

**MINUTES**  
**UTAH**  
**PHYSICIANS LICENSING BOARD**

**BOARD MEETING**

**June 9, 2010**

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

**CONVENED:** 9:10 A.M.

**ADJOURNED:** 3:00 P.M.

**Bureau Manager:**

Noel Taxin

**Board Secretary:**

Karen McCall

**Compliance Specialist:**

Debbie Harry

**Board Members Present:**

John Bennion, Ph.D., Chairperson

James R. Fowler, MD

Lori Buhler

Marc E. Babitz, MD

James H. Pingree, MD

Elizabeth F. Howell, MD

Kristen Ries, MD

**Board Members Absent:**

Stephen Lamb, MD

Daniel J. Parker, MD

George Pingree, MD

David D. Byrd, MD

**Guests:**

Francine Giani, Department Director

Judi Jensen, Assistant AG

Blaine Furguson, Assistant AG

Richard Sperry

Charmiane Ueu, Medical Student

Leanne Pope

Doug Springmeyer

Jessica Sudweeks

Brendan Bybee

John Hoidal

Lorris Betz

Kim Wirthlin

Liz Wutou

John Morris

Michelle McOmber  
Mark Brinton  
Casey Hill  
Liz McKern  
John Swallow, Deputy Attorney General, did not sign  
Guest Roster  
Approximately 10 people did not sign the Guest  
Roster, although announcements were made 4 times as  
a reminder.

**DOPL Staff Present:**

Mark B. Steinagel, Division Director

**TOPICS FOR DISCUSSION**

**DECISIONS AND RECOMMENDATIONS**

**ADMINISTRATIVE BUSINESS:**

**MINUTES:**

The minutes from the April 14, 2010 Board meeting  
were read.

Dr. Ries made a motion to approve the minutes as  
read. Ms. Buhler seconded the motion. **The Board  
vote was unanimous.**

**APPOINTMENTS:**

**9:15 am**

Debbie Harry, Compliance Update

Ms. Harry updated the Board regarding the  
compliance or non-compliance of probationers. Ms.  
Harry reported all the probationers were in compliance  
today.

Ms. Harry reported **Dr. Nathan R. Currier** is  
currently in compliance with his Stipulation and  
Order. She voiced concern regarding Dr. Currier's  
chaperone log. Ms. Harry stated the Board amended  
the Order to allow him to treat younger patients. She  
stated Dr. Currier has not submitted a log but if he has  
structured his practice for females 35 and older he  
would not need a chaperone log. She stated Dr.  
Currier's prescriptions appear to be appropriate.

**Dr. Babitz asked if a new practice plan should be  
submitted.**

**Ms. Taxin responded if Dr. Currier has  
employment other than Comprehensive**

**Psychological Services then he will need to submit a new practice plan. Ms. Taxin stated she received a phone call from Mrs. Currier regarding the timeframe for a former male patient to be friends with Dr. Currier. She stated Mrs. Currier was directed to have Dr. Currier review the APA and AMA Code of Ethics regarding socializing with patients and/or former patients.**

**Dr. Howell reminded the Board that Dr. Currier worked in rural Utah which is more difficult for practitioners.**

**Dr. Babitz asked if he and the Board could address the phone call with Dr. Currier. He stated he is inclined to request Dr. Currier to write a report on the issue.**

**Ms. Taxin responded it would be appropriate to bring up the phone call. She stated the Division has not received other complaints or issues that she is aware of. She stated part of the reason Dr. Currier is on probation is due to a Boundary violation and it does not really matter if the patient is male or female, Dr. Currier needs to understand overall boundaries and the potential conflicts when involving himself personally with patients.**

Ms. Harry reported **Dr. David M. Pope** is currently in compliance with his Stipulation and Order. She stated he is always prompt in getting his information turned in.

**Dr. Howell stated there is note in the file regarding stating Dr. Pope does not refer pain patients out.**

**Ms. Taxin stated there are some odd quantity numbers on the prescriptions and some were written in an emergency room with others having been written out of his office.**

**Dr. Howell noted some prescriptions were written in the emergency room.**

**Ms. Buhler asked if Dr. Pope will be completing his**

**probation soon as the case file has June 16, 2010 as the completion date.**

**Following discussion the Board recommended speaking with Dr. Pope and then determine his termination date.**

Ms. Harry reported **Dr. Kittya N. Paigne** is currently in compliance with his Memorandum of Understanding. She stated Dr. Paigne is working in California as he was unable to obtain employment in Utah. Ms. Harry reminded the Board that Dr. Paigne was requested to ask his supervisor to be more specific and detailed in the report regarding Dr. Paigne's interaction with staff and patients. She asked if Dr. Paigne needs to submit a new practice plan for his California location.

**Ms. Taxin responded she had given Dr. Paigne some ideas regarding employment but they did not work out. She stated she believes he should submit a new practice plan as the time in California is being counted for the Utah probation. She explained Dr. Paigne had not worked for some time and was able to go back into employment in California.**

**Dr. Babitz asked if the probation time needs to be extended from the date he started working due to the period of time Dr. Paigne was not working.**

**Ms. Taxin requested the Board to be clear with Dr. Paigne that his probation is for three years from the date he commenced working in California. She stated Dr. Paigne is also on probation with California and the Board may want to request California reports be sent to Utah to verify he is in compliance there. She stated if and when California terminates his probation Utah could also consider termination.**

**Ms. Taxin and Ms. Harry reviewed the file and determined Dr. Paigne should be given credit from November 2008 to March 2009, approximately five months, then from January 2010 to present,**

**approximately six months, a total of 11 months toward his three year probation for Utah.**

**Ms. Buhler clarified Dr. Paigne's probation will be two more years from July 2010.**

**Dr. Fowler read the California supervisor reports.**

**Ms. Taxin requested the Board to ask Dr. Paigne to request the California reports to be expanded with more information about his performance.**

Ms. Harry reported **Dr. Stephan J. Kitson** is currently in compliance with his Stipulation and Order. She stated a letter was received from the Medical Director recommending Dr. Kitson's license be reinstated. Ms. Harry stated his probation is scheduled to terminate the end of 2012.

