

**MINUTES**

**UTAH  
PHARMACY  
BOARD MEETING**

**March 23, 2010**

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

**Convened:** 8:00 a.m.

**Conducting:** Dominic DeRose, Chair

**Division Director:** Mark Steinagel  
**Bureau Manager:** Laura Poe  
**Board Secretary:** Shirlene Kimball  
**Compliance Specialist:** Connie Call  
**Compliance Officer:** Ray Walker

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

**Guests:** Russell Brown, Walgreens  
Robert Hansen Wal-Mart  
Linda Sandberg, Omnicare  
Betty Yamashita IHC  
Greg Jensen, Target  
Rich Bens, Pacific University  
Rory Davis, student  
Faith Stapley, Stapley Pharmacy  
Chris Condit, Voc Rehab  
Reid Barker, UPhA  
Jared Cash, Primary Children's Medical Center  
Beth Young, USHP

**TOPICS FOR DISCUSSION**

**ADMINISTRATIVE BUSINESS:**

January 26, 2010 Minutes:

**DECISIONS AND RECOMMENDATIONS**

The January 26, 2010 Board minutes were approved with corrections. All Board members in favor.

February 23, 2010 Minutes:

The minutes from the February 23, 2010 Board meeting 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: Michael Jarman has not signed up with CVI and has not completed a chemical evaluation. Jeremy Boyle has not submitted his paperwork and is out of compliance.

Ms. Call indicated the following individuals or pharmacies are in compliance with their Orders: Stapley Pharmacy, Cameron Tolley, S. Rich Wright, Aidee Torres, Richard Lowe, Trent Decker, James Bee, Alfonso Montano, Phuong Sheffer, David Barrow and Susan Macon.

Williams Family Video,  
Catherine Williams and Waseland Scott  
Williams:

Mr. and Mrs. Williams submitted documentation of completion of continuing education. Mr. Garn made a Motion to accept the continuing education as meeting the requirement outlined in the public reprimand for Catherine Williams and Waseland Scott Williams. Mr. Fitzpatrick seconded the Motion. All Board members in favor. Williams Family Video Pharmacy is still on probation.

Mr. Garn conducted the interview. He informed Mr. and Mrs. Williams that the Board accepted the continuing education; however, it appears that the fines still need to be paid before the public reprimand requirements are complete. Mr. Williams stated he is willing to pay the fine today. Mr. Garn reported Board members reviewed the policies and procedures and the list of revisions that were submitted. Mr. Fitzpatrick indicated the policies and procedures mentioned locked areas of the pharmacy, but do not address who will have access to the keys for the locked areas. This will need to be addressed.

Mr. Williams stated he has contacted Carl Sorensen for the quarterly audit review. Mr. Williams stated he worked with Mr. Sorensen for about 5 years and felt he would be a good mentor. Mr. Fitzpatrick made a Motion to approve Carl Sorensen as the audit

pharmacist. Dr. Lundberg seconded the Motion. All Board members in favor. Board members indicated the audit is due to the Board by July 13, 2010 and Mr. Sorensen will need to submit the audit directly to the Board. Ms. Poe suggested Mr. Sorensen read the Stipulation and Order so he can address the areas of concern in the audit.

Mr. Garn reminded the Williams' that they need to be sure to identify themselves with their title when answering the phone.

Mr. Williams had a question regarding partial fill of controlled substances. He stated he had a patient who presented a prescription for 120 Percocet per month; however, the insurance would only pay for 60 Percocet per month. He questioned whether or not he could have the patient pay cash for the other 60 tablets. Board members indicated he may want to discuss this with the DEA. Board members indicated if he fills the prescription, it would have to be filled on the same day so that the full prescription is dispensed the same day.

Mr. Williams also questioned whether or not removing a label with the patient's information and placing it in a dark garbage bag to be compacted is acceptable practice? Or should the information be shredded? Mr. Fitzpatrick stated anything with a patient name needs to be destroyed. He stated it is his understanding placing the label in a dark garbage bag to be compacted would meet HIPPA requirements. However, the pharmacy should have written policies and procedures in place to indicate how this situation is addressed by the pharmacy.

Mr. Fitzpatrick indicated there are two items that need to be added to the Pharmacy's policy and procedures. Mr. Williams needs to identify who has access to the keys to the locked pharmacy and add the procedure for HIPAA compliance regarding destruction of patient information. Mr. Williams needs to have the policy and procedures revised and submitted to the Division within the three weeks for review at the next Board meeting. Williams Family Video will be scheduled to meet with the Board May 25, 2010 at 8:30 a.m.

