

**MINUTES**

**UTAH  
PHYSICIANS LICENSING BOARD  
MEETING**

**April 14, 2010**

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

**CONVENED:** 9:05 A.M.

**ADJOURNED:** 11:58 A.M.

**Bureau Manager:**

Noel Taxin

**Board Secretary:**

Karen McCall

**Compliance Specialist:**

Debbie Harry

**Board Members Present:**

John W. Bennion, Ph.D., Chairperson

George C. Pingree, MD

Elizabeth F. Howell, MD

Lori G. Buhler

Daniel J. Parker, MD

David D. Byrd, MD

James H. Pingree, MD

James R. Fowler, MD

**Board Members Absent:**

Kristen Ries, MD

Marc E. Babitz, MD

Stephen E. Lamb, MD

**Guests:**

Officer Michael A. Watkins, SLPD

David Copeland

**DOPL Staff Present:**

Andy Free, Investigator

Kent Barnes, Senior Business Analyst

Ray Walker, Regulation and Compliance Officer

**TOPICS FOR DISCUSSION**

**DECISIONS AND RECOMMENDATIONS**

**ADMINISTRATIVE BUSINESS:**

**MINUTES:**

The minutes from the March 10, 2010 Board meeting were read.

Dr. James Pingree made a motion to approve the

minutes as read. Dr. George Pingree seconded the motion. **The Board vote was unanimous.**

#### Update on Hearings

Ms. Taxin stated Judge Eklund informed her that the dispositions of the hearings have been determined and he will e-mail or hand deliver copies of the documents on Thursday or Friday for Board members to review. She stated the Board will not discuss any hearing as this is not the place for discussion.

**Dr. Bennion asked Ms. Taxin to explain the process after the Board reviews the document.**

Ms. Taxin explained after the Board reviews and approves the document it goes to Mr. Steinagel, Division Director, to be reviewed and signed for final approval. She stated upon his signing the Order becomes effective. She stated the process will probably be completed on Thursday as per Judge Eklund.

**Dr. James Pingree asked if there is an appeal process higher than the Division.**

Ms. Taxin responded there is an appeal process and it could go through the District Court.

#### **APPOINTMENTS:**

**9:15 am**

Debbie Harry, Compliance Update

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

Ms. Harry reported **Dr. Julie Dobell** is currently in compliance with her Memorandum of Understanding. She stated Dr. Dobell is not yet working.

**Ms. Taxin stated she has tried to assist Dr. Dobell and put her in touch with someone at the University of Utah and Mountain West anesthesiology who gave her some names and suggestions for employment. She stated they appear interested in Dr. Dobell but had nothing at this time. Ms. Taxin stated Dr. Dobell had stated a lot of people voiced concerns that she has not worked for 5 years. She stated Dr. Dobell had**

**informed her of a residency program in New York and has decided to attend. She stated there is a letter regarding the program in Dr. Dobell's file and Dr. Dobell will discuss the specifics during her appointment.**

**Ms. Taxin stated she received a letter requesting a supervisor signature to ensure Dr. Dobell would abide by specific conditions in Massachusetts. Ms. Taxin stated Massachusetts is terminating Dr. Dobell from their diversion program since DOPL is currently supervising her and she has been successful in her program as per Susan Berg but she is still on probation for 5 years with no conditions with the Medical Board in Massachusetts. She stated the Massachusetts Board representative told her after 5 years Dr. Dobell is to meet with the Massachusetts Board who will review her drug testing, work experience and performance. She stated the Utah Board may terminate Dr. Dobell when they believe it is appropriate without waiting for Massachusetts to terminate their probation. Ms. Taxin stated the Division received a letter from Dr. Dobell's therapist, Dr. Janiece Pompa, Psychologist, who believes Dr. Dobell should no longer be required to have random UA's as she has had negative tests for 5 years. She stated Dr. Pompa will meet during Dr. Dobell's appointment. Ms. Taxin stated she believes Dr. Dobell should be monitored for a period of time while employed before the Board recommends termination of her probation. She stated Massachusetts diversion agreement is requiring her to drug test and be in therapy until May 18, 2010. Ms. Taxin stated Dr. Dobell needs to be working for her probation in Utah to count.**

Ms. Harry stated Dr. Dobell's disciplinary time with Massachusetts will be a total of 10 years by the time she finishes.

