

## MINUTES

### UTAH PHARMACY BOARD MEETING

December 14, 2010

Room 474 – 4<sup>th</sup> 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.  
Jan Bird, CPhT, pharmacy technician  
Andrea Kemper, PharmD D  
David C. Young, PharmD D  
Gregory Jones, R.Ph.

**Board Members Excused:** Kelly Lundberg, PhD public member

**Division Staff:** Jared Memmott, Investigator  
Brittany Butsch, Investigator

**Guests:** Linda Sandberg, Omnicare  
Betty Yamashita, IHC  
Jeff Beal, Amara Home Medical  
Travis Guyman, Associated Food Stores  
Dave Cheney, Associated Retail Stores  
Bill Stilling, Parsons Behle and Ladimer  
Kelly Hansen, HCA  
Reid Barker, UPhA

#### TOPICS FOR DISCUSSION

##### **ADMINISTRATIVE BUSINESS:**

October 26, 2010 Minutes:

#### DECISIONS AND RECOMMENDATIONS

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

Election of Chair:

Mr. Garn made a Motion to re-elect Dominic DeRose as chairman. Dr. Young seconded the Motion. All Board members were in favor of the Motion.

Connie Call,  
Compliance Report:

Ms. Call reported Heather Palmer has not submitted a physical evaluation and is out of compliance with the terms and conditions of her Order. All other probationers are in compliance with the terms and conditions of their Orders.

Williams Family Video,  
Wasland Williams,  
Probation Interview:

Mr. Williams stated he has made improvements in the way he keeps his records. He reported the most difficult part of his probation is to make sure his controlled substances are in order. He stated he feels he is able to comply 100% with the terms and conditions in the Order. Mr. Williams indicated he received information from nationalpartners.com, a mail order pharmacy that is looking for pharmacists to fill prescriptions for them. Mr. Williams questioned whether or not Board members have heard of this company. Board members indicated there are a number of these types of companies and indicated Mr. Williams should carefully consider this type of practice because it is difficult for a pharmacist to determine if the patient/physician relationship requirement has been met. **Mr. Williams will be seen February 22, 2011. He is in compliance with the terms and conditions of his Order.**

Ridley Family Market,  
Cathi Ketterling, District Manager  
Todd Wise, PIC  
Educational Interview:

Ms. Butsch reported the Division received several complaints regarding Ridley Family Market and a citation has been issued to the PIC and the District manager. Ms. Butsch stated she also felt that an educational interview was necessary.

Cathi Ketterling, District manager and Todd Wise, PIC explained the circumstance that brought them before the Board. Ms. Ketterling reported there were pharmacy errors such as using the wrong NDC numbers, not dispensing accurately and errors made by a previous pharmacist who labeled a generic medication as a brand. Mr. Wise stated that the same patient received two wrong medications, and a generic medication was issued to a child that needed to receive the brand medication.

Ms. Ketterling stated she has written a quality improvement manual which will be followed in all the pharmacies owned by this company. Mr. Wise stated he is taking more time and using more functions of the computer software in order to avoid further problems. Mr. Wise stated all the pharmacists are checking the markings on the pills and the computer program now has pictures of the medications. Ms. Ketterling stated they do not use scan verification, a technician has to scan the stock bottle and the prescription before ever getting to the picture. Dr. Kemper suggested they circle the four middle NDC numbers to double check. Mr. Garn reminded Ms. Ketterling and Mr. Wise that after any incident, the incident should be reviewed by the whole staff to find ways to prevent the errors from happening again. Ms. Ketterling stated there is new leadership at the pharmacy and they are implementing new procedures.

Dennis Beasley,  
New Order:

Mr. Beasley explained the circumstances that brought him before the Board. Mr. Beasley stated he had injured his back and self medicated for the pain. This led to diversion of medications from his employer. Mr. Beasley stated he has completed the chemical and psychological evaluations, but has not received a copy of the reports. He indicated he was referred to an outpatient treatment program and continues to see a therapist. Mr. Beasley stated he can not find a PIR meeting in the St. George area. Mr. Jones made a Motion to amend the Order to allow Mr. Beasley to attend either four PIR or 12-step meetings per month. Dr. Kemper seconded the Motion. All Board members in favor. Mr. Beasley stated he has found a webinar on law continuing education and will fax a copy of the information to Ms. Poe for review and approval. Mr. Beasley stated he is not currently taking any pain medications. Mr. Beasley stated he understands the terms and conditions of the Order. **Mr. Beasley will be scheduled to meet with the Board January 25, 2011. He is in compliance with the terms and conditions of his Order.**

