changes in the Law.**

**Dr. Reimer seconded the motion.**

**The Board vote was unanimous.**

Mr. Bunnell asked if the Board could review the recommended Rule changes.

Ms. Taxin responded with the change in the Law regarding the accredited program Rule changes should wait because if the Law passes in 2010 it will require Rule changes. Ms. Taxin stated she has accommodated the Physicians requests to supervise additional PA's without making a Rule change and she does not believe that area is now an issue.

Yearly Board Member Training

Ms. Taxin conducted the annual Board member training.

Ms. Taxin reviewed the Open and Public Meetings Act guidelines with formal Board meetings for business and reminded the Board that all Board meetings are recorded with the recording being retained for a year. She reviewed the guidelines for Board meetings and explained that Board business must be conducted in the formal Board meeting with

an agenda having been posted 24 hours in advance for any interested public people to be able to attend, that additional items cannot be added after the 24 hours but will wait for the next scheduled Board meeting. She stated a quorum of Board members is required to make decisions with motions and votes. Ms. Taxin explained the purpose for closing a meeting and stated with the Open Public Meetings Act there are very few reasons to close a meeting and have the public leave. Ms. Taxin reviewed electronic (telephonic) participation by Board members and for interviews. She stated Board members and public visitors may be requested to leave a Board meeting if they are being disruptive. Ms. Taxin covered the issue of requesting a probationer, an applicant or any individual to leave the meeting for Board discussion and stated meetings are open and comments should be made to the individual in order for them to understand the issues. She covered the guidelines for an Emergency meeting and stated these are not often conducted but could be required if the situation was serious with the public at great risk. She covered the motion, second, discussion and voting procedures. Ms. Taxin reviewed examples of when a meeting needs to be closed to protect a probationer or a person with an appointment. She reviewed the guidelines for an emergency in the building, i.e.; fire alarms going off, where to exit and where to meet. She stressed the importance of Board members being professional, remembering they are here to protect the public, to be fair, attentive and balanced in their comments and decisions. She stated Board members should be respectful to each other as well as any visitors or people with appointments. She stated they should listen and consider other view points, sometimes they may need to be creative but clear and open in communication and withhold judgment until after all the facts have been presented. Ms. Taxin recommended that the Board review and be familiar with the Laws and Rules in order to make correct decisions. She stated they should be positive role models.

**The Board thanked Ms. Taxin for the information.**

**APPOINTMENTS:**

**8:40 am**

Susan Higgs, Compliance Update

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

Ms. Higgs reported **Alan N. Bybee** is currently in compliance with his Stipulation and Order. He has submitted a letter requesting early termination of his probation for the Board to review.

**Ms. Taxin explained she saw a few issues with his triplicate prescriptions that were submitted. She stated if the Board does not see an issue then they would not need to be addressed.**

**Dr. Schmitz asked if there is a way to measure average prescription writing and if patients tend to go to Physicians who will prescribe controlled substances for them.**

**Ms. Taxin responded there is but she did not request the information for a comparison today.**

Mr. Barnes offered to request the information from the database.

**Dr. Clark commented the prescriptions from the Morgan clinic are not in sequential order.**

**Dr. Schmitz commented the Ogden clinic prescriptions are in sequential order. He stated North Ogden has a number of pain clinics available where patients go to get refills.**

**Ms. Taxin stated patients do know which prescribers will write prescriptions for them but Mr. Bybee could also be in a practice that has more chronic pain patients. She stated it would be appropriate to voice concern as Mr. Bybee is on probation for over prescribing. She stated the Board will be able to compare when Mr. Barnes returns with what the average would be. Ms. Taxin reminded the Board that the comparison is information only.**

**Dr. Schmitz stated Mr. Bybee is in Morgan and the only one up there but it appears he is still**

**prescribing more than average.**

**Ms. Taxin stated if the population base is about 5,000 Mr. Bybee may be prescribing in proportion to the population.**

**Dr. Allen asked if Mr. Bybee is prescribing appropriately.**

**Ms. Taxin responded the Board should ask Mr. Bybee. She stated she does not remember if the original quantities were high but the current quantities appear to be smaller.**

**Dr. Schmitz stated Mr. Bybee should identify which patients are chronic and perhaps have him document with the records why he is prescribing the doses.**