Ms. Harry reported **Dr. David J. Morris** is currently in compliance with his Stipulation and Order.

Ms. Harry reported **Dr. Edmund Chein** is currently in compliance with his Memorandum of Understanding. She stated a letter was received thanking California for releasing him from their probation and then a letter indicating his probation will not end until 2012.

**9:30 am**

Dr. Nathan R. Currier, Probationary Interview

Dr. Currier met for his probationary interview.

Dr. Babitz conducted the interview.

**Dr. Babitz asked Dr. Currier to update the Board regarding his employment and asked if he is still working 20 hours a week.**

Dr. Currier responded he is currently working about 25 hours a week. He stated the position doing MRI monitoring ended about April.

**Dr. Babitz asked if the amendment to Dr. Currier's Order in regard to the chaperone requirements has made any difference in his practice.**

Dr. Currier responded he has seen an increase in his patient load since the Order was amended. He stated it is not time or cost effective to schedule a patient and then have to schedule a chaperone so he treats females who are 35 and older.

**Dr. Babitz asked if Dr. Currier was aware of his wife calling to inquire about a male patient being a friend and if it is appropriate.**

Dr. Currier responded he was aware of the phone call. He then explained he was approached by a former patient who wanted a tennis partner. Dr. Currier stated he had told the man he would need to talk with the Board first.

**Dr. Babitz referred Dr. Currier to the APA and AMA Code of Ethics. He stated the APA Code has more strict standards. Dr. Babitz assigned Dr. Currier to do some research and send an e-mail to Ms. Harry regarding the answer to the question.**

**Dr. Howell responded the general rule for Psychiatrists is no socializing with current or former patients as the practitioner is seen as the therapist.**

**Ms. Taxin stated if Dr. Currier finds no specific time frame then he will have to decide how to handle the situation and if Dr. Currier decides to be a friend he might consider having the former patient sign a release acknowledging he understands the relationship. Ms. Taxin stated once a doctor, always a doctor in the mind of a patient.**

**Dr. Babitz stated the Board discussed how it is complicated in a rural area. He stated there is usually no problem in a more populated area.**

Dr. Currier thanked the Board for their input and stated he will do the research. He then stated his supervisor, Dr. Mark Davis, asked if they could meet every 2 weeks instead of weekly as there are not that many patient charts to review. He stated they have

talked about boundaries and Dr. Davis has given him a lot of training on boundaries. He stated they are now repeating the review of charts.

**Dr. Babitz made a motion to amend Dr. Currier's Order to reflect meeting every 2 weeks with his supervisor, Dr. Davis.**

**Dr. Howell seconded the motion.**

**The Board vote was unanimous.**

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

**An appointment was made for Dr. Currier to meet again on September 8, 2010.**

**9:45 am**

Dr. David M. Pope, Probationary Interview

Dr. Pope and Mrs. Pope met for his probationary interview.

Dr. Howell conducted interview.

**Dr. Howell informed Dr. Pope of the Board noticing his probation is scheduled to end soon. She stated the Board would like to discuss their concerns regarding his writing prescriptions. She asked Dr. Pope why some prescriptions are written on a prescription pad paper, some on computer paper and some written in the emergency room (ER).**

Dr. Pope responded the Board had approved of his writing his prescriptions in this manner. He explained the schedule II prescriptions are on the pink pads and the schedule III - V are the computer copies. Dr. Pope stated the schedule II prescriptions do not have to be hand written but he does not have a program that prints on tamper proof paper.

**Ms. Taxin stated Dr. Pope has written several prescriptions to several patients names that appear regularly. She asked Dr. Pope to explain.**

Dr. Pope responded he follows those specific patients

regularly. He stated a few of them also obtain prescriptions from pain specialists.

**Ms. Taxin asked if Dr. Pope's patient with back pain had his surgery and if so, did the surgery help him.**

Dr. Pope responded the patient did have his surgery and Dr. Pope has not heard from him for several months. He stated at least 80% of his pain patients have seen a pain specialist.

**Dr. Howell asked how Dr. Pope documents the charts of those who also see pain specialists.**

Dr. Pope responded he receives documentation on the patient from the pain specialist and he includes that documentation in the patient chart.

**Dr. Howell brought to Dr. Pope's attention the multiple prescriptions with odd numbers of pills prescribed and asked him to explain. She also reminded Dr. Pope of the high risk of combining different types of medications. She voiced surprise to know pain specialists are still recommending and prescribing certain CS combinations of medications.**

Dr. Pope responded he tries to avoid combination prescriptions. He stated pain patients also deal with psychological and emotional issues and he may have written odd numbers to carry those patients over.

**Ms. Taxin reminded Dr. Pope to be sure to document well in the charts regarding having addressed any issues in case questions arise.**

**Dr. Howell inquired about one more patient who appears to always need medications from emergency.**

Dr. Pope responded the patient is in a care center and he does not know what the problem is as the patient has a standing order for his medications. He stated he has talked with the nursing staff and the Pharmacy but it is still a problem. He stated the medications have

also been changed and he believes the patient could go to less medications.

**Ms. Taxin suggested Dr. Pope write a note in the patient chart regarding the problem.**

**Dr. Howell suggested Dr. Pope check into the problem further as someone could be using his DEA number and diverting drugs at the care center. She stated she noticed one prescription with another written two days later for the same patient.**

**Dr. Babitz suggested Dr. Pope talk with the care center again and if the problem is not resolved he contact the Health Department to go out and investigate. He stated the Health Department will give them a deadline to get into compliance or they will lose their Medicare and Medicaid funding.**

**Ms. Taxin reminded Dr. Pope it is his license and the Board/Division do not want another complaint to come in on him.**

Dr. Pope thanked the Board and Ms. Taxin for their comments. He stated the probation experience has not been fun but has been educational for him and has helped him to interact better with his patients.