Brent McFadden,  
New Order:

Mr. McFadden explained the circumstances that brought him before the Board. He indicated he diverted medications from his employer and also left

the pharmacy unattended. Mr. McFadden stated he is not currently employed as a pharmacist, but is in the process of helping his wife establish an independent pharmacy. Board members expressed concern regarding supervision if Mr. McFadden works in the pharmacy owned by his wife. Board members indicated Rule does not prohibit a pharmacist from being supervised by a spouse, but Board members expressed concern with this situation. Mr. McFadden submitted a practice plan which was reviewed by Dr. Young. The practice plan was accepted with the concern regarding supervision. Mrs. McFadden will be invited to meet with the Board to discuss supervision responsibilities. The McFadden's will be scheduled to meet with the Board January 25, 2011. **Mr. McFadden is in compliance with the terms and conditions of his Order.**

Diann Millikan,  
Request to terminate suspension:

Ms. Millikan met with the Board to discuss her request for termination of suspension. Ms. Millikan submitted additional information as requested from the October Board meeting. The evaluation indicated there is a low possibility of substance abuse, but indicated Ms. Millikan would benefit from continuing to see a therapist for substance abuse treatment. The evaluator also recommended Ms. Millikan receive cognitive behavioral therapy. Ms. Millikan stated she is seeing a licensed social worker and Ms. Poe stated that was acceptable. Ms. Millikan will need to find out if her current therapist can work with her regarding cognitive behavioral therapy. Ms. Millikan provided a positive letter from the hospice where she is volunteering and submitted documentation of attendance at 12-Step meetings. Ms. Millikan appears to be progressing and moving forward in her recovery. Dr. Young made a Motion to lift the suspension and place the license on probation with the terms and conditions listed in the Order. Ms. Bird seconded the Motion. All Board members in favor. Ms. Millikan's next meeting with the Board will be scheduled for March 2011. **Ms. Millikan is in compliance with the terms and conditions of the suspension.**

Kathryn Irons,  
Probation Interview:

Ms. Irons reported things are going well. She has excellent employer reports and Ms. Call reported Ms. Irons has never been out of compliance with the terms

and conditions of her Order. She is requesting early termination of probation and has completed one year of the five year probation. Ms. Iron's letter regarding what she has learned during the probation was very well presented. Board members agree she has done exceptionally well in the probation. Ms. Poe indicated Ms. Irons did not have a substance abuse problem and by the time the evaluations were received, her Order already contained the standard terms for substance abuse. Ms. Iron's action was a one-time event and if the evaluations had been received sooner, the probation would have been issued for a shorter period of time. Ms. Bird made a Motion to terminate probation. Dr. Kemper seconded the Motion. All Board members in favor. **Ms. Irons is in compliance with the terms and conditions of her Order.**

Trent Decker,  
Telephone Interview:

Mr. Decker's interview was conducted by telephone. Mr. Decker indicated he is working approximately 35-40 hours per week. He stated it has been stressful trying to find a testing center in Caliente NV. He indicated he has no problems with testing centers in Hurricane and LaVerkin. He stated everything else is going well. He stated he has been clean 4 years. Mr. Decker's next interview will be June 28, 2011. **Mr. Decker is in compliance with the terms and conditions of his Order.**

Richard Lowe,  
Probation Interview:

Mr. Lowe reported things are going well. He is current on all reports and Ms. Call stated he has always been in compliance. Mr. Lowe has completed three years of his probation and is requesting early termination of probation. Mr. Garn asked to be recused from the Discussion. Ms. Bird made a Motion that based on his completion of the thinking errors course and complete compliance with his Order, the probation be terminated. Dr. Kemper seconded the Motion. Mr. Garn abstained. All other Board members in favor. **Mr. Lowe is in compliance with the terms and conditions of his Order.**

David Barrow,  
Probation Interview:

Mr. Barrow reported things are going well. He stated he is working on-call at 4 Care Pharmacy and takes about ten phone calls per week-end. He indicated he stays at home taking care of his children. Mr. Barrow

stated this is teaching him patience and helping with decision making skills. He stated he is working on putting good decisions in sequence and making long term commitments. Dr. Young questioned if he has time to concentrate on his recovery. Mr. Barrow stated he is concentrating on his recovery. Mr. Barrow also indicated he is thinking of completing a non-traditional PharmD program. He questioned whether or not entering the program would count toward the probation. Ms. Poe stated if he is accepted into a program, it may count toward the probationary period. Mr. Barrow stated he will submit documentation if he decides to follow this route. He also indicated he is giving a presentation on medication errors at the recovery center and questioned if this would be considered the practice of pharmacy. He will need to provide the information to the Board for review.

