

MINUTES

**UTAH
PHARMACY
BOARD MEETING**

September 28, 2010

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

Convened: 8:03 a.m.

Conducting: Dominic DeRose, Chair
Bureau Manager: Laura Poe
Board Secretary: Shirlene Kimball
Compliance Specialist: Connie Call

Board Members Present: Derek Garn, R.Ph.
Dominic DeRose, R.Ph.
Kelly Lundberg, PhD public member
Jan Bird, Pharmacy technician
Andrea Kemper, Pharm D
David C. Young, Pharm D
Gregory Jones, R.Ph.

Guests: Colby Hancock, U of U School of Pharmacy
Kevin Walkenhurst, U of U School of Pharmacy
Mark Longo, 4-Care Pharmacy
Sanaz Ghaffarian, U of U Hospitals and Clinics
Linda Sandberg, Omnicare
Betty Yamashita, IHC
Greg Jensen, Target Pharmacy
Cameron Dawson, U of U School of Pharmacy
Shadi Clark, U of U School of Pharmacy
Robert Hansen, Wal-Mart Pharmacy
Kelly Hansen, HCA
Jerry Petersen, UPhA
Evan Vickers, Utah House of Representatives
Jennifer Lambert

TOPICS FOR DISCUSSION

ADMINISTRATIVE BUSINESS:

August 24, 2010 Minutes:

DECISIONS AND RECOMMENDATIONS

Dr. Lundberg made a Motion to approve the minutes.
Ms. Bird seconded the Motion. All Board members in favor.

Connie Call,
Compliance Report:

Ms. Call reported Aidee Torres is out of compliance with the terms and conditions of her order for missing one urine screen.

Ms. Call reported the following individuals are in compliance with the terms and conditions of their Orders: S. Rich Wright, Richard Lowe, Trent Decker, James Bee and David Barrow.

Heather Palmer submitted a practice plan for review; however, she is not currently employed. Dr. Lundberg made a Motion to approve the practice plan; however, once Ms. Palmer becomes employed she will need to submit an updated practice plan specific to her employment. Mr. Garn seconded the Motion. All Board members in favor.

Ms. Call reported Wendy Madsen and Melynda Frohlich will surrender their licenses.

David Barrow,
Probation interview:

Mr. Mark Longo, Mr. Barrow's supervisor, was present during the interview. Mr. Barrow stated he is only working 8-12 hours per week and feels he could find full time employment if the direct supervision requirement was lifted. He also indicated it would be helpful if the probation time counted if he worked less than 16 hours per week. Mr. Barrow also indicated he would like the urine screen requirement changed. Dr. Lundberg stated Mr. Barrow was using over 40 opioids a day and questioned why he believes he is no longer at risk. Mr. Barrow stated he attends meetings weekly, sees a counselor on a monthly basis and calls CVI everyday. He stated he feels making the calls to CVI is like having a drug test every day. He reported he has been sober 400 days. Dr. Lundberg stated the Board could consider changing some of the restrictions, not because they are unreasonable, but because he has moved forward in his recovery. Ms. Poe stated that the Order could be amended for general supervision, which would require a supervisor to fill out the report, but who does not need to be in the pharmacy at all times. However, there is a section in the Order that does not allow Mr. Barrow to be alone in the pharmacy and this would also have to be modified. Mr. Longo stated if the changes were made

to allow Mr. Barrow to be on-call, he would be able to meet the 16 hours per week requirement. Mr. Longo stated that for an on-call situation, if Mr. Barrow needs to go into the pharmacy, the PIC will go in with him.

Mr. Barrow also indicated he is having a difficult time paying his fine. Ms. Poe stated the Board could recommend the rest of the fine be waived; however, she is not aware of that type of request being granted in the past.

Dr. Lundberg made a Motion to amend Mr. Barrow's Order to allow for general supervision rather than direct supervision, the remaining fine be waived, the hours worked in order to count toward probation would be a minimum of 16 hours per month and allow Mr. Barrow to work on-call specific to 4-Care Pharmacy. Ms. Bird seconded the Motion. All Board members in favor. Mr. Barrow will be seen again in December. **Mr. Barrow is in compliance with the terms and conditions of his Order.**

Thomas Strebel,
Request for Termination of Probation:

Mr. Strebel met with the Board to request termination of probation. He stated he received a letter from OIG indicating he has been taken off the OIG exclusion list. Mr. Garn stated the letter from the OIG addresses Medicare patients and Mr. Strebel may want to clarify if this also applies to Medicaid patients.