**Dr. Howell stated Dr. Pope needs to set clear limits with the care center and his patients.**

**Ms. Taxin asked if the Board wanted to make a motion to terminate probation today or let the probation terminate naturally. She informed Dr. Pope of the Boards discussion regarding possibly pulling his prescription list randomly. She stated Dr. Pope has access to the database and she recommended he use the database.**

**Dr. James Pingree made a motion to terminate probation a few days early based on Dr. Pope's having completed all the requirements of his Stipulation and Order and his compliance.**

**Dr. Howell seconded the motion.**

**The Board vote was unanimous.**

**Ms. Taxin explained the process for terminating the probationary status.**

**10:00 am**

Dr. Kittya N. Paigne, Telephonic Probationary Interview

Dr. Paigne met for his telephonic probationary interview.

Dr. Fowler conducted the interview.

Dr. Paigne stated he has been working in Southern California with Dr. Adams since February 2010. He stated Jordan Valley turned down his application as he was not Board Certified and the American Board of Internal Medicine will not consider recertification until he has completed his probation.

**Dr. Fowler asked if Dr. Paigne would ask Dr. Adams to report more about how Dr. Paigne is doing, the number of patients he sees, the type of patients he sees and the number of hours a week he works. He stated Dr. Paigne should also submit a new practice plan for the Board to review. He recommended Dr. Paigne prepare the practice plan and review it first with Dr. Adams for his comments.**

**Dr. Howell explained Dr. Paigne's Order requires the Board to approve the practice plan. She requested he include what he is doing, who is supervising him, etc. Dr. Howell stated there is an outline for a practice plan on the DOPL website or Dr. Paigne may contact Ms. Harry.**

**Dr. Fowler stated Utah also needs a report from California to verify he is in compliance with their Board.**

**Ms. Harry requested Dr. Paigne fax a copy of his practice plan to her after it is written.**

Dr. Paigne responded he will review the website and, if necessary, contact Ms. Harry before he faxes a new practice plan to her.

**Dr. Fowler then clarified Dr. Paigne's probation. He stated the probation was for a period of three years and the Board has determined Dr. Paigne has completed about 11 months as he was not working for a period of time after his license was issued. He stated the Board calculated if he continues to work, that his probation will be completed July 2012. Dr. Fowler stated if California terminates Dr. Paigne's probation he should submit the documentation to Utah as soon as possible as Utah could then consider termination of probation.**

**Dr. Babitz asked if Dr. Paigne has had any new communication with California regarding his probationary status.**

Dr. Paigne responded he meets with the California Board quarterly. He stated California will consider termination of probation in about 2 years if everything is in order. Dr. Paigne stated he will request California to submit a report to Utah. Dr. Paigne stated Dr. Adams is considering having him join the practice at some point in the future. He stated Dr. Adams would remain as his supervisor but he would be running the clinics with Dr. Adams. He asked if there would be any concerns.

**Ms. Taxin responded when Dr. Paigne and Dr. Adams get to the point of including Dr. Paigne as a partner then he and the Board will discuss their concerns as the relationship of supervisor is to be independent of the person being supervised.**

**Dr. James Pingree asked where the practice would be located.**

Dr. Paigne responded the practice is in Long Beach, California.

**Dr. James Pingree asked if the practice would consist mostly of Southeast Asian immigrants as that is the type of practice Dr. Paigne has reported in the past.**

Dr. Paigne responded the practice would include

Southeast Asian immigrants but additionally other cultures.

**The Board determined Dr. Paigne is in compliance with his Memorandum of Understanding.**

**An appointment was made for Dr. Paigne to meet again September 8, 2010.**

**10:15 am**

Dr. Stephan J. Kitson, Telephonic Probationary Interview

Dr. Kitson met for his telephonic probationary interview.

Dr. Ries conducted interview.

**Dr. Ries asked Dr. Kitson to update the Board regarding how many hours he is working each week, what type of patients he treats and any changes that have taken place since he last met with the Board.**

Dr. Kitson responded he is working about 30 hours a week; he is now the Assistant Medical Director and works mostly in outpatient acute care.

**Dr. Ries stated his probation is scheduled to be completed in 2012 if he continues to work and stays on track. She asked if he has had any stresses and how he deals with those stresses.**

Dr. Kitson responded he is aware his probation should be completed in 2012. He stated he doing well and the stresses are having his youngest child graduate and the financial pressures of having two children in college next fall. He stated he would like to request early termination of the Utah probation.

**Dr. Babitz stated if Colorado terminates his probation he should submit the documentation to Utah to consider early termination.**

**Ms. Taxin stated Dr. Kitson's reports from Colorado have all been positive. She thanked him for submitting all his paperwork on time.**

**Ms. Harry stated the paperwork has not been**

**received on a quarterly basis but has been received when Dr. Kitson meets with the Board. She stated Colorado is not very cooperative with Utah when we have called for information.**

**The Board determined Dr. Kitson is in compliance.**

**An appointment was made for Dr. Kitson to meet again December 8, 2010.**

**10:30 am**

Dr. David J. Morris, Probationary Interview

Dr. Morris met for his probationary interview.

Dr. Bennion conducted interview.

Dr. Morris informed the Board he is still working at Life Tree Pain Clinic. He stated he is still working one day a week and anticipates his hours will increase soon. He stated he had to reapply for all insurance panels and many have put him back on their panels. He stated Dr. Webster is anxious for him to work more hours and as he will then be able to see more patients.

**Dr. Bennion stated Dr. Morris's reports have been positive. He asked Dr. Morris how his health has been.**

Dr. Morris responded he is doing the best he can to control his diabetes and has informed the staff at the clinic of his issues in case he needs their assistance.

**Dr. Bennion asked if Dr. Morris believes he will be able to increase his workload given his circumstances.**

Dr. Morris responded he is well enough to increase his workload. He stated the clinic is a pain clinic and most patients are on pain medications and narcotics in large quantities. He stated he does not discuss his concerns or make any recommendations to the Nurse Practitioners as he is not sure if it violates his probation but he believes some patient medication should be changed or reduced.