**Ms. Taxin clarified Dr. Dobell is scheduled be on probation with Utah for 5 years. She stated if Massachusetts does not accept what she has done for the next 5 years they will extend her probation but Utah needs to monitor for Utah.**

**Dr. James Pingree asked what diversion means.**

**Ms. Taxin explained diversion is for licensees who have unprofessional behavior or illness, usually substance abuse, and the action is private, not public and monitored by a State appointed Board.**

**Dr. Howell stated there are some violations which will prohibit a practitioner from being in the diversion program. She stated she treats some in her private practice but the program is completely private.**

**Ms. Buhler stated practitioners usually turn themselves in.**

Ms. Harry states there are times when an investigator will call and recommend a practitioner be in diversion and some will move out of the program and go on probation if they do not complete the requirements of the program or if they offend again.

Ms. Harry reported **Dr. David J. Morris** is currently in compliance with his Stipulation and Order. She requested the Board to clarify if Dr. Morris worked two days last month or if he worked two days a week during the month. She stated he has submitted a practice plan for the Board to review.

**Ms. Taxin stated the report that was received documented they have not seen Dr. Morris very much so clarification needs to be asked for.**

Ms. Harry reported **Dr. Alan F. Heap** is currently out of compliance with his Stipulation and Order. She stated Dr. Heap has not tested with CVI as required since March 16, 2010 and the last two tests were positive. Ms. Harry reminded the Board Dr. Heap is required to test twice a week. She stated Dr. Spector has not submitted the required supervisor report for this quarter and the last therapist report was received on December 14, 2009. She stated she made copies of letters received since Dr. Heap's hearing for Board

members to review.

**Dr. Bennion asked if Dr. Heap is expected for his appointment.**

**Ms. Taxin responded Dr. Heap was scheduled to meet. She stated the Division has received several letters and phone calls from his patients regarding this meeting. Ms. Taxin stated the appointment is for Dr. Heap's regular probationary interview and is not a hearing or the place for patients to testify.**

Ms. Harry and stated Dr. Heap will probably not appear today based on the content of a letter received this morning. She read the letter.

**Ms. Taxin stated Dr. Heap sends a letter everyday and one indicated he has made a decision to close his practice on May 14, 2012 but believes he meant to write 2010. She stated she hopes he does meet today so the Board can voice some concerns about his compliance and encourage him to understand the continual violation of boundaries with patients. Ms. Taxin stated Dr. Heap testified he was not prescribing some controlled substances and that they were forgeries and Andy Free, Investigator, was requested to check the prescriptions for accuracy. She turned the time over to Mr. Free to report his findings.**

**Mr. Free stated he ran the CS database prescription report and conducted a random check with different Pharmacies. He stated he discovered the prescriptions that were written were written in Dr. Heap's handwriting and there were some called in by Dr. Heap as the Pharmacists recognized his voice and he identified himself as Dr. Heap. He stated the calling in of prescriptions is a violation of Dr. Heap's Order. Mr. Free stated one prescription for Phentermine had a note on it that the prescription was for depression. He stated his investigation was a sampling of the prescribed list but due to finding Dr. Heap's signature on the grouping that was sampled there is no reason to believe any of the prescriptions were forgeries as Dr. Heap had claimed in the hearing. He stated he**

**also found Dr. Heap has been writing up to three different types of prescriptions on one prescription page which is not appropriate.**

**Board members stated they had never heard of Phentermine being used for depression.**

**Ms. Taxin stated one prescription triplicate indicated it was for a hand fracture. She stated Dr. Heap is a psychiatrist but with a Physician and Surgeon license he could treat a hand fracture.**

