

MINUTES

UTAH PHARMACY BOARD MEETING

February 22, 2011

Room 474 – 4th Floor – 12:00 Noon
Heber Wells Building
Salt Lake City, UT 84111

Convened: 12:04 p.m.

Adjourned: 4:44 p.m.

Conducting:

Dominic DeRose, Chair

Bureau Manager:

Noel Taxin
Clyde Ormond

Board Secretary:

Shirlene Kimball

Compliance Specialist:

Connie Call

Division Staff:

Mark Steinagel, Division Director
Karl Perry, Assistant Attorney General
Jared Memmott, Division Investigator

Board Members Present:

Derek Garn, R.Ph.
Dominic DeRose, R.Ph.
Kelly Lundberg, PhD public member
Jan Bird, CPhT, pharmacy technician
Andrea Kemper, Pharm D
David C. Young, R. Ph
Gregory Jones, R.Ph

Guests:

David Zeiger, Priority Pharmaceuticals
William Stilling, attorney
Representative Evan Vickers
Greg Jensen, Target
Jaimee Peterson, Walgreens
Andy Simmons, University of Montana
Linda Sandberg, Omnicare
Kathy Falk, University of Utah
Nathan Votroubek, University of Utah
Betty Yamashita, Intermountain Health Care
Robert Hansen, Walmart
Cindy Reetar, Walmart
Jay Sorensen, Intern
Reid Barker, UPhA
David Cheney, Associated Foods

Sam Haddadin, Associated Foods,
Chad Hilly, pharmacy Intern

TOPICS FOR DISCUSSION
ADMINISTRATIVE BUSINESS:

January 25, 2011 Minutes:

Connie Call,
Compliance Report:

Priority Pharmaceuticals,
David Zeiger, owner
William Stilling, attorney

DECISIONS AND RECOMMENDATIONS

The January 25, 2011 Board minutes were approved with corrections. All Board members were in favor.

Ms. Call reported the following individuals were out of compliance with the terms and conditions of their Orders:

- Dennis Beasley was late submitting his paperwork.
- Paul Martz did not submit his therapist report.
- Heather Palmer was late submitting her therapist report.

Ms. Call reported the following individuals are in compliance with the terms and conditions of their Orders:

- Mary Jo Cates.
- Scott Harris is in compliance. He has not practiced for a period of time and Ms. Call suggested the Board may want to consider offering Mr. Harris a surrender document until he is ready to return to practice as a pharmacist.
- Brent McFadden is in compliance with his Order. Ms. Taxin indicated she spoke with Mrs. McFadden and explained the Board's concerns regarding a spouse providing supervision and discussed supervision requirements/methods. Ms. Taxin also indicated the therapist report was received and stated he has no substance abuse issues. Ms. Taxin reported the pharmacy inspection was completed and appears to be in order.
- Diann Millikan's suspension was terminated and she is scheduled for an initial interview.

Prior to the Board meeting, Ms. Taxin provided Board members with a letter addressed to Ms. Poe from Priority Pharmaceuticals attorney William Stilling. Ms. Taxin stated she felt the letter would help Board members understand the concerns from all individuals involved in the application process.

Mr. Zeiger, owner and William Stilling, attorney met with Board members to explain the business model

and the Priority Pharmaceuticals application. Mark Steinagel, Division Director, Jared Memmott, Division investigator and Karl Perry, Assistant Attorney General were also present for the discussion.

Mr. Zeiger first addressed why he did not answer yes on the first qualifying questionnaire and then after being requested to resubmit the qualifying questionnaire, answered yes to number one and two on the qualifying questionnaire. He indicated Priority previously held a Utah license and failed to disclose it on the application. He also indicated he had received a citation December 2006 from the State of California for failing to properly transfer records and notify the California State Board of the sale.

Mr. Zeiger then explained that Priority Pharmaceuticals is a traditional wholesale pharmacy. He indicated they would not distribute controlled substances. The current physical location of the wholesale pharmacy is located in California; however, they would like to have a physical location in Utah. Ms. Taxin questioned the relationship between Priority Pharmaceuticals and Optimal Pharmacy. Mr. Zeiger stated for the record, there is no relationship between the two pharmacies. Mr. Zeiger stated that an employee working for him submitted an application at the same time Mr. Zeiger submitted his application. The employee used Priority Pharmaceutical's business telephone number as a contact phone number on the application. Mr. Zeiger stated the individual is no longer an employee and there are current ongoing legal issues with this individual related to his employment and misrepresentations. Ms. Taxin stated that the Optimal Pharmacy application has been denied and is off the table. Mr. Jones questioned who filled out and signed the Priority Pharmaceutical application. Mr. Zeiger stated he filled out and signed the application.