**Ms. Taxin responded Dr. Morris has no restriction regarding his supervising. She stated Nurse**

**Practitioners are required to consult with the supervising Physician to prescribe. She stated Dr. Morris cannot prescribe but is allowed to discuss in an educational capacity with Dr. Webster and the Nurse Practitioners making changes in medications or reducing medications but that it is the licensed CS provider's final decision. She stated Dr. Morris could not tell the Nurse Practitioners what to prescribe as he might be crossing the line without a DEA registration but he is allowed to educate from his experience and knowledge. Ms. Taxin requested Dr. Morris to ask Dr. Webster to write the reports more clearly and to give more feedback regarding his performance.**

Dr. Morris thanked the Board and Ms. Taxin for the information today. He stated the Nurse Practitioners do their own prescribing and he does not believe the timing is right to consult with them right now. He stated he will talk with Dr. Webster.

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

**An appointment was made for Dr. Morris to meet again September 8, 2010.**

**10:45 am**

Dr. Edmund Chein, Telephonic Probationary Interview

Dr. Chein met for his telephonic probationary interview.

Dr. Babitz conducted interview.

**Dr. Babitz asked when the California probation is scheduled to be completed.**

Dr. Chein responded he thought his California probation was completed but California confirmed it will not be completed until March 2011.

**Dr. Babitz requested Dr. Chein to submit the documentation of completion when California terminates his probation in order for Utah to consider termination of the Utah probation. He stated all reports have been submitted and reviewed by the Board. Dr. Babitz asked Dr. Chein**

**to briefly explain the nature of his practice.**

Dr. Chein responded his practice is in hormone replacement.

**Dr. Babitz asked if Dr. Chein still travels overseas to work.**

Dr. Chein responded he does still travel to China. He stated his practice is doing well in China as the economy is doing well there.

**The Board determined Dr. Chein is in compliance with his Memorandum of Understanding.**

**An appointment was made for Dr. Chein to meet again September 8, 2010.**

**11:15 am**

Discussion of Visiting Profession  
Statute/Applications received for Licensure

Dr. Bennion requested the Board and visitors to introduce themselves.

Doug Springmeyer, Assistant Attorney General, introduced himself as counsel for Dr. Deininger. He then laid the foundation of the purpose of Dr. Deininger meeting today. He then stated a variety of people were going to speak in support of the Division issuing a Physician and Surgeon license to Dr. Deininger.

John Swallow, Deputy Attorney General, stood up and stated he is here on behalf of Mark Shurtleff, Attorney General, and himself. Mr. Swallow stated the Attorney General has reviewed the application and the materials provided. He stated Dr. Deininger is qualified and he and Mr. Shurtleff support licensure.

Following introductions Dr. Bennion turned the time over to Mr. Steinagel, Division Director, for discussion.

**Mr. Steinagel reviewed a graph he prepared of requirements for licensure in Utah as a Physician and Surgeon. He stated there are two paths to become licensed in Utah of which 99% of the applications received are licensed by the first path**

**which lists the education, examinations, two year (24 month) residency in the United States and the FCVS packet and/or ECFMG for foreign educated applicants. The second path is for endorsement which requires a license in another State with no action pending, suspended or revoked unless the license has been reinstated as a full unrestricted license in good standing, satisfactory evidence of the applicant's qualifications, identity and good standing to the satisfaction of the Division/Board, be currently licensed in good standing with a full unrestricted license and have been actively engaged in the practice of medicine for a minimum of 6000 hours during the five years immediately preceding the date of application.**

**Mr. Steinagel stated he has heard concerns on both sides and that there will be attempts to change the Law through the next Legislative session. He apologized to Dr. Deininger for the lateness in giving him notice of the opportunity to meet today and stated he can present his situation to the Board at a later date if he desires.**

Dr. Deininger responded he would like to meet today.

Dr. Howell asked how many licenses have been issued by endorsement since the Law passed.

**Ms. Taxin responded she does not have an exact number but applications are received and approved on a daily basis. She explained the precedence has been to review the endorsement applications and in order to determine satisfactory evidence of the applicants qualifications the FCVS or ECFMG packet has been required to document an approved education, examinations, a two year (24 month) residency in the United States and the 6000 hours of being actively engaged in the practice of medicine for the last five years immediately preceding applying for licensure in Utah. She stated the information was provided but did not meet requirements according to previous processing procedures in Dr. Dienenger's case.**

**Ms. Taxin stated a request for reciprocity came up**

**and reciprocity means if an applicant is licensed in good standing in another State they provide a verification from that State, we trust the applicant has met specific requirements for licensure and we issue a Utah license. Ms. Taxin stated at this time the Utah Laws and Rules do not provide for licensure by reciprocity.**

**Ms. Taxin stated the endorsement requirements for Physicians also does not require an application and fee to be submitted but the Division does require the information. She stated the 6000 hours of practice must be active practice and the applicant must have an unrestricted license to practice in the other State. She stated if the applicant had a resident license the hours would not count toward the 6000 hours as a resident license is a restricted license and the 6000 hours would have to be after the resident license. Ms. Taxin stated she wants to ensure equity across the Board and not make exceptions for certain individuals. She suggested the Board determine the qualifications and that they are applied across the Board.**

Dr. James Pingree asked if Dr. Deininger is requesting a temporary license or full licensure.

**Mr. Steinagel responded Dr. Deininger is requesting full licensure.**

Dr. Howell asked if the licensee can practice anything once they are licensed.

**Ms. Taxin responded yes. She stated once a license is issued there are no restrictions regarding practice other than the licensee must practice within the scope of their education and knowledge.**

Dr. Bennion asked if the Division has any other concerns regarding the endorsement requirements as they are currently written.

**Mr. Steinagel responded he believes the endorsement section needs to be clarified in Statute as the language is broad and does not specify the standard of qualifications as does regular licensing.**

**Ms. Taxin stated there may not be an answer today for Dr. Deininger but the Board should determine qualification required for licensure by endorsement or the Board may believe the Law is adequate the way it reads.**

Dr. Babitz commented he has not seen an application by endorsement but the FCVS packet has been very important to the Board and the profession. He voiced concern regarding the copies of information Dr. Deininger distributed to Board members as nothing has been verified through FCVS or ECFMG.