**Mr. Barnes returned and stated the opinion of the database specialist is Mr. Bybee prescribes more than normal. He pointed out there are still several prescriptions still being filled on Mr. Bybee's expired DEA which is concerning. Mr. Barnes stated Mr. Bybee should request a database printout and contact the Pharmacies as they may be forgeries.**

**Ms. Taxin responded Mr. Bybee may review the list to be sure it has current patients. She stated maybe investigations should resolve the issue of prescriptions on the expired DEA for him as there are so many on the list. Ms. Taxin stated Mr. Bybee has submitted a request for early termination and the Board will have to address his request but it is not appropriate to terminate early with these questions outstanding.**

**Ms. Higgs reported Jeffrey M. Pollock is currently in compliance with his Stipulation and Order. She stated she called Mr. Pollock regarding a prescription to a patient and he explained the patient had a dental problem and could not get into his Dentist so Mr. Pollock wrote a prescription for the patient to tide him over until he could see his Dentist.**

**Ms. Taxin stated there is also a prescription for testosterone and she called the Pharmacy who confirmed they had made an error. She stated the Board should ask Mr. Pollock where the error is occurring and maybe the clinic office can make some changes to be clear on his prescriptions. She requested the Board to confirm where Mr. Pollock is working.**

**8:50 am**

Alan N. Bybee, Probationary Interview

Mr. Bybee met for his probationary interview.

Dr. Schmitz conducted the interview.

**Dr. Schmitz voiced the Board's awareness of Mr. Bybee requesting early termination of his probation. He stated the Board has some questions to ask and have the list of prescriptions filled under Mr. Bybee's expired DEA number. He asked Mr. Bybee to review the list and explain. He also asked Mr. Bybee where he is working.**

Mr. Bybee responded there were some prescriptions since his last appointment. He stated he called the database for the current report and talked to the Pharmacies. Mr. Bybee stated yesterday's report had 2 new Pharmacies listed and he has already contact them. He stated his old DEA number expired 12 or 13 years ago and any prescription he writes has his current DEA number on it. Mr. Bybee stated the Pharmacists he has talked with have changed the numbers. Mr. Bybee stated he is still with the Morgan Health Clinic.

**Ms. Taxin introduced Mr. Bybee to Jared Memott, investigator, with whom could help him address the expired DEA issue.**

**Dr. Schmitz asked how often Dr. McClellan is in Morgan with Mr. Bybee.**

Mr. Bybee responded he is in the Morgan Clinic 4 days a week and Dr. McClellan is there with him 2 days a week.

**Dr. Schmitz asked Mr. Bybee's approximate average patient volume per day.**

Mr. Bybee responded he sees an average of about 20 patients per day and about 400 patients per month between the 2 clinics.

**Dr. Schmitz stated it appears Mr. Bybee is writing a lot of opiate therapy prescriptions and stimulants. He asked how many chronic pain and ADD patients Mr. Bybee treats as most of prescriptions appear to be for those maladies.**

Mr. Bybee responded his background is on ADD. He stated he might have 4 children with ADD on medication and he has 20 to 35 adult ADD patients for whom he fills prescriptions on a monthly basis. Mr. Bybee stated there are only about 5 chronic pain patients that he sees in the clinic.

**Dr. Schmitz asked how Mr. Bybee monitors those patients.**

Mr. Bybee responded he basically monitors their refills but has not conducted any drug testing yet. He stated whenever anyone comes in for an appointment they are to bring their prescription bottles with them.

**Dr. Clark asked if Mr. Bybee refers specific patients out to a neurologist.**

Mr. Bybee responded he does refer them out. He stated there is a problem with referrals as the waiting period is 2 to 3 months out. Mr. Bybee stated Topomax is a good medication but insurance does not like to reimburse fully for it.

**Dr. Clark informed Mr. Bybee that Topomax now comes as a generic medication. He asked Mr. Bybee what he does with the white copy of the triplicate prescriptions when he has voided one.**

Mr. Bybee responded he usually sends the white copy with the triplicate copies to DOPL. He stated when he voided the top copy the 3 were already stapled together and it voided the other 2 at the same time.

**Dr. Clark pointed out Mr. Bybee is not filling out the proper dates for refills when he is writing 3 prescriptions for the same medication. He explained Mr. Bybee should write the date they are all written and then include “not to be filled before” and put in the specific dates in the future.**

Mr. Bybee responded he was instructed by Dr. McClellan how to write the prescriptions when he does three at one time.

