

MINUTES

UTAH

PHYSICIANS LICENSING BOARD

BOARD MEETING

September 9, 2009

**Room 474 – 4th Floor – 9:00 A.M.
Heber Wells Building
Salt Lake City, UT 84111**

CONVENED: 9:05 A.M.

ADJOURNED: 11:09 A.M.

Bureau Manager:

Noel Taxin

Board Secretary:

Karen McCall

Compliance Specialist:

Debbie Harry

Board Members Present:

John W. Bennion, Ph.D., Chairperson

Kristen Ries, MD

David D. Byrd, MD

George C. Pingree, MD

Stephen E. Lamb, MD

James H. Pingree, MD

Lori G. Buhler

James R. Fowler, MD

Marc E. Babitz, MD

Board Members Absent:

Elizabeth F. Howell, MD

Daniel J. Parker, MD

Guests:

Franz Monroy, Student

Michelle McOmber, UMA

DOPL Staff Present:

Laura Poe, Bureau Manager

Jared Memmott, Investigator

TOPICS FOR DISCUSSION

DECISIONS AND RECOMMENDATIONS

ADMINISTRATIVE BUSINESS:

MINUTES:

The minutes from the August 12, 2009 Board meeting were read.

Dr. Fowler made a motion to approve the minutes as read. Dr. George Pingree seconded the motion. **The Board vote was unanimous.**

APPOINTMENTS:

9:30 am

Debbie Harry, Compliance Update

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

Ms. Harry reported **Dr. Alan F. Heap** is currently in compliance with his Stipulation and Order and the new addendum.

Ms. Taxin questioned, with the new Stipulation and Order, if the Board wanted to re-approve Dr. Spector as Dr. Heap's supervisor or recommend a change. She mentioned Dr. Spector called questioning the Laws and Rules regarding the practices of prescribing.

Ms. Buhler asked if prescribing practices, Laws and Rules are taught in medical school.

Dr. Lamb responded they are not taught in medical school.

Board members commented they do not believe most Physicians read the Laws and Rules and fully understand them prior to licensure or during licensure.

Dr. Babitz recommended the sections violated by probationers be given to them to read when they are given the Stipulation and Order.

Ms. Taxin responded that each Stipulation and Order has an outline of the Laws and Rules that have been violated and it would be redundant for her to rewrite the Laws and Rules for each probationer. She stated that maybe the supervisor should have a form they sign confirming they have reviewed the Laws and Rules with the probationer.

Dr. Babitz stated he believes the Division should be doing more to assist probationers and

recommended the attorneys write out the Laws and Rules in a more summarized manner for probationers.

Ms. Harry reported **Dr. Mia E. Carson** is currently in compliance with her Stipulation and Order. She stated a positive report was received from Hawaii. Ms. Harry stated Dr. Carson requested early termination of her 5 year probation. She stated January 1, 2010 is the end of the 5 year period and Dr. Carson would only meet once more with the Board prior to that date.

Ms. Harry reported **Dr. Sidney M. Johnson** is currently in compliance with his Stipulation and Order. She stated he has requested early termination of his 5 year probation which ends June 1, 2010. Ms. Harry stated she contacted Hawaii regarding a report but they have not yet returned her call. She reminded the Board that Dr. Johnson's probation started in Massachusetts.

Dr. James Pingree was requested to interview Dr. Johnson. Dr. Pingree disclosed his knowing Dr. Johnson thru his son and asked if that would be a problem.

Ms. Taxin suggest he asked Dr. Johnson if he is uncomfortable with Dr. James Pingree conducting the interview. She stated if he is uncomfortable then some other Board member may volunteer to conduct the interview.

9:45 am

Dr. Alan F. Heap, Probationary Interview

Dr. Heap met for his probationary interview.

Dr. Byrd was introduced.

Dr. Babitz conducted the interview.

Dr. Babitz requested Dr. Heap to update the Board regarding his health prior to reviewing the new addendum requirements.

Dr. Heap responded that his health has improved and he is doing well.

Dr. Babitz asked if Dr. Heap completed the required evaluation by Dr. Pompa.

Dr. Heap responded the evaluation was completed. He stated he has not received a copy from Dr. Pompa.

Ms. Harry stated the evaluation was received and is in Dr. Heap's file.