**Ms. Taxin explained the FCVS/ECFMG packet has been requested and when she contacted FCVS to inquire where they were in their process they said it was not yet complete but would be sent upon completion.**

Dr. Babitz stated his goal is to be consistent. He stated if the Board discusses the issues and makes a decision to issue a license and then discover specific information is not documented in the FCVS/ECFMG packet then what action would be taken. He stated he believes the application should be held until the packet is received for the Board to review a complete file.

Dr. Howell voiced her concerns regarding being fair and consistent. She stated if specific information is required of other applicants the Division/Board should require the information for endorsement before issuing a license. Dr. Howell voiced confusion by the special instances and motivation behind licensing Dr. Deininger. She stated she is in the process of reviewing information for individuals to take the National Boards so she understand the process but is confused as to the reason this is a Board discussion today without a complete application.

**Mr. Steinagel explained the application was received and did not meet the requirements of path one. He stated the Division requested the additional information, had many discussions and then realized we were requiring all of path one plus the additional 6000 hours for licensure by**

**endorsement when the Law is not clear on those requirements. He stated it is important to act on an application when it is received and that is the basis for the discussion today.**

Dr. James Pingree asked if it is the responsibility of the Division to request information or the applicant to provide the information.

**Dr. Howell explained the applicant initiates the process by submitting an application, paying the fees and requesting the FCVS/ECFMG packet.**

**Ms. Taxin explained Dr. Deininger is in a unique situation in his request. She stated there are Laws and Rules and the Division/Board try to be equitable across the board but the Laws and Rules do not make allowances for special circumstances for certain applicants. She stated she believes the Board should hear what Dr. Deininger has to say. Ms. Taxin stated the Board should decide if the requirements for endorsement are clear or if they need to be adjusted and they do not have to make a decision today.**

Ms. McOmber, UMA, stated the UMA agrees with the comments regarding being fair across the board and being consistent with all applicants. She stated revisions should not be made for special applicants.

Dr. Deininger turned the time over to those in attendance with him and stated he would make the final comments.

Mr. Springmeyer, AAG, spoke on behalf and in support of Dr. Deininger receiving licensure. Dr. Hoidal, MD, from the University of Utah, spoke on behalf of Dr. Deininger and recommended the Division/Board issue a license to Dr. Deininger based on the requirements of endorsement. They suggested a temporary license be issued today. The U of U speakers informed the Board that Dr. Deininger was recruited to a faculty position from the Oregon Health and Science University as he is one of the top Physicians to work with Leukemia patients.

**Mr. Steinagel responded the Division position is we believe Dr. Deininger is qualified but the Board must be satisfied he has met qualifications before a license may be issued. He stated he does not believe the endorsement requirements have been documented to ensure they have been met.**

**Mr. Furgeson, Assistant Attorney General for the Division, stated he would like to make a clarification. He stated at times when different agencies are represented by the Attorney General's office they may potentially have divergent interests or divergent views. He stated his section of the AG's office has been advising the Division and a different part of the AG's office has been advising Dr. Deininger. Mr. Furgeson stated his section has gone through a process and been in contact with Mr. Springmeyer and the University Counsel about the licensure process and explained the views of the Division. Mr. Furgeson stated his section has independently been advising DOPL about the statutory interpretation and have not been in contact with Mr. Swallow or with the Attorney General, Mr. Shurtleff because Mr. Springmeyer and his section have been involved in representing the University of Utah. He stated that is the reason those in attendance may hear Mr. Steinagel say the Division has been receiving counsel from Mr. Furgeson's section of the AG's office about the interpretation of the statute. Mr. Furgeson stated he was respectfully pointing out that a different part of the AG's office has been involved in representing the University and advising them. He asked Mr. Swallow if the clarification was consistent with his understanding.**

Mr. Swallow responded he believed Mr. Furgeson's clarification was very fair and important.

Following additional statements of support Dr. Deininger spoke. He thanked the Board for listening and reviewing his application. He stated his education and training were in Germany, he spent some time in England and the United States and decided to specialize in internal medicine. Dr. Deininger stated his passion is in hematology, oncology and internal

medicine. He stated he could not stay in Germany as he could not continue his research there so he found a position in Oregon where he could continue his research and work independently. Dr. Deininger stated he had a license to work for four years at the University in Oregon and then obtained a two year license to continue working. He stated he was not granted full licensure until 2008. He stated he has had an active outpatient clinic where he utilizes visiting scholars from other countries. Dr. Deininger explained he has conducted extensive trials in leukemia and he believes he can make a contribution to society by moving to a position at the University of Utah where he can use the skills he has gained over the years.

Dr. Fowler asked if Dr. Deininger could stay in Oregon and continue to practice there with full licensure.

Dr. Deininger responded he could stay in Oregon but he could perform some additional things in Utah that he could not do in Oregon.

Dr. Fowler clarified there is no reason for Dr. Deininger to leave Oregon other than he wants to come to Utah.

Dr. Howell asked if Dr. Deininger was part of the medical faculty in Oregon.

Dr. Deininger responded Dr. Fowler is correct. He then answered Dr. Howell's question by stating Oregon will issue a full license if an individual has sufficient experience of four years with a faculty license. He stated he was approved to take the USMLE and has taken and passed all three parts and obtained the ECFMG for licensure in Oregon.

**Ms. Taxin clarified Dr. Deininger had a faculty license in Oregon for four years which could not be extended or renewed and then obtained a visiting professor license for an additional two years which could not be extended. She stated he could apply for full licensure if he passed the USMLE, which he did.**

Mr. Springmeyer, Assistant AG, stated Dr. Deininger has not completed a two year United States residency and that requirement would prohibit him from licensure in Utah if the Division/Board enforces the requirement. He suggested the time in Oregon with the faculty license and the visiting professor license be counted for Dr. Deininger to meet the 6000 hours of licensed practice to meet the endorsement requirements for Utah.