**Williams Family Video is out of compliance with the terms and conditions of the Order and needs to have the policies approved by the Board.**

James Bee,  
New Order:

Mr. Young conducted the interview. Mr. Bee explained the circumstances that brought him before the Board. He stated he understands he can not work alone, but that a pharmacy technician would be accepted as the licensed professional. Mr. Bee stated he last worked as a pharmacist in October at Lin's St. George Pharmacy. Mr. Bee questioned whether or not he could volunteer as a pharmacist. Board members indicated he could volunteer as long as he remains in compliance with the Order. Mr. Bee requested a 30 day extension to the section that reads periods of unemployment or employment in other fields of practice shall not count toward completion of probation if not practicing for a period of 60 days or longer. Mr. Young made a Motion to give a 30 day extension so that if Mr. Bee is not working as a pharmacist for greater than 90 days, that time will not count toward probation. Ms. Bird seconded the Motion. All Board members in favor. Mr. Bee's next meeting will be scheduled for May 25, 2010. **Mr. Bee appears to be in compliance with the terms and conditions of his Order.**

Stapley Pharmacy,  
Evan Stapley:

Mr. Fitzpatrick conducted the interview. Mr. Stapley requested termination of probation. Mr. Fitzpatrick made a Motion to terminate probation pending a final inspection by a Division investigator. Mr. Garn seconded the Motion. All Board members in favor. **Stapley Pharmacy is in compliance with the terms and conditions of the Order.**

S. Rich Wright,  
Probation Interview:

Mr. Fitzpatrick conducted the interview. Mr. Wright indicated he is attending all meetings and reported he has a great support system. **Mr. Wright is in compliance with the terms and conditions of his Order.**

Cameron Tolley,  
Probation Interview:

Mr. Garn conducted the interview. Mr. Tolley reported everything is going well. He is requesting termination of probation. Board members questioned what he has learned from the probation. He stated he understands more about how the Board works and

about the decision making process. Mr. Garn made a Motion to terminate probation. Mr. Fitzpatrick seconded the Motion. All Board members in favor. **Mr. Tolley is in compliance with the terms and conditions of his Order.**

Alfonso Montano,  
Probation interview:

Mr. Fitzpatrick conducted the interview. Chris Condit, a Voc. Rehab counselor appeared with Mr. Montano. Mr. Montano discussed with Board members a job interview where the prospective employer indicated a search of the web brought up negative information from Board minutes. Mr. Montano stated he feels this negative information is preventing him from obtaining employment. Mr. Fitzpatrick thanked him for bringing this to the Board's attention and the Board will discuss making changes to the way minutes are written. Mr. Montano submitted a letter requesting termination of probation. Ms. Poe indicated she would recommend the request be granted based on the fact that the behavior happened in 2002 and he has been in counseling and has been monitored for a period of time. Mr. Fitzpatrick made a Motion to terminate probation. Dr. Lundberg seconded the Motion. All Board members in favor. **Mr. Montano is in compliance with the terms and conditions of his Order.**

Trent Decker,  
Telephone probation interview:

Mr. Garn conducted the interview. Mr. Decker stated he continues to look for full time employment. He indicated he is working PRN at several different pharmacies. Mr. Garn stated Mr. Decker is making tremendous improvement and appears to be doing well. Mr. Decker expressed concern that he may be called for urine screens when he is working at the Caliente, Nevada, pharmacy and the closest testing site is two hours away. Ms. Poe indicated that if this happens, he can contact Ms. Call and the Board may be willing to excuse testing under those conditions. He also questioned whether or not his Order was amended to allow him to work without another licensed individual in the pharmacy as discussed at the September 22, 2009 meeting. Ms. Poe stated she will check to see if the Order was amended. **Mr. Decker is in compliance with the terms and conditions of his Order.**

David Barrow,  
Probation interview:

Dr. Lundberg conducted the interview. Mr. Barrow reported he is 198 days clean and sober. Mr. Barrow questioned whether or not attendance at aftercare meetings will count as attendance at 12-Step meetings. Board members indicated he must attend at least four 12-step meetings per month and he will also need to attend aftercare meetings once he has completed the IOP. Mr. Barrow submitted a practice plan for review. However, Mr. Barrow's practice plan did not include his practice with the controlled substance license. Mr. Barrow indicated since his controlled substance license was returned, he usually only fills schedules 3-5. The Schedule II controlled substances are filled in a different area by another pharmacist. Board members stated Mr. Barrow will need to submit an updated practice plan to include his access to controlled substances. Board members requested he address how often inventories are completed and submit the controlled substance inventory quarterly. Once the practice plan is received by the Division it will be sent to Mr. Garn for review. Dr. Lundberg made a Motion to approve the practice plan upon receipt of clarification regarding controlled substances. Mr. Garn seconded the Motion. All Board members in favor. Board members indicated they would like to continue to see him on a monthly basis. **Mr. Barrow is in compliance with the terms and conditions of his Order.**

Aidee Torres,  
Telephone probation interview:

Dr. Lundberg conducted the interview. Ms. Torres reported work is going well. She stated she has settled her account with CVI and has been communicating with Ms. Call as requested by the Board. Ms. Torres reported she will be camping March 27, 2010 through March 30, 2010 and questioned what she should do if her number comes up. Ms. Torres was directed to contact Ms. Call if her number comes up. **Ms. Torres appears to be in compliance with the terms and conditions of her Order.**

Michael Jarman,  
Probation interview:

Mr. Jarman did not appear for his scheduled interview. He was last seen by the Board on December 15, 2010. He reported in his self assessment that he doesn't have the coping skills necessary to do well on probation. He also indicated in the self assessment that he is not

working and reported he is overwhelmed. Ms. Call indicated she could contact him to see if he wanted to surrender the license or be placed on an indefinite suspension until he reaches a point he can cope with the terms of probation. Board members requested Ms. Call contact Mr. Jarman and give him 20 days to respond. If he doesn't respond, he will be referred for an Order to Show Cause Hearing. **Mr. Jarman is out of compliance with the terms and conditions of his Order.**

Jeremy Boyle  
Probation interview:

Mr. Garn conducted the interview. Mr. Boyle indicated he had considered giving up his license, but has decided to meet the terms and conditions of the Order and keep the license. He submitted a copy of the pharmacy controlled substance inventory and a practice plan. Board members requested that the controlled substance inventory provide the actual count and how discrepancies are addressed. The practice plan is not in the file and he indicated he will fax it to Ms. Call again. He stated he has not attended PIR or 12-step meetings, but has completed an evaluation. The evaluation recommended he complete an intensive outpatient treatment with group and individual therapy. Board members indicated while he is in the IOP program, the meetings he attends would count toward the 12-step requirement. He will still need to attend PIR meetings twice a month. Once he completes the intensive outpatient treatment program he would need to attend 12-step meetings. He stated he is in the process of signing up with CVI. He indicated his supervisor has submitted documentation that he has read and understands Mr. Boyle's Order. Dr. Lundberg questioned when he felt he would meet all requirements of the Order. He stated it would be within the next month and he is doing the best that he can. Board members indicated they would like to see him succeed and compliance with the Order demonstrates that he is serious about keeping his license. His next meeting will be scheduled for June 22, 2010. **Mr. Boyle is out of compliance with the terms and conditions of his Order.** He needs to attend PIR meetings, sign up with CVI, submit a controlled substance inventory and enter an IOP program.

James Ammon,  
Request for re-licensure:

Mr. Ammon met with the Board and explained the circumstances that brought him before the Board. He indicated he pleaded guilty to health care fraud in 2007. He indicated he was released from court supervised probation February 2010 and has completed all requirements set forth by the Federal Government with the exception of paying restitution. Mr. Ammon submitted a re-licensure application in May 2009 but decided to withdraw it after meeting with the Board.

Mr. Ammon stated when he signed his Stipulation and Order he agreed not to reapply for a period of 5 years; however, he indicated he would like to pursue licensure at this time. Ms. Poe stated the issue today is to review the application, the criminal history, and the behavior that lead to the criminal action and determine whether or not Mr. Ammon meets the requirements for re-licensure.