Dr. Babitz briefly reviewed the evaluation and noted Dr. Pompa recommended psychotherapy weekly to meet the goal of assisting Dr. Heap in managing stress and to better care for himself. Dr. Babitz stated the therapist could be any mental health therapist Dr. Heap chooses. Dr. Babitz reminded Dr. Heap to have his therapist approved by the Board and/or Ms. Taxin and to be sure to give the therapist a copy of the evaluation, the Stipulation and Order and the addendum. He stated Dr. Heap could contact Ms. Harry if he needs copies. He stated Dr. Pompa suggested Dr. Heap's talents could be best used if he was in a group setting clinic and not in private practice.

Dr. Babitz continued with the addendum requirements by stating Dr. Heap has agreed to abstain from drinking any alcoholic beverage except the sacrament wine and will be drug testing in Tooele every Tuesday and Friday. He stated the testing will start this Friday, September 11, 2009. Dr. Babitz continued that Dr. Heap must notify the Division in advance if he is going out of town or on vacation.

Dr. Heap voiced agreement and stated he will not have any sacrament wine at this time. He stated his next planned vacation will be in November.

Dr. Babitz informed Dr. Heap of a positive report being received from Dr. Spector. He asked if Dr. Heap had any questions for the Board.

Dr. Heap stated there is a pandemic of opioid abuse in Tooele County. He stated he has discussed prescribing suboxone for opioid dependency with a

local pharmacist. Dr. Heap stated he is aware he will need to complete specific training. He asked for the Board's support.

Dr. Babitz responded if Dr. Heap completes the training and submits a certificate for his file he would give his support.

The Board concurred.

Dr. Heap thanked the Board and stated he will be in contact with Ms. Harry and the DEA regarding taking and completing the training.

Dr. Bennion asked how many hours a week Dr. Heap is now working.

Dr. Heap responded he is working about 35 hours a week and takes Mondays and Thursdays off. He stated his business has begun to increase.

Ms. Taxin reminded Dr. Heap to contact her when he decides on a therapist and to be sure to get a copy of the evaluation for Dr. Heap and the therapist to review together. She suggested Dr. Heap contact Dr. Pompa for a copy.

Dr. Heap requested the Board consider Jim Sheldon for his therapist as he knows Mr. Sheldon.

Ms. Harry stated if Mr. Sheldon is approved he will need a report form to complete and submit monthly.

No action was taken at this time in regard to the therapist.

The Board determined Dr. Heap is in compliance with his Stipulation and Order.

An appointment was made for Dr. Heap to meet December 9, 2009.

Dr. Heap left the meeting.

Ms. Taxin briefly reviewed the issues which caused

Dr. Heap to be on probation.

Dr. Byrd stated it might not be appropriate for Dr. Heap to have access to suboxone at this time.

Ms. Taxin stated Dr. Heap has difficulty setting limits with family, friends, employees and patients. She stated he also has difficulty treating patients who he believes cannot afford his services so he drops his fee schedule for them. She stated she suggested he take some business courses to help him with setting a reasonable fee schedule.

Ms. Buhler asked if the addendum increases Dr. Heap's time on probation.

Ms. Taxin responded Dr. Heap's time was not extended as there is sufficient time left on his probation to resolve the issues.

Following additional discussion the Board requested if Dr. Heap completes the suboxone course that he submit a written plan and a list of his patients to whom he will prescribe suboxone for the Board to review and for discussion of Board concerns.

Dr. Bennion voiced concern regarding Dr. Heap's relationship with his proposed therapist, Mr. Sheldon, as it appeared their relationship is closer than Dr. Heap stated.

Ms. Taxin suggested the Board might recommend a therapist who is at the VA as it would be less expensive for Dr. Heap. She stated she could call Dr. Heap and deliver the message.

Dr. Babitz agreed that the VA would be less expensive but stated he did not believe the Board should make the decision of who Dr. Heap should see.

Dr. Lamb stated he believes Dr. Heap should see a therapist he does not have any relationship with.

The Board concurred except Dr. Babitz stated he

thought it should be upon the probationer to chose.

Ms. Taxin stated Dr. Heap admitted to Dr. Pompa that he has an alcohol problem.

Dr. Babitz commented the evaluation states the alcohol abuse is inconclusive. He recommended the approved therapist be invited to meet with the Board.

10:15 am

Dr. Mia E. Carson, Telephonic Probationary Interview

Dr. Carson met for her telephonic probationary interview.

Dr. George Pingree conducted the interview.

Dr. George Pingree stated Dr. Carson discussed the possibility of early termination of probation 3 months ago. He stated the Division received a letter from Hawaii confirming Hawaii will hold her on probation until the completion date. He stated Dr. Carson's Utah probation is scheduled to terminate January 4, 2010 and the January meeting should be her last with the Utah Board.

Ms. Taxin asked Dr. Carson if she had any questions for the Utah Board.