**Mr. Steinagel reminded the Board if they take action to issue a license to Dr. Deininger they set a precedence as they have used the requirements of path one to evaluate qualifications. He stated he has not heard anything that causes him concerns but wants to make it clear that when an application is received that indicates concerns the Division/Board will make a judgment that is fair. He read the requirements in the Law under 58-68-302 regarding the temporary license and stated a temporary license may be issued for a period of one year and cannot be renewed or extended.**

**Ms. Taxin asked the Board if they would accept Dr. Deininger's restricted licensure time as part of the 6000 hours for endorsement. She also reminded the Board if they accept the hours they would be setting precedence.**

Dr. Babitz stated he is not sure why the Division/Board should rush the process and not wait for the verification of information. He voiced being uncomfortable with changing the normal process. He stated he does not believe the Board should be bending so far to make an exception in Dr. Deininger's case.

Following discussion the Board determined the hours should count toward the 6000 hours for licensure by endorsement.

Dr. Pingree asked when the FCVS/ECFMG packet will be received.

**Ms. Taxin responded FCVS is having trouble verifying Dr. Deininger's education but are hoping**

**to have the packet to Utah within a month. She stated it is between Dr. Deininger and FCVS to complete the information for the packet.**

Mr. Sperry stated the Division/Board issued temporary licenses when he served on the Board due to FCVS being slow to submit a complete packet.

**Ms. Taxin responded Dr. Sperry is correct but the applicant must provide all paperwork and Dr. Deininger has not provided that information. She stated she believed he had not met the 6000 hour requirement as he has had restricted licenses in Oregon so she bumped his application back to the first path.**

Dr. James Pingree asked if Dr. Deininger would be allowed to practice at the U of U if a temporary license was issued.

Mr. Springmeyer responded Dr. Deininger must have the license for the U of U to proceed in their offer to Dr. Deininger. He stated if the Board does not issue at least a temporary license today the U of U would have to decline their offer.

Dr. Howell stated the Board could issue a temporary license and wait for the FCVS/ECFMG packet to verify. She asked if the 24 months of U.S. residency is required under endorsement.

**Mr. Steinagel responded he does not believe the 24 months residency would be required under endorsement. He stated Laws and Rules change all the time. He stated the Board could issue a temporary license and then determine specific standards for licensure by endorsement.**

Dr. Ries commented she believes the endorsement section has a defect but Dr. Deininger should not have to suffer until the Board figures out the requirements. She stated she would be comfortable issuing a temporary license to Dr. Deininger.

Dr. Babitz asked if Oregon sent a verification to Utah.

**Ms. Taxin responded she contacted Oregon who confirmed Dr. Deininger had been issued a restricted license until 2008 when full licensure was granted.**

Dr. Deininger stated Oregon does not participate in FCVS but he has all the original documents and could submit unofficial copies to the Board.

Dr. Howell voiced her concerns about setting precedence. She stated she is not prepared to meet two days a month to review applications that may come in by endorsement.

**Mr. Steinagel asked Ms. Taxin if she knows how many endorsement applications a month are received.**

**Ms. Taxin deferred to Ms. McStotts who responded she believes there are about 5 to 15 applications by endorsement received every month.**

**Ms. Taxin stated she is hearing each endorsement application will be reviewed individually as the Division cannot go by the requirements under path one. She stated she and her staff would then not be qualified to review the endorsement applications to determine if the applicant has submitted documentation of satisfactory evidence of the applicant's qualifications for licensure.**

**Mr. Steinagel again stated the Division/Board would need to determine specific requirements for licensure by endorsement.**

**Dr. Babitz made a motion to issue a Temporary Physician & Surgeon license to Dr. Deininger after he submits notarized copies of the information he provided in his packet to the Board today which includes a copy of his diploma from Germany and a complete copy of the information submitted to Oregon for licensure in Oregon and, if the FCVS packet is complete when it is received, issue the permanent license.**

**Mr. Springmeyer recommended the motion be amended to accept copies of the information in the packet provided to the Board today and not require notarized copies.**

**Dr. Babitz accepted the recommended amendment to his motion as a friendly amendment.**

**Dr. James Pingree seconded the motion.**

**The Board vote was unanimous.**

**Mr. Steinagel stated upon receiving the requested information the Division will issue a temporary license to Dr. Deininger and asked if the visitors had any additional questions.**

The visitors responded there were no additional questions.

**Ms. Taxin clarified the endorsement applications will be sent to the Board for their review.**

**Dr. Ries stated it is important for the Board to clarify licensure by endorsement qualifications.**

The Board asked Ms. Taxin to explain the process if the FCVS/ECFMG packet does not document or verify satisfactorily Dr. Deininger's information.

**Ms. Taxin responded the Division would have the Board review the information and if deficient to start the process to revoke Dr. Deininger's license.**

Dr. James Pingree asked if the U of U considers Dr. Deininger Board certified even though he does not have the U.S. Board certification.

Dr. Hoidal, U of U representative, responded yes.

Ms. McOmber asked if all endorsement applications will now come before the Board and how long it will take to issue a license if they come before the Board.

**Ms. Taxin responded, yes, all endorsement applications will need to be reviewed and evaluated**

**by the Board. She stated the Board probably need to meet monthly and hopefully enough information will be with the application for the Board to determine it is satisfactory evidence of the applicant's qualifications.**

**Ms. Taxin stated the Physicians Board action today will also affect the Osteopathic Physicians as their Law is similar.**

Dr. Bennion stated he understood Division staff would review all applications and bring to the Board only those applications that are in question.

**Ms. Taxin responded her understanding is the Board will need to determine the criteria for licensure by endorsement so the Division can make the changes in the Rule. She stated each Board member should read the current Law and Rule and write down a list of what they believe the criteria should be. She stated they may want to value what another State documents in the verification without verifying any education, residency or examinations. She stated the Board made the decision today against the recommendation of the FSMB and are waiving requirements. Ms. Taxin reminded the Board that Dr. Deininger does not have any U.S. residency and is having difficulty verifying a foreign residency. She stated it will now bring up the issue of why a foreign educated person would do a U.S. residency if Utah will waive that requirement. Ms. Taxin complimented her staff as they try to license applicants within a few days. She stated if any application does not meet all requirements then applications will now have to wait for the Board to meet for them to review.**

Dr. Howell asked why Utah would issue a license to someone with a foreign residency.