Mr. Perry requested clarification of the proposed business model. Mr. Zeiger stated the model is used in a number of other states and hires physicians who buy hard-to-find pharmaceuticals and transfers them to Priority Pharmaceuticals. He indicated they purchase FDA approved drugs. They do not purchase drugs

from overseas. Mr. Stilling explained that one arm of the company is wholesale to wholesale; the other arm has the physician obtaining hard-to-find pharmaceuticals and then selling them to Priority Pharmaceuticals. The physicians would be licensed as distributors in Utah and Priority Pharmaceuticals would ensure the pedigree of the products. Mr. Stilling stated their main concern is whether or not the proposed model would be legal in Utah. Ms. Taxin stated according to the Medical Practice Act, a physician could not participate in dispensing or in purchasing pharmaceuticals in this manner or action could be taken against his/her license for unlawful conduct. Mr. Memmott questioned whether or not the company is a temporary holding company? Mr. Zeiger replied that they would ship hard-to-find medications out of Utah to clients generated by their California company. He indicated at times there may be thirty different medications, at other times there may only be one or two medications.

Mr. Stilling stated it is understood that a physician can not sell the medications out of their office and it is clear from the discussion that the model will not work in Utah. He indicated they will make changes in the application to bring it into compliance with Utah law. Ms. Taxin stated the application would have to be modified before the application would be approved. Mr. Stilling stated they would correct the application and will not use the physician to bring the hard to find medications into to Utah to be redistributed. Mr. Zeiger also stated he would also submit a copy of the lawsuit regarding the previous employee.

Ms. Taxin stated it appears that Mr. Zeiger has addressed the Division's and Board's concerns. Once a corrected application is received and reviewed, and if the application is in compliance with the Utah Pharmacy Practice Act and Rules, the inspection could be completed. If the inspection does not find any additional problems, the license could be issued. However, if there are any questions with the corrected application or with the inspection, the application will be brought back before the Board.

Representative Evan Vickers:

Representative Evan Vickers updated the Board

regarding current Legislation that may be of interest to the pharmacy profession.

He reported H.B. 321 is in regards to therapeutic substitutions and requires the purchaser and the prescribing practitioner to authorize a substitution. He stated a physician voiced concern that pharmacists are switching generic medications without physician authorization. Rep. Vickers stated he visited with the physicians and they have specific issues with some pharmacy chains. Rep. Vickers stated that the same language appears in S.B. 202, which amends the Medical Assistance Act to establish a competitive bidding process for drug product equivalents. He indicated it is not clear why the wording is the same for both bills. Rep. Vickers indicated S.B. 248 makes amendments to the Controlled Substance Database Act. Mr. Steinagel stated this bill authorizes certain individuals to access the database for the purpose of reviewing a patient's request for workers' compensation benefits and requires that a physician review the Controlled Substance Database before writing a first prescription for a Schedule II or Schedule III controlled substance. Mr. Steinagel stated the law currently allows the prescriber and law enforcement officials to review the database and this bill will allow other individuals to have access to the database. Mr. Steinagel stated he is concerned that there may be a data breach. Also, if one type of insurer is allowed access, then all insurers would want access. Rep. Vickers stated that Senator Bramble may delay the bill in order to more fully discuss the implications. Rep. Vickers stated S.B. 137 requires Medicaid to authorize a nonpreferred psychotropic drug when the patient is stable and has been on the existing therapy six months. Dr. Lundberg questioned what fiscal note was attached. He stated one million dollars would be saved with the net cost of 325,000. An amendment to S.B. 128 would allow advanced practice registered nurses and physician assistants to dispense the approved cosmetic drug or injectable weight loss drug to a patient and allows an optometrist to dispense the approved cosmetic drug to a patient. Rep. Vickers stated no additional drugs were added. H.B. 336 authorizes the Department of Health to establish a protocol for the distribution of medicine in

a national, state, or local emergency to a local health department, pharmacy, prescribing practitioner and licensed health care facility. H.B. 16 provides that a pharmacy benefits manager may not accept payment or reimbursement to or from a health benefit plan for providing pharmacy service unless certain criteria are met.

Board members thanked Rep. Vickers for his update and expressed appreciation for his service.