Dr. Carson responded she did not have any questions.

Ms. Taxin asked if Dr. Carson is still attending the support groups.

Dr. Carson responded she is still attending the support groups. She stated her contract with Hawaii requires continued attendance.

Ms. Harry asked Dr. Carson what she will do different when she is not on probation.

Dr. Carson responded she plans to continue with her support groups. She stated a co-worker has been attending the same meetings and is part of Dr. Carson's support group.

Dr. George Pingree asked Dr. Carson if she plans

to continue living in Hawaii after her probation has been terminated.

Dr. Carson responded she plans to remain in Hawaii.

Ms. Taxin stated she recalled Dr. Carson asking for Utah to terminate her probation as Hawaii would then follow suit. She stated when the paperwork was received from Hawaii it clearly documented that Utah must terminate probation first. She asked if Dr. Carson has talked with the Hawaii Board.

Dr. Carson stated she has and that the Hawaii Board is not terminating early as she thought.

Ms. Taxin stated she believes it would be better at this point for Dr. Carson to complete the Utah probation in January 2010.

Dr. Carson responded she has talked with the Hawaii Board and September 22, 2009 is when her contract with Hawaii is to terminate. She stated the dates were confusing but Hawaii is following the January 2010 termination.

Following additional discussion Dr. Lamb made a motion to terminate Dr. Carson's probation in Utah early based on Dr. Carson's full compliance with Utah's requirements.

Dr. George Pingree seconded the motion.

The Board vote was unanimous.

Ms. Taxin explained the process.

Dr. Carson thanked the Board and stated she meets with the Hawaii Board on September 23, 2009.

Ms. Taxin stated she will try to complete the paperwork so Dr. Carson will have her license active in good standing in time for that meeting. She stated she and the Board recommend Dr. Carson continue to use her support systems.

10:30 am

Dr. Sidney M. Johnson, Telephonic
Probationary Interview

Dr. Johnson met for his telephonic probationary
interview.

Dr. James Pingree conducted the interview.

**Dr. James Pingree asked Dr. Johnson if he would
be comfortable with him conducting the interview
today as they know each other.**

Dr. Johnson responded he would be ok with Dr. James
Pingree conducting the interview.

**Dr. James Pingree stated the Utah Division has not
yet received any documentation from
Massachusetts or Hawaii regarding those States
terminating Dr. Johnson's probation.**

Dr. Johnson responded he completed the
Massachusetts probation and will submit
documentation to Utah. He stated he has been lax in
completing the Hawaii requirement of talking to the
medical students as required by his Order. Dr.
Johnson stated his Hawaii probation should be
completed about June or July 2010 and he will have
that requirement completed before the termination
date.

**Dr. James Pingree stated the Utah probation is
scheduled to be completed June 1, 2010. He stated
the Board had talked with Dr. Johnson regarding
having a Utah Controlled Substance (CS) license
for the Board to monitor while he is on probation.
He stated it should not be an issue as long as Dr.
Johnson is practicing and using his CS
appropriately in Hawaii.**

**Ms. Taxin asked if Dr. Johnson is continuing to
attend his support groups in Hawaii and if he is
maintaining his sobriety.**

Dr. Johnson responded he is attending support groups
and is maintaining his sobriety.

**The Board determined Dr. Johnson is in
compliance with his Utah Stipulation and Order.**

An appointment was made for Dr. Johnson to meet March 10, 2010, which will be just prior to his termination date.

Dr. George Pingree stated the Board had discussed in 2008 early termination of Dr. Johnson's probation and asked if that is still a possibility.

Ms. Taxin responded Dr. Johnson has not followed through by submitting the documentation to Utah regarding termination of probation in Massachusetts which is required for further discussion and/or termination of the Utah probation.

11:00 am

Discussion regarding Practitioners Dispensing Cosmetic/Facial Products

Ms. Taxin explained there are many Physicians who are selling facial products in their offices. She stated some of the products have RX on the label which indicates the products are prescription level and should be dispensed by a Utah pharmacy. Ms. Taxin stated it is unlawful in Utah for anyone other than a pharmacy to dispense RX products. She stated some products are available over the internet and the companies will mail the products to Utah. Ms. Taxin stated the companies selling the products to the Physicians will only sell them to Physicians. Ms. Taxin stated Utah Physicians sell these products for additional income and service.

She stated she has talked with the UMA and wanted input from the Board regarding if clarification should be included in the Law or maybe a consent agreement to be allowed to sell certain drugs out of the Physicians offices.

Dr. Byrd requested Ms. Taxin explain what is meant by pharmacy grade.