**Dr. Clark and Ms. Taxin again informed Mr. Bybee that he must have the written date and then the dates they can be filled.**

**Ms. Taxin stated the Utah CS Rules outline the requirements and how to write the prescription. She recommended he review those Rules.**

**Dr. Schmitz voiced concern regarding a provider who is on probation for writing high numbers of prescriptions. He stated perhaps the chronic pain patients should be handled by Dr. McClellan.**

Mr. Bybee responded one patient is 97 and still walks around Morgan. He stated this patient needs a hip replacement but no one will do it based on her age. He stated there are others with specific issues but if any patient escalates their dosage of medications he sends them to pain clinics. Mr. Bybee stated Dr. McClellan will manage those patients if the Board has concerns.

**Dr. Clark stated if Mr. Bybee knows his patients that well he would not have as much concern. Dr. Clark referred Mr. Bybee to a specific patient on the database list and asked for an explanation and there were 2 people with the same last name receiving the same medication.**

Mr. Bybee explained the patient is a distant relative and has only filled 2 prescriptions all year.

**Ms. Taxin asked if Mr. Bybee found any concerns on the database list.**

Mr. Bybee responded there is one name that a prescription is listed as his patient but it is not one of his patients. He stated the others on the list appear to be regular patients.

**Ms. Taxin asked if Mr. Bybee's patient files explain the reasoning for all the prescriptions and if the amounts are appropriate.**

Mr. Bybee responded yes. He stated those patients he and Dr. McClellan have concerns about have been referred to chronic pain clinics as their pain has escalated.

**Dr. Clark commented Darvacet/Darvon is no longer recommended as it is very addictive and is no better than Aspirin or Tylenol.**

Mr. Bybee thanked Dr. Clark for the information. He stated the patients listed on the database have been on their medications for years and he would like to keep them on the medications that work for them.

**Dr. Schmitz commended it appears the chronic pain patients is double the 5 patients Mr. Bybee said he is seeing. He stated Mr. Bybee should be very careful about documenting appropriate medications for those patients.**

**Ms. Taxin stated the Board may request Mr. Bybee to bring some files that have been chosen at random for the Board to review to be sure how he is documenting.**

Mr. Bybee responded he is comfortable with the Board reviewing some of his files and to let him know which ones to bring.

**Dr. Clark stated Mr. Bybee submitted a request for early termination. He stated Mr. Bybee has been on probation since May 2008, which is about 18 months.**

**Dr. Schmitz stated he believes it is premature to consider early termination and would not**

**recommend early termination until the prescribing has been reviewed and determined to be appropriate. Dr. Schmitz stated he would also like to monitor Mr. Bybee's practice a little longer to be sure there are no longer issues.**

**Ms. Taxin stated Mr. Bybee does not want the prescribing to get out of control and he should know if he should continue to prescribe as he has done or if he should cut back on prescribing. She stated it would be helpful in the review of the prescriptions if Mr. Bybee wrote a note regarding what the prescription is for such as: chronic back pain, ADHD, etc.**

**Dr. Allen asked if Mr. Bybee has an electronic record for prescriptions.**

Mr. Bybee responded he does not yet have the electronic record but they are in the process of obtaining one.

**Dr. Schmitz summarized for the next meeting Mr. Bybee needs to have available a complete number of patients he is monitoring for ADHD and chronic pain management issues in order for the Board to determine what is a reasonable number of prescriptions and amounts.**

**Ms. Taxin recommended Mr. Bybee review the recommendations with his supervisor. She suggested Mr. Bybee ask his supervisor to address the review in his report which will indicate he is aware of the numbers.**

Mr. Bybee responded he will keep a record and review with his supervisor. Mr. Bybee reviewed the database list and stated there are some older patients with insomnia and a couple of prescriptions that appear to have been filled in one day. He stated the insurance companies will not pay if 2 are filled in one day or the patient may have gone to one pharmacy which could not fill the prescription and then went to another which could and did fill the prescription. He stated both pharmacies may be on the list in this case.