**Ms. Taxin responded the Division has not licensed anyone with a foreign residency. She stated there was one exception where an applicant did not meet several requirements and the Division Director made an executive decision to issue the license. She stated the Board could require accepting licensure**

**in another State for a specified length of time as meeting endorsement requirements. Ms. Taxin stated the Board and guests have stated today that Dr. Deininger's experience was equivalent and if the experience was equivalent then Dr. Deininger should have completed the residency experience form, which he did not do. She state Dr. Deininger had a job. Ms. Taxin explained Dr. Deininger had difficulty obtaining licensure in Oregon and may have problems obtaining licensure in other States. She stated the Division has held to the requirement of proving a U.S. residency of 24 months.**

Dr. Howell asked if Dr. Deininger had a job for 3 ½ years and did not do a residency.

**Ms. Taxin responded, yes. She stated her issue is determining competency and protecting the public.**

Dr. Ries responded she believes strongly that the FCVS verification should be required for all licensure.

**Ms. Taxin again assigned the Board to review the Law and Rule and clarify the endorsement requirements for licensure or create licensure by reciprocity and write qualifiers for both. She also requested the Board to carefully review the requirements for initial licensure in Part 1 as there are some areas that may need to be cleaned up. She stated she will write the language for review but will need the information of what the Board wants in order to write the language.**

#### **APPLICATIONS:**

Dr. Magid Amer, Application and Examination review for Massachusetts State Examination in 1972

Ms. Taxin explained Dr. Amer currently has a temporary license. She stated Dr. Amer completed the Massachusetts State examination in 1972 and the Board will need to determine if the examination was equivalent to the Utah examination at that time.

**Dr. Babitz responded the State examinations were essentially the SPEX examination of today.**

**Dr. Babitz made a motion to accept the Massachusetts examination from 1972 and issue**

**Dr. Amer full licensure.**

**Dr. Ries seconded the motion.**

**The Board vote was unanimous.**

**DISCUSSION ITEMS:**

Proposed Pharmacy Practice Act Rule

Ms. Taxin reminded the Board of the discussion at the last Board meeting regarding the new Pharmacy Practice Act Rule. She stated the proposed Rule has been written and each Board member has a copy to review.

**Dr. Ries asked for clarification regarding the background for the Law change and who will be checking to be sure the products are stored properly, etc. She stated there is no indication from the FDA that HCG assists in weight loss and Dr. Ries asked why the Division is assisting practitioners to sell the drugs.**

Ms. Taxin explained there was a change in the Statute regarding allowing Physicians to dispense and Latisse and HCG were the drugs discussed. Ms. Taxin stated she suggested some additional drugs to be written in Rule along with Latisse and HCG but the Board vote last month was to stay with only these two at this time.

Mr. Steinagel clarified the two drugs were not specifically named in Statute but were discussed during the Legislative session. He stated the list is not limited and more may be added. He stated the Division outlined guidelines for Physicians who are dispensing to follow to be sure the dispensing is done right. He stated he is hearing Dr. Ries voice disagreement with dispensing these drugs.

**Dr. Ries stated Mr. Steinagel is correct, she does disagree. She stated the Rule as it is written does address any concerns she had and she hopes the Division will make sure the guidelines are carried out properly.**

**Dr. Babitz asked how all the required information will be printed and attached to the containers. He**

**stated the Pharmacist usually includes a handout with all the details.**

Mr. Steinagel responded those Physicians who will be dispensing will be held to the same requirements as the Pharmacist and the Division will review the issue of providing detailed information.

Ms. Taxin stated there is also a warning label the Physician may attach to the outside of the container.

**Dr. Howell recommended R156-17b-310(2)(e) be correct to read “cautionary statements”.**

**Dr. Babitz stated on page 2 under inventory that manufacturers, lot number and date of expiration should be added. He also recommended under number 5, the language read “provide patient counseling”. He stated the Rule does not indicated the information be documented in the patient chart that counseling has been done and he recommended it should be part of the medical record. Dr. Babitz recommended under (5)(e) that common severe side or adverse effects be defined.**

Mr. Steinagel responded Dr. Ries, Dr. Howell and Dr. Babitz have made valid suggestions and he will make sure they are included in the Rule.

**Dr. Fowler asked if someone should want to dispense other cosmetic drugs would they need to submit a petition for approval.**

Mr. Steinagel responded Dr. Fowler is correct.

Dr. Bennion Report on the FSMB Conference

Dr. Bennion requested Ms. Taxin give a report and then he will give his report.

**Ms. Taxin stated she, Dr. Bennion and Dr. Ramsey of the DO Board attended the FSMB Conference. She stated some of the issues discussed were the recommendation to expand the Physician Assistant scope of practice and candidates for FSMB positions. She stated there was discussion about ongoing competence in Physicians, how to evaluate and report to State Boards and maintenance of**

**licensure. Ms. Taxin stated the FSMB Strategic Plan was reviewed and updated. She offered Board members the FSMB book to review all discussion item and lectures if anyone was interested.**

Dr. Bennion gave Board members a handout regarding one presentation. He stated the presentation discussed errors that occur in medicine and he wrote his ideas on how manage those issues in Utah. He stated Rosemary Gibson worked for the Robert Wood Johnson Foundation in Quality and Safety and wrote a book on surgical errors and how to minimize them. Dr. Bennion stated various communities and hospitals are doing unwarranted and expensive procedures and not looking at alternative or less invasive procedures. He stated the way MD's are compensated lends itself to continuing the process as it is lucrative for the MD's. Dr. Bennion stated he started thinking about the issue of competence or the lack there of. He stated he has served on the Board for 5 years and only remembers one incident where the sole issue was substandard performance, patients were harmed and one died. He stated peers have a hard time blowing the whistle on co-workers and he thought the Board should discuss if they are doing enough and adequately addressing egregious patterns of substandard practice.

Dr. Bennion stated he has contacted a couple of people who are interested in the issue of identifying people who provide substandard service who are dangerous and should be dealt with. He asked if the Division is tapping into databases that would reveal patterns of serious problems in quality of practice and should the Division be receiving reports from hospitals if there is anything that raises red flags. He asked if the Board/Division obtain information from insurance companies regarding malpractice. He asked who is responsible to monitor besides the Board/Division. Dr. Bennion stated if the Board is responsible to monitor and only receive one case in 5 years then maybe there is something they should be doing.