Mr. Strebel stated he has completed two years of probation, completed two years with OIG, paid all fines and restitution, and has been in compliance with the terms and conditions of the Order. He stated he understands that the actions that brought him before the Board were totally his fault and he will not let it happen again. He stated he has taken his probation seriously and has shown the Board how determined he is to get his license back free and clear. He indicated he does not plan on owning a pharmacy, or being a partner in a pharmacy. Dr. Lundberg stated she would like to have him explain to the Board what he has learned from this experience, what tools he has developed to help prevent those actions that brought him before the Board, and to provide the Board some reassurance that he has made changes in his thought process.

Mr. Garn made a Motion that upon receipt of the letter detailing what Mr. Strebel has learned from the experience, the letter be forwarded to Dr. Lundberg for review, and if accepted, terminate Mr. Strebel's probation. Dr. Kemper seconded the Motion. All Board members in favor.

Wendy Madsen,
New Order:

Ms. Madsen did not appear for her scheduled interview. She has indicated she would like to sign a surrender document.

Melynda Frohlich,
New Order:

Ms. Frohlich did not appear for her scheduled interview. She has indicated she would like to sign a surrender document.

Aidee Torres,
Telephone Probation Interview:

Ms. Torres reported everything is going well. Her employer evaluations have been excellent and Ms. Torres stated she is considering moving to Missouri. Ms. Torres stated she did not miss the urine screen on July 19, 2010. She indicated she appeared for the test, but the collection site didn't have a female available to witness the screen so she wasn't allowed to test. Ms. Call stated Ms. Torres would be excused and considered in compliance, but in the future, she needs to contact the Division if this happens. Board members suggested Ms. Torres write a letter requesting early termination of probation and include what she has learned and what changes she has made. **Ms. Torres will be interviewed again in December. Given the explanation for not providing a urine screen on July 19, 2010, Ms. Torres is in compliance with the terms and conditions of her Order.**

Kenneth Moore,
Application review:

Mr. Moore met with the Board to discuss his yes answers on the qualifying questionnaire of the application. Mr. Moore indicated he was charged with domestic violence in 2005 and that case was dismissed March 28, 2008. On February 3, 2008 he was arrested for public intoxication and disorderly conduct. He indicated he was required to undergo an assessment and counseling. Mr. Moore indicated he received an evaluation from Valley Mental Health and is required to complete 28 classes. He stated he has completed four domestic violence classes related to anger. He

indicated he needs to complete 16 domestic violence classes not related to anger and eight parenting classes.

Mr. Moore stated he no longer ingests alcohol and his sobriety date is February 3, 2008. He stated he does not plan on drinking again. He stated he has a court hearing on October 15, 2010. Dr. Lundberg stated if Valley Mental Health felt like he had a substance abuse problem, a substance abuse evaluation and treatment would have been required. Board members indicated that he should consider this a strong warning about making appropriate choices, and it appears he is making better decisions. Dr. Lundberg made a Motion to issue the license without any restrictions. Dr. Young seconded the Motion. All Board members in favor.

Andrew Buckley, LDS Hospital Outpatient Pharmacy – discussion regarding a proposal for a prescription pick-up area at the Physician Office Building:

Mr. Buckley explained the outpatient pharmacy at LDS Hospital would like to expand services to the Physician Office Building (POB) across the street from the hospital. He indicated prescriptions would be filled at the outpatient pharmacy, but delivered to the patient at the POB. The filled prescriptions would be sent via a pneumatic tube to the POB and handed out by a pharmacy technician. If the patient is not there to pick up the prescription, the prescription is placed in a hanging folder. If the prescriptions are not picked up by the end of the night, they are transferred back to the main outpatient pharmacy. A video teleconferencing system would be set up if the patient had any questions for the pharmacist. Ms. Bird questioned whether or not this could be done through a kiosk system? Mr. Buckley stated he feels a kiosk system is less effective than what he is proposing. Also, they would like to sell additional items, such as candy and drinks. Ms. Poe stated the key is the different addresses. According to statute, each place of business requires a separate license. The statute does not allow for an extension to a pharmacy at a different address. This request does not fall under a Branch Pharmacy because it is not in an underserved area.