Mr. Barrow stated he has not had any thoughts of relapse for the last six months. He stated he would like to be off all medications in three years. Mr. Barrow also questioned whether or not the period of time to pay off his fine could be extended. A Motion was made to amend the Order to allow him to extend the payment to two years. Dr. Kemper seconded the Motion. All Board members in favor. **Mr. Barrows is in compliance with the terms and conditions of his Order and will be seen again in March.**

S. Rich Wright,  
Probation Interview:

Mr. Wright reported things are going well. He reported his job is a great fit for him, it is not as high stress as past employment and the hours are shorter. He stated he still has some issues in recovery and some days it takes more commitment, but he has great family support. He stated he has been seeing a therapist for six years and questioned whether or not this requirement could be terminated. Board members indicated he would need to submit a letter from the therapist indicating therapy is no longer necessary. Mr. Wright will be seen June 28, 2011. **He is in compliance with the terms and conditions of his Order.**

Paul Martz,  
Probation Interview:

Mr. Martz reported things have been going well. He stated he had his Court Hearing and will be sentenced

in January. He stated he has been sober 151 days. He reported he has been looking for jobs and questioned if his Order could be amended so he can practice under general supervision instead of direct supervision. Mr. DeRose stated he feels it is too soon to amend the Order and he does not want to sabotage the recovery. Mr. Jones stated he agrees. Mr. DeRose stated he would like to have input from Dr. Lundberg before making a decision and suggested the request be tabled until next month. If Mr. Martz does find employment that meets the conditions of the Order, he must submit a practice plan for approval. Dr. Kemper made a Motion to table the request for general supervision and if in the meantime he finds employment, submit a practice plan for approval. Ms. Bird seconded the Motion. All Board members in favor. **Mr. Martz is in compliance with the terms and conditions of his Order.**

William Cordova,  
Probation Interview:

Mr. Cordova reported he is currently looking for employment. He submitted documentation of continuing education, but must complete two more courses. **Mr. Cordova is in compliance with the terms and conditions of his Order** and Board members made a recommendation to have him meet with the Board every six months instead of quarterly. His paperwork is still due quarterly. He will be seen in June and December and if he finds employment, he will need to meet with the Board.

James Bee,  
Probation Interview:

Mr. Bee did not appear for his scheduled interview. He will be rescheduled for next month. **Mr. Bee is out of compliance with the terms and conditions of his Order for not appearing for the scheduled interview.**

Heather Palmer,  
Probation Interview:

Ms. Palmer stated things are going well and she continues to look for employment. Ms. Palmer needs to submit a physical evaluation. She indicated she has an appointment scheduled in January. Ms. Palmer is currently in Drug Court and attends AA meetings once a week. She has completed 9 hours of Law continuing education. **Ms. Palmer is out of compliance because she has not submitted the physical.** She will be seen again February 22, 2011.

Report regarding the 2011 Legislative session: Ms. Poe reported the ingredients of SPICE may be listed as a controlled substance, but not scheduled because of the impact on research. The DEA has temporarily registered the ingredients, but they have not been scheduled so that research is not impacted.

Ms. Poe reported the Division of Occupational and Professional Licensing Act will be cleaned up to eliminate the old references to the Controlled Substance Data Bank. Changes will also include citation authority. She reported the Pharmacy Practice Act amendments will change Central Fill and Central Processing to Remote Entry Fill and Remote Entry Processing.

Ms. Poe stated criminal background checks for pharmacists, pharmacy technicians and pharmacy interns will remain the same. However, a proposal is being made to add background checks for individuals who own at least 20% of an independently owned pharmacy and also for a publicly traded pharmacy chain, the individual who is responsible for the application at the district level would need to be fingerprinted. Ms. Poe stated if the pharmacy opens other stores within the 6 months, the fingerprints would only have to be submitted once, but if it is a period longer than six months, the owner/or responsible individual would have to submit fingerprints again for another background check.