**Dr. Fowler asked if Dr. Spector should be notified of the prescriptions being written by Dr. Heap as he is an advocate for Dr. Heap and represented him during the hearing. He stated Dr. Spector should know Dr. Heap was stringing him along so Dr. Spector can be aware in case he ever volunteers to supervise anyone else in the future.**

**Dr. Howell suggested Mr. Free contact Dr. Spector as he was the one who asked at the hearing if Mr. Free had verified the prescriptions were written by Dr. Heap.**

**Ms. Taxin requested Mr. Free to let Dr. Spector know about the prescriptions and to notify him that his report has not been received. She also asked him to ask Dr. Spector if he has any feedback for the Board.**

Ms. Harry stated she sent a letter to Dr. Heap regarding the long list of prescriptions he has written and asked him to discuss his prescribing with Dr. Spector.

**Ms. Taxin stated a letter was also sent regarding Dr. Heap prescribing Suboxone without DEA approval.**

**Dr. Byrd asked why Dr. Heap prescribes so many stimulants.**

**Dr. Howell responded the stimulants are used for adults with ADHD.**

**Dr. Bennion asked if Pharmacies can be told not to fill certain prescriptions.**

**Ms. Taxin responded the Pharmacies should see Dr. Heap does not have the DEA approval to prescribe Suboxone.**

**Dr. Howell explained Suboxone can be written for pain but if it is for substance abuse the prescriber needs an extra waiver from the DEA. She stated they may write a prescription for one person without the DEA waiver but not more than one. She stated the prescriber must have permission from the center for substance abuse.**

Ms. Harry stated Dr. Heap also submitted a copy of a letter he has sent to all his patients which is dated April 8, 2010. She read the letter to the Board.

Ms. Harry reported **Dr. Aaron Jones** is currently in compliance with his Memorandum of Understanding. She stated Dr. Jones is meeting today as he submitted a letter requesting early termination of his probation.

**9:30 am**

Dr. Julie Dobell, Probationary Interview, and Dr. Janiece Pompa, Therapist

Dr. Dobell, probationer, and Dr. Pompa met for the probationary interview.

Board members and Division staff were introduced.

Dr. Bennion conducted interview.

Dr. Dobell stated she is still trying to find employment. She stated potential employers ask what she has done lately as they want to know she is safe to practice. She stated she has decided to attend a 6 week course for anesthesiologists at Mt. Sinai Hospital in New York which gives a qualification certification upon completion. Dr. Dobell stated she has been accepted; she will leave the end of April and complete the course the end of June. She stated it is a simulator course so she will not be working on actual patients. Dr. Dobell stated she is hoping it will show she is ok to practice so she can find employment. She stated she will also be allowed to attend all guest lectures at

the Hospital. Dr. Dobell stated Massachusetts has already arranged for her to continue her drug and alcohol testing in New York while she is there. She stated she has looked into doing Locum Tenens but it has not appeared promising.

**Dr. Bennion asked Dr. Pompa for her comments regarding their counseling sessions.**

**Dr. Howell made a motion to close the meeting for Dr. Pompa's comments.**

**Dr. Parker seconded the motion.**

**The Board vote was unanimous.**

**Following the discussion, Dr. Howell made a motion to reopen the meeting.**

**Dr. Parker seconded the motion.**

**The Board vote was unanimous.**

**Dr. Pompa summarized that she believes Dr. Dobell has progressed in therapy as far as she can without working. She stated Dr. Dobell has kept all her appointments and been compliant with therapy suggestions. Dr. Pompa recommended Dr. Dobell's drug testing be terminated as she has been clean and sober without any positive tests for 5 years. Dr. Pompa stated Dr. Dobell's employability is now the issue.**