Paul Martz,
New Order:

Mr. Martz explained the circumstance that brought him before the Board. He stated he is a drug addict and was taking pain medications from the pharmacy.

He stated the last time he used drugs was July 16, 2010. He indicated he is going through a 75 day outpatient treatment program and has been in the program eight weeks. He indicated he was also caught shoplifting and feels this was due to the influence of the drugs. He reported he has a court hearing October 12, 2010 and hopes to get into drug court. He stated he has a physical evaluation scheduled and is working on the psychological evaluation. Board members requested Mr. Martz be scheduled to meet with the Board next month. **Mr. Martz is in compliance with the terms and conditions of his Order.**

Review e-mails received regarding pharmacy issues:

Ms. Poe indicated she received a question regarding remote order entry. She indicated a Utah hospital contracts with Remote Order Entry facility in another state and a licensed pharmacist in that state reviews the order. The question is whether or not the pharmacist needs to be licensed in Utah. Mr. Garn stated the current rule does not require a Utah license and this would be acceptable. However, the Board is working on changing the rule so that it would require a Utah licensed pharmacist and also require the company to be licensed as a non-resident.

Ms. Poe indicated that she received an e-mail from a Class E pharmacy which is being asked to supply sterile water and saline for patients receiving medical gases from another Class E pharmacy – medical gases only. Ms. Poe questioned the original intent of the statute and rule changes to the 5 classes of pharmacies. Class E license was meant as a catch all license and medical gases was given as an example. Board members indicated any complimentary products would fall under the scope of the medical gases/DME Class E pharmacy. The examples were meant to help an applicant know what type of license to apply for.

Ms. Poe reported she received an e-mail from a hospice facility regarding the 72 hour supply of a Schedule II controlled substance by verbal order in an emergency situation. However, the physician did not sign the order and then verbally requested another 72 hour supply. Ms. Poe questioned whether or not the second prescription could be filled. Mr. Garn stated

the physician has 7 days to get the prescription to the pharmacy. However, a second 72 hour prescription can not be filled because at that point, it is not an emergency situation. Dr. Young reported the DEA has a new website that requires a pharmacy to report a physician who does not provide a signed prescription within 7 days of the emergency fill.

Dr. Young reported he was contacted by a DOPL investigator regarding an individual in a rural area requesting a Class A Pharmacy license for a pharmacy housed in a “shed” next to the individual’s home. The question is whether or not the pharmacy can be in a residential area and if the shed is sufficient for a pharmacy building. Board members stated Rules do not address the issue of a pharmacy in a residential area and it would be up to the city or county building ordinances. If the shed meets the standards in law and rule and is secure, it would be acceptable. The house and the pharmacy will need to have separate addresses.

Ms. Poe indicated she had a question from an out of state wholesale/distributor whose state does not require licensure but they are registered with the DEA. She questioned whether or not this company would need to be licensed in Utah or would they meet the exemption? Board members indicated that if the company is not licensed in the state where physically located then they would need a Utah Class D, non-resident license.

Ms. Poe questioned whether or not Intern hours can be obtained by volunteering. Board members indicated it doesn’t matter as long as there is a qualified preceptor that signs for the hours. Mr. Jones questioned if the Intern is not a student and not employed, who would be responsible. Ms. Poe indicated since the intern is licensed, the intern would be responsible as would the supervising pharmacist.

Ms. Poe indicated the University of Utah Neuropsychiatric Unit is being asked by prescribing practitioners to store sample medications in the pharmacy. The prescribing practitioners provide the samples to patients to bridge the time until other medications can be obtained. Buying or selling any

drug or device that is labeled “sample” is defined as unlawful and unprofessional conduct. However, the storage of samples for a prescriber doesn’t appear to be addressed. Board members indicated this issue should be placed on a future agenda for further discussion.

Ms. Poe questioned whether or not a patient signature page for prescription pick-up is mandated. Board members stated no, the signature is simply for billing insurances.