Mr. Garn questioned the purpose of obtaining a background check. Ms. Poe stated the owning of a pharmacy is not the practice of pharmacy, but if a pharmacist lost his/her license and wants to own an independent pharmacy, there would be concerns. Also, a pharmacist is not required to be the owner of a pharmacy. If something goes wrong the owner is held accountable and it would make sense to have the owner fingerprinted. Mr. Garn stated he does not see the point of having a district manager fingerprinted. However, if this is the direction the Division is taking, he would like to have "responsible person" clearly defined. A question would be what happens when the responsible person fingerprinted is no longer with the pharmacy and a new representative is hired.

Ms. Poe also indicated she would like to register the pharmacy-technician-in-training and require background checks. If the technician-in-training was registered or licensed with the Division, the Division would have authority to take further action if there were issues of misconduct. Board members stated they agree that the pharmacy-technician-in-training should be licensed and go through the background check. Ms. Poe stated this would require a statute change; however, 58-1 allows for registration and we could require them to be registered.

Remote Entry and Remote Fill Rules:

Ms. Poe indicated the revision for the Remote Entry and Remote Fill will be made next week and sent to Board members for review. Once the revisions are reviewed and updated, the Rule for Remote Entry will be filled.

Branch Pharmacy Discussion:

Ms. Poe stated Division investigators felt it would be helpful to visit Branch pharmacies to see what the issues are and see how Branch pharmacies are practicing. Ms. Poe stated she has visited several branch pharmacies in East Carbon, Nephi and Helper. She stated it has been interesting and it appears that the Branch pharmacy is not being utilized by those who have been issued a Branch pharmacy license. She indicated most of these pharmacies are issuing samples. Ms. Poe indicated the Rules could also look at support personnel. She indicated one of the Branch pharmacies had different people performing functions that prescribing practitioners should be doing. Ms. Poe also reported there was confusion over telepharmacy and electronic. Ms. Poe suggested Board members review laws and rules from different states to help us determine what type of standards should be established.

Tom Harper,  
Update on the Controlled Substance Database:

Mr. Harper reported that the first vendor for real time reporting has decided not to work with the Department. He indicated the Department is working with a second vendor.

Mr. Harper reported the Division would like to have pharmacists access the CSD. He reported he is looking at developing training for pharmacists and if Board members have any suggestions to be included

in the training, to contact him. Mr. Harper indicated that fewer than 7% of the pharmacists are currently utilizing the CSD. Board members indicated not all pharmacists would access the CSD and an example would be the inpatient pharmacists. Mr. Harper stated if the pharmacist would not use the CSD, he/she could opt-out. Mr. Jones stated there may be other pharmacists who would not use the CSD and questioned why have those pharmacists sign up for something they don't need to have access to.

Standards for a Class E Pharmacy:

Ms. Poe stated that standards for Class E pharmacy are non-existent. She stated that if a company is providing oxygen, they can handle sterile water, but if they have medications, a pharmacist would need to be involved. Ms. Poe indicated the Division has received an application for a Class E Durable Medical Equipment pharmacy. The applicant is CMS accredited and an approved DME provider for Medicare. This facility is located in a garage next to a private residence. Ms. Poe stated at a previous Board meeting, approval had been granted for an applicant to establish a pharmacy in a rural area in a building next to a personal home. Board members had indicated it would be acceptable as long as the city gave approval, the company was registered with corporations and had a business license, and if they passed the pharmacy inspection. Ms. Poe noted that there was discomfort on how the pharmacy would be run. In the past, the Board has been clear that the idea of running a pharmacy in a residential home was not acceptable because of accessibility, inspection criteria and whether or not the Division has inspection authority in a private home. Mr. Jeff Beal, the applicant for the current application was in the audience and he explained his situation. He stated the company is located in his garage. He stated CMS inspectors have been to the facility twice and the fire department has inspected the facility for safety issues. He stated he meets environmental criteria and has approval from the city of Farmington. He stated there will be no medications stored, only durable medical equipment. He stated as the business grows, they would move to another facility. Mr. Beal stated they do not fill the tanks, they are only stored. There is no patient access because their products are outbound

only. Mr. Beal reported they are in compliance with all state, local, and federal laws. Ms. Poe stated she would like to place this issue on the next agenda.

Adjourned: 3:30 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.*

January 25, 2011  
Date Approved

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

January 25, 2011  
Date Approved

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