**Dr. Howell responded she believes every Board struggles with those issues. She stated the number being monitored is very small compared to the**

**number of practitioners that should be monitored.**

**Ms. Taxin stated the Utah Statute is different from most States. She stated Utah does not require all malpractice suits to be reported but she does receive reports daily from NPDB/HIPDB and from practitioners. She stated she reviews each one and sends the information to investigations if she believes it is egregious enough to investigate.**

Dr. Bennion asked if she reviews multiple suits and how much information does she receive from hospitals.

**Ms. Taxin responded if she sees a pattern she does give the information to investigations. She stated she has denied some renewals based on malpractice patterns and issued some conditional renewals until an investigation verified the information. Ms. Taxin stated the denials have been upheld.**

Dr. Babitz stated hospitals could not function if they did not have private access to protected information. He stated a report in 1994 stated there was only 4% of issues reported actually involved incompetence. He stated he applauds Dr. Bennion for raising the issues but when insurance panels decide to un-panel someone the information is all protected. Dr. Babitz stated Utah has a system for anonymous reporting. He stated the Board does not have a legal role to obtain the information as they have not been charged with going out to find problems and cannot be proactive. He stated some changes could be made so if the Board did go out the information received would be protected but it would involve Law and Rule changes. Dr. Babitz stated the profession recommended a uniform way of marking sites for surgery and since then there has been a decline in wrong site surgeries.

Dr. Howell stated there is also the impaired professionals program.

**Dr. Bennion responded when Dr. Walton met with the Board he discussed the diversion program for substance abuse.**

Ms. Taxin stated there is a new Law that if anyone dies in a hospital from substance overdose the hospital must report the incident to the Division.

**Following additional discussion, Dr. Bennion asked if there was enough Board interest to try to make some changes.**

Board members responded, yes, they were interested.

**Dr. Bennion asked who he would contact.**

Ms. Taxin recommended he contact the UMA Legislative representative.

**Dr. Bennion stated he will also do some research on Florida and Oregon to present to the Board at the next meeting.**

#### Discussion of Dr. Carl Wurster's Probation

Ms. Taxin reported Dr. Wurster is not working as he has personal health issues. She stated he has never worked since he signed an order for probation. She stated she is not sure how long Utah should retain Dr. Wurster on probation with him unable to meet the requirements of his probation. She suggested maybe another year and then send him information to surrender his Utah license until he is able to complete probation requirements.

**Dr. Babitz recommended Dr. Wurster be invited to meet with the Board to discuss his probation and possibly surrendering his license.**

Ms. Taxin agreed with the recommendation.

#### Board Meeting Schedule

Ms. Taxin stated she has been trying to cancel some meetings when there are not sufficient probationers and/or business to conduct but with the endorsement issue the Board may need to meet monthly to review endorsement applications. She requested Board members to submit their endorsement criteria as soon as possible for her to review.

The monthly meeting schedule is as follows: July 14, August 11, September 8, October 13, November 10 and December 8, 2010.

FYI

Ms. Taxin informed the Board of the Revocation Order for Dr. Alan Heap on May 4, 2010.

Ms. Taxin informed the Board of the revocation Order for Dr. Goates on June 2, 2010.

FYI

Ms. Taxin informed the Board of terminating probation for Dr. Sidney Johnson based on his compliance and completing all conditions of his Order.

FYI

Ms. Taxin informed the Board that Dr. Julie Dobell contacted her and reported she had a good experience at the training program she did in New York. She stated Dr. Dobell is looking into some opportunities for employment. Ms. Taxin stated she recommended Dr. Dobell meet with Dr. Pompa for therapy and ask Dr. Pompa to write any recommendations for the Board to consider regarding releasing Dr. Dobell from drug testing. She stated she informed Dr. Dobell that she would have an appointment at the next scheduled Board meeting.

#### **CORRESPONDENCE:**

American Board of Medical Specialties (ABMS) Letter re: Overseeing the Certification of Physician Specialties in the U.S.

The Board reviewed the information with no action being taken.

Dr. Heap Letter

Ms. Taxin stated she has received many phone calls from Dr. Heap's patients. She stated an investigator went out to Tooele and hand delivered the revocation Order and told Dr. Heap to stop practicing. Ms. Taxin stated Dr. Heap then called her to say he needed time to close his practice and she instructed him to finish the day but no more time will be given. She stated Dr. Heap told her he has not written anything in the patient charts and she told him to get all his charts updated. Ms. Taxin stated David, Dr. Heap's assistant was also on the telephone and said he understood her instructions but Dr. Heap kept saying there was no one he could refer his patients to in Tooele area. She stated she went to Google and asked for Psychiatrists in Utah and up popped a map of Utah with a list of Psychiatrists in each County. Ms. Taxin stated she received only a couple more telephone calls since her

discussions with Dr. Heap.

**Dr. Bennion stated he had heard Dr. Heap was still prescribing.**

Ms. Taxin responded she had been informed that Dr. Heap is still writing prescriptions and back dating them. Ms. Taxin stated she received a letter Dr. Heap wrote to his patients and she read the letter. She stated she then received a letter addressed to Dr. Babitz and she read that letter. Ms. Taxin stated she believes the Board was more than fair with Dr. Heap.

**Dr. Bennion asked who is going to blow the whistle on Dr. Heap for writing prescriptions.**

Ms. Taxin responded without a Utah Physicians license and the Utah Controlled Substance license it is criminal action to write prescriptions so it falls in the jurisdiction of the local police department.

The New England Journal of Medicine

Board members reviewed the journal with no action being taken.

Journal of Medical Regulation

The Board stated they all receive this Journal and requested it not be presented for Board review in the future.

**NEXT MEETING SCHEDULED FOR:**

July 14, 2010

**ADJOURN:**

The time is 3:00 pm 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.*

September 8, 2010  
Date Approved

(ss) Elizabeth F. Howell, Chairperson  
Chairperson, Utah Physicians Licensing Board

June 30, 2010  
Date Approved

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