Ms. Poe stated the Statute reads that if an individual is convicted of one or more felonies, an applicant must receive an absolute discharge from the sentences for all felony convictions five or more years prior to the date of filing an application for licensure. The absolute discharge means completion of all associated conditions, including completion of paying all fines and restitution. Ms. Poe indicated Mr. Ammon is off criminal probation, but he still has restitution to pay. Mr. Ammon stated he would like to have the restitution paid off within two years, but that would depend on whether or not he was able to return to work as a pharmacist. Mr. DeRose questioned whether or not we can accept an application since it has not been five years post discharge. Ms. Poe indicated an individual can submit an application for review at any time. If the Board denies the request for re-licensure, Mr. Ammon has due process and can appeal the denial to the Department Director. Mr. Fitzpatrick stated the Board needs to make a decision regarding licensure and then if Mr. Ammon wants to appeal the decision, he can go through the appeal process. Mr. Ammon stated his plan is to move forward with the process.

Board members indicated it has only been three years

since he signed the Stipulation and Order and he agreed not to reapply for five years. Mr. Ammon stated as part of the plea agreement with the AG, the Federal judge set aside the stipulated agreement. Ms. Poe indicated the Board and Division have not seen the document that Mr. Ammon claims set aside the Order. Board members indicated that if the Order was set aside, the Board needs a copy of that document. Mr. Ammon stated he has received his clarification and he feels the onus is on the AG's office to obtain that documentation and to provide the information to the Board. Board members indicated the onus is on Mr. Ammon. Mr. Fitzpatrick stated it is not the Board who needs to do the research. If Mr. Ammon wants the license, he needs to provide the documentation and he needs to demonstrate he has changed the behavior. Mr. Fitzpatrick suggested that a psychological evaluation may help provide documentation of behavior change. Mr. Ammon stated he would be willing to provide an evaluation, but does not feel an evaluation would be helpful. Ms. Poe stated that at this point, the Board could table the discussion until he has seen a psychologist. Dr. Lundberg stated, based on the statute, his application would have to be denied. Mr. Ammon stated he believes the statute is arbitrary and capricious and questioned where the 5 year time frame came from. Ms. Poe stated the 5 year mark was based on the research and recidivism rate and indicated scientific data has shown that the likelihood of the behavior recurring is greatest within the five year period following termination of probation. Mr. Young indicated the timeframe was obtained thru a valid process used to study the issue.

Ms. Poe stated that if the Board denies the application based on statute, Mr. Ammon would not need to obtain a psychological evaluation. However, the Board would table the discussion until a psychological evaluation is completed. Mr. Ammon would meet with the Board at that time.

Mr. Fitzpatrick made a Motion to deny the application based on the statute and the 5 year post completion of all conditions of the felony conviction. Dr. Lundberg seconded the Motion. All Board members in favor.

Discussion:

Ms. Poe questioned whether or not there needs to be a change in the way we record the minutes. Mr. Young stated it is not fair to the probationer if someone is taking small snippets out of the minutes and not looking at the whole picture to determine that an individual is hireable or not. Ms. Poe stated the minutes could reflect that the probationer appeared for the interview, who conducted the interview, whether or not the probationer is in or out of compliance, and if out of compliance, why he/she is out of compliance. Dr. Lundberg stated the minutes provide a written memory and the interviewer would have to document more in the file. Dr. Lundberg stated she would also like to record that the probationer is taking responsibility or reflect their attitude under non-compliant behavior.

Lunch Break at 12:27 p.m.  
Reconvened 1:00 p.m.

Jared Cash,  
PCMC:

Mr. Cash indicated he requested a meeting with the Board to discuss medication errors. He stated he works with the Institute of Safe Medication Practice. He reported on an incident that occurred in Ohio where the death of a child occurred when a pharmacy technician made a mistake in the basic ingredient for a pediatric chemotherapy patient. The pharmacist involved lost his license and was charged criminally. Mr. Fitzpatrick stated that Utah has minimum training for technicians before they are allowed to practice and when this occurred in Ohio, there was no minimum requirement in Ohio for pharmacy technicians. Mr. Cash questioned at what point a medication error is considered a criminal action. Mr. Fitzpatrick stated since he has been on the Board, there has only been one individual placed on probation in Utah for medication errors. Ms. Poe indicated that generally if one error has occurred with little or no adverse effect, a letter of concern would be sent and the pharmacy would be required to put in place action to ensure the error does not happen again. Ms. Poe indicated one error would not be considered gross negligence, unless the outcome was egregious. If what happened in Ohio had been an adult, the individual most likely would have survived. It would have been the same action but

a different outcome. Boards struggle with and are influenced by outcomes. Ms. Poe reported Boards still struggle with how to weigh the outcome based on the error.