Ms. Taxin explained pharmaceutical grade is the percent of the active ingredient.

Dr. James Pingree commented that all Physicians give out samples.

Ms. Taxin stated the facial products are not samples given out. She stated the Physicians may write a prescription for the patient to obtain the product through the pharmacy. She stated many pharmacies do not carry the specific name brand but will carry the generic brand. Ms. Taxin stated some other States complained about a Utah Physician selling these products out of their office to patients in other States. Ms. Taxin stated the Division handled this specific situation. She stated anyone can walk into the Physician's office and purchase the products without being a patient.

Ms. Taxin again stated she talked with the UMA who asked her if the Board wanted to make a change in the Law to accommodate for the Physicians to dispense certain products or medications.

Dr. James Pingree stated he does not believe the Law should be changed. He stated Physicians can write the prescription and the patient can obtain the product legally and with less expense if it is the generic name.

Dr. Lamb commented he believes the protection of the public is to leave the Law the way it is currently written. He stated if people want to appeal the Law and enter into a consent agreement then the Board could review the issue again.

Michelle McOmer, UMA, joined the meeting.

Ms Taxin updated Ms. McOmer and stated the Board believes the Law should not be changed and the Physicians should write prescriptions for the facial products.

Ms. McOmer asked if there is some type of leniency if there is a written agreement between the pharmacy and the Physician.

Ms. Taxin responded there is no leniency. Ms. Taxin stated she believes Physicians are not aware of the problem and that an education needs to occur. She suggested an article be printed in the UMA newsletter regarding Physicians cannot sell prescription level

products. She stated violations would then be treated as any other case.

Dr. Fowler commented Physicians should be notified of the Law and write appropriate prescriptions for their patients and if they are selling through the internet the Physicians should follow the Laws for internet prescribing.

Ms. Taxin asked if the Board would consider expanding the list of drugs to sell on-line. She questioned the thought that there are times the Physician should see the patient prior to prescribing.

Dr. Lamb responded on-line prescribing has more potential for inappropriate prescribing. He voiced concern regarding someone using a facial product when they really should be seen by a dermatologist for the condition.

Ms. McOmber stated the UMA is having a meeting this weekend and if Ms. Taxin has information prepared she could take the information and hand it out at the meeting.

Ms. Taxin responded she does not have anything in writing to handout. She requested Ms. McOmber make a reminder/announcement at the meeting that it is against the Law for Physicians to dispense out of their office.

Laura Poe, Bureau Manager, and Jared Memmott, Investigator, arrived at the meeting.

Ms. Taxin recapped the discussion for Ms. Poe and Mr. Memmott by stating the Board has determined DOPL should enforce the Law as it is currently written and not make accommodations for Physicians to dispense out of their offices based on individuals should see a Physician prior to taking/using products.

Dr. Fowler asked if there are similar problems with spas and medical spas.

Ms. Taxin responded she is not sure the spas and medical spas are dispensing. She stated there are other

products that are not prescription grade the Physicians can sell out of their office.

DISCUSSION ITEMS:

New Board Member Training

The Board requested the training be deferred to the next scheduled Board meeting as 2 Board members are absent today and Dr. Fowler will be leaving early for an appointment.

FYI

Ms. Taxin reminded the Board of the September 22, 2009, 3:00 pm, Room 474, Physicians Board and Osteopathic Physicians Board meeting to discuss internet prescribing Rules. She stated a quorum is required for any voting but the meeting will take place whether a quorum is present or not. Ms. Taxin requested Board members to read the information sent out to be familiar with the proposal.

FYI

The Board noted the following dates for the 2010 Board meeting Schedule: Wednesdays, January 13, February 10, March 10, April 14, May 5, June 9, July 14, August 11, September 8, October 13, November 10 and December 8, 2010.

Dr. Bennion asked if any Board members are aware of any conflict with the proposed schedule, specifically May as it is scheduled for the first Wednesday instead of the second Wednesday.

Board members voiced no conflict.

October 14, 2009 Board Meeting

Ms. Taxin stated there is only 1 probationer for the October 14, 2009 meeting. She asked the Board if they would be opposed to cancelling the October meeting if there are not enough other agenda items.

The Board recommended the meeting be cancelled if there are not enough agenda items for a meeting.

NEXT MEETING SCHEDULED FOR:

October 14, 2009

ADJOURN:

The time is 11:09 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.

November 4, 2009
Date Approved

(ss) John Bennion, Ph.D.
Chairperson, Utah Physicians Licensing Board

September 28, 2009
Date Approved

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