Ms. Poe questioned whether or not finger sticks were within the scope of practice of a pharmacist and whether or not additional education is necessary. Board members indicated it is within the scope of practice and no additional education is necessary.

Adjourned to Lunch at 12:00 noon
Reconvened at 12:50 p.m.:

Rule Hearing:

The Rule Hearing was conducted by Judge Eklund.

Continued discussion regarding possible rule changes:

Mr. Fitzpatrick sent a list of questions he had regarding central fill pharmacies. 1). The central fill pharmacy can not fill a prescription and ship directly to a patient. They would have to be licensed as a mail order pharmacy to send directly to the patient. 2). Label. The question is which pharmacy address should be on the label. Is it the pharmacy that filled the prescription or is it the pharmacy who dispenses? Mr. Jones stated the label should be the dispensing pharmacy, but there should be a record of the pharmacy that provided the medications. 3). The provider can not call the central fill pharmacy directly. Mr. Garn stated he does not think this needs to be addressed in rule. 4) Both pharmacies should maintain a copy of the prescription. The central fill pharmacy needs to document what they have done and the dispensing pharmacy needs a copy in case they get a phone call from the patient. 5). Central fill can not dispense compounded drugs. This issue is already addressed in rule. A pharmacy can not compound a drug to be sent to another pharmacy. Ms. Poe indicated that the section of rule should also be referenced in the central fill section.

Pharmacy Technician:

Ms. Poe questioned if there is a specific order that the pharmacy technician needs to go through to obtain a license. Does it matter if the individual passes the certification examination prior to completing an education program or on-the-job training? The current rule does not prevent an individual from taking the certification examination prior to completing an approved training program.

Mr. Garn suggested the rule require training first, exam next, and can continue to work up to one year period, then after the end of the year, if not licensed, submit a request for extension to the Board. Ms. Poe questioned whether or not the individual can be a tech in training forever. Board members indicated that was not the intent. It was suggested if the individual fails to obtain the license in one year, they can submit another application for one year. Then if not licensed by the end of that year, they can not continue. Mr. Jones stated he feels one year is long enough to obtain the necessary training.

Discussion regarding Controlled Substance Handler license:

Ms. Poe stated she is looking at re-instating the controlled substance license that is not attached to a primary license for those individuals who are conducting research and need a controlled substance license to obtain a DEA registration. The issue is whether or not to license the individual or facility. The concern is if the license is issued to the individual for the purpose of research and that individual terminates from the position, the license is with the individual who walks out the door. If there is a facility conducting research and we issue the license to the facility, and the researcher leaves, the facility would still have the license. Dr. Lundberg stated in academic studies, the individual receives the grant, not the university. This issue will be discussed at a future Board meeting.

Environmental Scan:

Environmental scan: Ms. Poe indicated the e-prescribing subcommittee meeting will be scheduled for October 12, 2010 at 9:00 a.m. Subcommittee members include: Dave Young, Jan Bird, Dominic DeRose, Mark Munger, Linda Sandberg, Betty Yamashita and Roger Fitzpatrick.

Dr. Young reported he is on the Controlled Substance Advisory Committee which is reviewing Spice, Tramadol and other issues. He reported the first meeting was spent discussing Spice and indicated it is very difficult to define Spice because it comes in various forms. He indicated he will continue to report back to the Board.

Dr. Young reported that NABP has updated the MPJE standards and the new standards are slightly harder than the previous standards. He reported the new standards will be sent to the NABP Advisory Committee, they will accept or reject the standards, and then they will be sent to the NABP review body.

Dr. Young also reported on the NABP District meeting and topics discussed which included: ordering laboratory tests by a pharmacist, pharmacy technician regulation and eligibility, coupons, background checks, mail order prescriptions without patient provider relationship and tribal Internet pharmacy.

Mr. Jones reported on his research into the medication take-back collection in California. He indicated a reverse distributor goes to the participating pharmacies. The pharmacist and a reverse distributor unlock the collection bin together. The medications are ground up on site, and then taken away to be burned. He reported in one area the water district paid for the process, in another area, the pharmacist paid for the process.

Adjourned: 2:55 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.

October 26, 2010
Date Approved

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

October 26, 2010
Date Approved

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