Mr. Cash stated the Institute of Safe Medication Practices will be having a conference regarding these issues and would like to invite the Board members and anyone from DOPL to attend. Mr. Fitzpatrick stated there are some complaints/cases the Board never sees because the complaints are handled by DOPL investigations and it would be helpful to have the DOPL investigators attend the conference.

Rules:

Ms. Poe indicated the rules are ready to be sent to the Department for approval. However, Ms. Poe stated one issue remains which is the experience required to be a PIC. Mr. Fitzpatrick had indicated one year of licensed experience was necessary to qualify as a PIC. Ms. Poe indicated she left it out of the Rule because there was no formal agreement or vote. Mr. Fitzpatrick stated he would like to go on record that he feels the PIC should have at least one year of licensed experience.

Ms. Poe indicated the Rules should be filed by mid April and will plan for a May or June Hearing and potentially the rules could go into effect July 1, 2010.

Discussion:

Ms. Poe questioned if it is acceptable for a technician-in-training to obtain all hours at a closed door pharmacy and never receive training in a retail setting? Board members stated the technician should have a more rounded education; however there are no rules that would prevent the technician-in-training from receiving all training hours at a specific type of pharmacy. However, the individual may not do as well on the examination.

Legislative Update:

Ms. Poe stated the definition of legend drug is now in statute and can be eliminated from the rule. The bill also provided conformity to drug definitions throughout Title 58.

Rep. Daw's bill regarding the controlled substance database provides for an advisory committee and a

member of the Committee shall be recommended by the Pharmacy Board.

The Soma bill passed and Soma is now a controlled substance in Utah.

Ms. Poe stated SB 88 includes physicians dispensing cosmetic drugs and HCG. This bill goes into effect May 11, 2010 and the Board will be drafting the rules. Rules will need to be filed by September 2010. Mr. Barker questioned whether or not DOPL is prepared to inspect physician offices to see if they are in compliance with the same standards as the pharmacy. Ms. Poe indicated that if a complaint comes into the Division regarding the dispensing of HCG or other cosmetic drugs, the office may be inspected and would have to meet the standards established in the Statute and Rules.

SB 274, online pharmacies, will have a separate Board and an application should be developed by July 1, 2010.

HB 104 and HB 135 were moved to the summer interim session.

Environmental Scan:

Ms. Poe had several questions regarding pharmacy practice. She questioned if it is acceptable for the pharmacist to change a medication if there is a collaborative practitioner agreement which allows the pharmacist therapeutic interchanging of a medication within its class. An example would be an antibiotic. If there is another medication that is better, is it acceptable for the pharmacist to change the medication. Mr. Young stated this goes on across the country and as long as there is a written agreement, it would be an acceptable practice.

Ms. Poe questioned if a prescription is written for one dosage, and Medicare will only pay for a lesser dosage, is it acceptable, for example, to change a prescription from one 40 mg tablet to two 20 mg tablets per day? It is the same dosage as written. Does the pharmacist have to contact the prescriber and obtain a new prescription? Mr. Garn stated it is acceptable to give the same medication, the same dose

as long as it is not a Schedule II. Mr. DeRose stated he calls the practitioner just to be covered. Board members indicated it is acceptable and within the scope of practice as long as the patient understands the change and the prescribing provider is contacted. A Schedule II would need a new prescription.

Ms. Poe questioned if a research facility is giving drugs to mice and needs a controlled substance license, would it be considered an analytical lab or should we add to rule in the Class E Pharmacy category an Animal Research facility. Board members stated research is usually a Class B pharmacy. Board members discussed adding to Class E, non human research; and human research would still be a Class B Pharmacy. Mr. Young made a Motion to add in the current rule file an inclusion for non-human research facility involving pharmaceuticals to the list of Class E pharmacies. Mr. Garn seconded the Motion. All Board members in favor.

Pharmacy Technician Program Review:  
Oquirrh Mountain Pharmacy:

Ms. Kemper reviewed the documentation and requested the following clarification. An updated law examination using current Practice Acts and Rules; documentation of practice of sterile technique and to specify that the program must be completed and all exams must be passed within one year of beginning the program.

Enterprise Pharmacy Technician In Training  
Program:

The program submitted additional information. The program was approved.

Adjourned:

2:48 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.*

April 27, 2010  
Date Approved

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

April 27, 2010  
Date Approved

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