**The Board discussed some MOU requirements.**

**Ms. Taxin responded Massachusetts requires Dr. Dobell to be in therapy and doing the drug and alcohol testing at least until May 18, 2010. She stated Dr. Dobell may want to contact Massachusetts regarding terminating her probation there and then the Utah Board can discuss her Utah status. She asked Dr. Dobell to contact her if any changes are made by Massachusetts. Ms. Taxin stated Dr. Dobell's Order requires her to meet with her therapist, Dr. Pompa, at least twice a month.**

**The Board voiced support for Dr. Dobell to attend the course in New York and stated they would work at adjusting some of her MOU requirements when she returns from New York.**

**The Board determined Dr. Dobell is in compliance with her MOU as far as she can be without working.**

**An appointment was made for Dr. Dobell to meet again June 9, 2010.**

**10:00 am**

Dr. David J. Morris, Probationary Interview

Dr. Morris met for his probationary interview.

Dr. Byrd conducted the interview.

**Dr. Byrd asked Dr. Morris how long he has worked with Life Tree.**

Dr. Morris responded he works one or two days a week at Life Tree as he is still waiting to get on some additional insurance panels. He stated there are a lot of patients being seen in the clinic by Nurse Practitioners. Dr. Morris stated Dr. Webster thought with his background he could serve a role by reviewing patient charts and review charts with patients as they come in, re-examine the patients, review their medications, etc.

**Dr. Byrd stated a letter was received from Dr. Webster but he mentioned he has not seen Dr. Morris often.**

Dr. Morris stated Dr. Webster does not see him often due to the schedule. He stated he would like to get involved in some volunteer programs at some point. Dr. Morris disclosed taking a Lortab which was his wife's prescription when they were out of range of their home for him to take his own for pain.

**Ms. Taxin stated Dr. Morris is currently taking a number of medications and should not take a prescription for his wife.**

**Dr. Byrd stated Dr. Morris should always get his medications from one source. He stated it is not significant but does put up a red flag for the Board.**

**Ms. Taxin asked Dr. Morris to request Dr. Webster to address his performance in the next report.**

**Dr. Howell informed Dr. Morris that the Board reviewed his revised practice plan. She then made a motion to approve the practice plan as written.**

**Dr. Parker seconded the motion.**

**The Board vote was unanimous.**

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

**An appointment was made for Dr. Morris to meet July 14, 2010.**

**10:20 am**

Dr. Alan F. Heap, Probationary Interview

Dr. Heap did not appear for his probationary interview. No discussion took place.

**Ms. Taxin stated Debbie Harry from the compliance unit will send Dr. Heap a letter notifying him he is out of compliance with his Stipulation and Order for the following reasons:**

- 1. For not meeting with the Board today,**
- 2. For not drug and alcohol testing,**
- 3. For failure to submit the supervisor and therapy reports,**
- 4. For continuing to prescribe in large quantities, and**
- 5. For prescribing specific CS's without DEA approval.**

**11:00 am**

Dr. Aaron Jones, Discussion of Probationary Issues

Dr. Jones met for the discussion of his probation and his request for early termination of probation.

Dr. Fowler conducted the interview.

Dr. Jones submitted letters supporting early

termination of probation from his supervisor and employer and his chaperone log for the Board to review. He stated his probation is short of being half the determined time and he believes he is not a risk to the public. He stated he believes he has contributed to the medical profession in the Logan area. Dr. Jones voiced understanding of his violation and addressed how he will abide by the Laws and Rules of the profession for the rest of his career. Dr. Jones stated he has discussed previously with the Board the issue of obtaining his Board Certification, however, since California will not terminate their probation he will be unable to obtain Board Certification at this time.

**Following discussion, Dr. James Pingree made a motion to terminate probation early based on Dr. Jones being consistently in compliance with his Memorandum of Understanding.**

**Dr. George Pingree seconded the motion.**

**The Board vote was unanimous.**

**Ms. Taxin explained the termination of probation process to Dr. Jones.**

## **DISCUSSION ITEMS:**

### **Dr. Howell Comments**

Dr. Howell stated the California Board is under fire for not being strict enough. She stated the diversion program in California and a few other states have been eliminated and those who would have gone into a diversion program will now be going into probation programs. Dr. Howell stated there is a push to eliminate diversion programs around the U.S.