**Ms. Taxin suggested an investigator do some checking as it could be pharmacy error.**

**Dr. Clark again addressed the request for early termination and stated the Board generally will consider early termination after half of the probation has been completed. He stated the Board could address the issue again at the March meeting. He reminded Mr. Bybee that he will be notified to bring 2 specific ADHD files and 2 chronic pain files with him for the Board to review.**

**The Board determined Mr. Bybee is in compliance with his Stipulation and Order.**

**An appointment was made for Mr. Bybee to meet again March 4, 2010.**

**9:10 am**

Jeffrey M. Pollock, Probationary Interview

Mr. Pollock met for his probationary interview.

Mr. Coursey conducted the interview.

Mr. Pollock stated he received a call regarding prescribing testosterone and found it the prescription was written by Dr. Moore. He stated he contacted the pharmacy and let them know of the error. He stated he has documentation of the contact.

**Mr. Coursey thanked Mr. Pollock for the information. He stated the Board recommended the drug testing be terminated when Mr. Pollock last met and asked if Mr. Pollock has had any problems since then.**

Mr. Pollock responded he had a bad toothache and could not get in to see his Dentist for a few days so he took some Percocet which was prescribed. He stated he had no problems with stopping the medication after a few days.

**Mr. Coursey stated the Board had voiced concern regarding the lack of information on Dr. Moore's reports. He asked Mr. Pollock to expand on what he is doing and how often he and Dr. Moore are in the office together.**

Mr. Pollock responded hormones are the main part of Dr. Moore's practice. He stated he does the physicals for the weight loss patients. Mr. Pollock stated he and Dr. Moore are in the office together as he works part-time. He stated their business has slowed down.

**Ms. Taxin asked if Mr. Pollock is looking for another position.**

Mr. Pollock responded he is not as he is hoping business will pick up soon.

**Mr. Coursey voiced appreciation for Dr. Moore giving additional information on the most recent report. He stated the report is important as Dr. Moore speaks to Mr. Pollock's professionalism, how he is doing well at the clinic and there have been no problems. Mr. Coursey asked Mr. Pollock if he had any questions.**

Mr. Pollock responded he did not.

**Ms. Taxin asked Mr. Pollock when he is working at the clinic is Dr. Moore in that clinic or a different one.**

Mr. Pollock responded at this time there is only one clinic and Dr. Moore is there. He stated once in awhile they see some patients in Draper and once a month they see patients at a Chiropractor's office next door to Dr. Moore's clinic.

**Mr. Coursey asked Mr. Pollock if he has contacted the DEA regarding obtaining a number.**

Mr. Pollock responded he has wanted to contact the DEA but cannot locate the telephone number.

**Ms. Taxin asked Mr. Pollock to call her after the meeting and she will give him the DEA telephone number.**

**Ms. Taxin stated the Board had discussion moving Mr. Pollock's appointments to every 6 months but maybe the Board would like to see him in March**

**and then consider waiting 6 months for the next appointment. She stated Dr. Moore is the eyes for the Board and needs to report if Mr. Pollock is clean and sober, if charts are appropriate, if he works well with the patients, if his performance and assessment of patients is appropriate, etc. She stated more information would be helpful for the Board to make an assessment.**

**The Board determined Mr. Pollock is in compliance with his Stipulation and Order.**

**An appointment was made for Mr. Pollock to meet again March 4, 2010.**

Mr. Pollock asked when the reports are due.

**Ms. Higgs responded the reports are due February 20, 2010.**

**DISCUSSION ITEMS:**

Review 2010 Schedule for Possible March Date Change

Ms. Taxin explained there is a conflict with the March 4, 2010 schedule.

**Following the review of schedules it was determined to move the meeting to March 1, 2010.**

2010 Board Meeting Schedule

The Board noted the following dates for the 2010 Board meeting schedule: The March date changed to March 1, June 3, September 23 and December 2, 2010.

**NEXT MEETING SCHEDULED FOR:**

March 1, 2010

**ADJOURN:**

The time is 10:29 am and the Board meeting is adjourned.

*Note: These minutes are not intended to be a verbatim transcript but are intended to record the significant features of the business conducted in this meeting. Discussed items are not necessarily shown in the chronological order they occurred.*

March 1, 2010  
Date Approved

(ss) Gordon L. Day, PA-C  
Acting Chairperson, Utah Physician Assistant  
Licensing Board

December 30, 2009  
Date Approved

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