### **Discussion of SB88, Allowing Physicians and Osteopathic Physicians to Dispense Certain Cosmetic Drugs and Injectable Weight Loss Drugs**

Ms. Taxin explained Mr. Steinagel was going to speak to the Board regarding this Bill but is away from the office today.

She stated SB88 amended the Pharmacy Practice Act to allow Physicians and Osteopathic Physicians to dispense specific cosmetic drugs and injectable weight loss drugs out of their offices. She stated the discussion at the Legislature was specifically for Latisse and HCG and those will be included for

dispensing out of the office. Ms. Taxin suggested the Board consider including some additional classification drugs as after the Rules are written individuals will need to apply to the respective Board for any additional drugs to be approved and included. The Boards will then review and approve or deny the requests. She stated if a Physician or Osteopathic Physician compound drugs they will be required to abide by the Laws on compounding. Ms. Taxin inquired if the Board believes the following should be included in the new Rule:

- Hydroquinone (a skin lightener)
- Retinoids
- Benzoperoxide
- Lactic, Glycolic and Salicylic acid products.

**Dr. Byrd asked who will make sure Physicians and Osteopathic Physicians are following the Law.**

Ms. Taxin responded the Division will conduct random audits.

Mr. Walker commented if a Physician or Osteopathic Physician is dispensing out of their office they are subject to inspections just like a Pharmacy is.

**Following discussion, Dr. James Pingree and Dr. George Pingree, Ms. Buhler, Dr. Byrd and Dr. Bennion Board recommended only Latisse and HCG be approved at this time and if someone wants any additional drugs on the list they will need to submit an application for the Board to review.**

**Dr. Fowler recommended the list be expanded to include the changes Ms. Taxin listed.**

Recommendation for Board Member Opening  
on New Controlled Substances Advisory  
Committee

Discussion of this item was deferred to a later date.

Visiting Professors

Ms. Taxin explained that the University of Utah proposed a Bill at the last Legislative session that provided for visiting professors with foreign education which are trained in specific specialties to be licensed in Utah without having met the requirements of the

examinations and/or a residency program but having endorsement from the Dean. She stated the Division had some concerns with the Bill. She stated the Bill was pulled and since that time the U of U has contacted her and asked if Utah would accept the same language for visiting professors as Colorado has currently. Ms. Taxin stated she contacted FSMB and asked how many States have a provision for visiting professors and found there are some states that have a provision for visiting professors but will not allow them to do surgery or prescribe. She asked the Board to review the information for discussion at a later date.

**Dr. Howell commented the U of U probably has one or two people they want to come to Utah.**

Ms. Taxin responded she believes the U of U is looking at some professors who are distinguished and experts in their specific areas. She stated there are some specific professors at the U of U who are pushing for this to be accepted.

**Dr. Parker asked if the U of U wants the approval of the licensing Board.**

Ms. Taxin responded yes. She stated she believes it would be advantageous if the Board has some language that would be appropriate but if the Board is of the opinion they do not want to include visiting professors in the Law then she will give the message to the U of U and the UMA. She stated she and the UMA were not initially notified about the Bill prior to it being presented at the Legislature. Ms. Taxin suggested the U of U consider having these visiting professors do a working residency where they would come as a professor and the Division issues a residency license for them to complete the required US residency and to complete the required examinations. She stated the U of U was not in favor of the recommendation.

**The Board voiced concern with the concept.**

**Ms. Taxin stated the Board should review the information with an open mind and dialogue with the U of U and the UMA and if something can be**

**worked out move forward or if not then discuss why it would not work.**

FSMB Resolutions

Ms. Taxin informed the Board that she, Dr. Bennion from the Physicians Board and Dr. Ramsey from the Osteopathic Physicians Board will be attending the FSMB conference next week. Ms. Taxin asked if Board members have read the information sent to them from FSMB.

**Board members responded they had not read the information from FSMB.**

Ms. Taxin stated there are some items they have to vote on and Dr. Bennion will be the voting member for the Physicians Board. Ms. Taxin stated the resolutions are important to review. She stated one resolution was proposed by the Oklahoma Medical Board which would appoint a special committee to look at specialty Boards to establish what Board certification means, the criteria for that certification, standards and uniform requirements and then report back to FSMB. She stated the Board may review the information by going to their e-mail, opening the FSMB information and clicking on the link.

**Dr. Howell commented this process is how Boards came about. She stated not every independent Board has the same criteria.**

**The Board determined this issue was worth a study.**

Ms. Taxin stated another area for a vote is the publication Essentials to be updated.

**There was no Board comment.**

Ms. Taxin stated another subject to be reviewed is to make sure Physician Assistants (PA) keep up with the standard. She stated FSMB is proposing the Board issue a license to a physician assistant applicant who fulfills all Board requirements for licensure. However, a licensed physician assistant is prohibited from practicing until they have a delegation agreement with a supervising physician(s). She stated at this time

Utah requires the PA to mark a box on the application that they are not currently working in Utah and we will issue a license to the PA. She stated another area is the renewal requirement and Utah requires PA's to renew every two years. Ms. Taxin stated she does not see any conflict with Utah Law.

**The Board recommended they vote in favor of this.**

Ms. Taxin stated candidate voting is another area. She asked if the Board trusts Dr. Bennion and herself to vote for appropriate candidates for a chair-elect, Board of Directors and the Nominating Committee.

**Board members recommended they vote as they see fit.**

Ms. Taxin stated maintaining competence without having to close the practice is another issue. She stated FSMB is proposing maintenance of licensure (MOL) and then read the following: the intent being quality improvement and continuous professional development for licensed physicians. It is not designed to identify and remove "bad" doctors from practice. MOL should encourage "lifelong learning and be a verifiable system of individual practice improvement efforts." She stated the support for research to maintain competence was a project from last year and the committee wants to continue their work for another year.

**The Board recommended they vote in favor of continuing the project for another year.**

Ms. Taxin stated updating for renewal, maintenance and the impact of maintenance of licensure is another issue.

**The Board recommended they vote in favor of this.**

Ms. Taxin stated the last one she printed out is an update of the Federation strategic plan and their mission.

**The Board recommended they vote in favor of this as it allows FSMB to do their work as necessary.**

Dr. George Pingree Question

Dr. George Pingree asked if attending Board meetings can be counted toward the CME requirements.

**Ms. Taxin responded right now he would need the UMA to agree for attendance at Board meetings to count for CME. She recommended Dr. George Pingree contact the UMA.**

Disposal Program for Prescription Drugs

Ms. Taxin distributed a flyer to each Board member regarding drop off locations throughout Utah for old drugs. She stated the drop off areas are secure bins located at Police Departments throughout the State.

Dr. Howell Information

Dr. Howell reminded the Board of the Drug and Alcohol Addiction school in June. She explained the program and recommended Board members notify Ms. Taxin if they are interested in attending and she will get the information sent out to them.

**Ms. Taxin stated Board members can request information by e-mailing Ms. Langston at [Susan.Langston@hsc.utah.edu](mailto:Susan.Langston@hsc.utah.edu) .**

May Board Meeting Information

Ms. Taxin stated there will probably be two probationers in May and possibly a hearing for a licensee who applied for renewal and was denied. She stated she will try to give the Board a break during the summer if possible.

Dr. Fowler Question

Dr. Fowler asked if any Board members besides him received the Yale University survey.

**Board members responded they did receive the survey. Some stated they completed the survey and returned it to Yale University and others stated they had not completed the survey.**

**NEXT MEETING SCHEDULED FOR:**

May 5, 2010

**ADJOURN:**

The time is 11:58 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.*

June 9, 2010  
Date Approved

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

April 28, 2010  
Date Approved

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