Discussion regarding Brent McFadden and supervision:

Ms. Taxin stated that Mr. McFadden's Stipulation and Order does not include the normal language placed in an Order. However, it has been signed by Mr. McFadden and the Division and they need to honor and follow the signed agreement. The Board needs to determine whether or not to accept Mrs. McFadden as his supervisor. Mr. Garn stated there does not appear to be any legal ground to deny the request, but has a number of concerns. Dr. Lundberg stated she feels that having a spouse as the supervisor is problematic due to a conflict of interest. She also expressed concern that there will be a fiscal conflict of interest. Ms. Taxin stated she spoke with Mrs. McFadden after the last Board meeting and explained the Board's concerns. Ms. Taxin stated she felt comfortable in her discussion with Mrs. McFadden and feels Mrs. McFadden understands the concerns and has mechanisms in place to monitor him. Ms. Taxin stated she understands the Board's concerns and agrees, but Ms. Poe signed and approved the conditions and we need to honor the signing and the decision. Dr. Lundberg stated the Order does not require the standard ways to monitor his probation, the only required document would be from the supervisor, and if the supervisor is the spouse, there is concern with the conflict of interest. Mr. DeRose stated he is concerned that there also may be a fiscal incentive not to report any problems. Mr. Jones stated another concern is allowing Mr. McFadden to work in a family owned pharmacy after having had problems working as a staff pharmacist.

Ms. Taxin stated the Order has been signed and approved. She stated the Board could suggest the Order be amended to be consistent with other Orders

and explained to Mr. McFadden that the Board is uncomfortable with having a spouse provide supervision. However, Mr. McFadden would have to agree to the amendment, otherwise, the Board has to enforce the current agreement.

Jared Memmott,
Report on inspection to Williams Family
Video:

Mr. Memmott informed the Board he conducted a random inspection of Williams Family Video. He stated he went into the pharmacy 12 minutes after opening and employees were in the pharmacy without the pharmacist present or even in the building. Mr. Memmott reported an employee and Mrs. Williams were in the back area working on the computer. Mr. Memmott stated he could not say that it was a violation for the employees to be at that computer, but there was concern because they would have had access to the medication profile system and were in an area where the records are kept.

He reported Mr. Williams did not have a complete controlled substance inventory and was behind in the perpetual inventory. Mr. Memmott stated the Controlled Substance Schedule III-IV inventory was completed shortly after the pharmacy was placed on probation and Mr. Williams had not completed one since that time. Mr. Memmott also indicated the pharmacy had patient driver license on file, but did not ask to see the driver's license when the patient picked up the Schedule II prescriptions. Mr. Memmott stated this is a violation and he should be requesting positive ID for every Schedule II prescription.

Mr. Memmott indicated the pharmacy was also in violation because of out-of-date products on the shelves.

Ms. Taxin left the meeting and Clyde Ormond was acting Bureau Manager.

Williams Family Video,
Scott Williams:

Mr. Williams stated he feels things have been going well. He reported Mr. Memmott completed an inspection and the pharmacy still had several violations. Mr. Williams stated his wife comes into the pharmacy in the morning and logs onto the computer. Mr. Williams explained the area where the medications are held is locked off, and behind that

area is the computer area. Board members stated that if the pharmacy technician is accessing the area where the medications are located, or if accessing patient records, the pharmacist needs to be present. If the pharmacy technician answers the phone and processes the request, the pharmacist needs to be present. If the pharmacist is not present, the pharmacy technician can take down the information but not access the patient records until the pharmacist is present. Board members suggested they set up a voice mail system where the patient leaves a message, and the pharmacy technician takes the message off and accesses the patient records when the pharmacist is present. Mr. Williams stated the Video store opens at 9:00. He indicated his wife goes into the video store at 8:00 a.m. to get ready for the day and he comes in at 9:00 a.m. Mr. DeRose stated the solution would be that they go in together, or move the computer out of the pharmacy. Mr. Jones questioned whether or not Mr. Williams is familiar with the CS inventory law and the Pharmacy Practice Act and Rules. Mr. Williams stated yes, he is familiar with the law. Board members questioned how he felt with the inspection? He stated he felt good about the inspection and understands he has some things to work on. Board members questioned how he stays current with the law? He stated he has the law on the computer and reads the newsletters. However, he indicated his priority is to take care of the customers and does not have a lot of time to spend on reviewing the law. Dr. Lundberg stated it is great that he is not having as many violations, but the issue is not to have any violations at all. Dr. Young stated if he has a question, he needs to pull out the law and read it, or call the Division.

Mr. DeRose stated Mr. Williams has requested early termination. Mr. DeRose stated that because of the violations, he does not feel it is time to terminate the probation. Board members agree. **Williams Family Video is out of compliance with the terms and conditions of the Order due to the violations during the inspection.** Mr. Williams will be seen May 24, 2011.

Mr. Ormond, discussion regarding the positive identification requirement when an individual

Mr. Ormond indicated to Board members that the section regarding requiring positive identification for

is picking up a controlled substance from the pharmacy:

Tom Strebel,
Probation interview:

Dennis Beasley,
Probation Interview:

Break at 2:40 p.m.
Reconvened at 3:47 p.m.

Heather Palmer,
Probation Interview:

an individual who is picking up a controlled substance medication has been moved from the Pharmacy Practice Act to the Controlled Substance Database Act, section 58-37f-203(e).

Mr. Strebel stated things are going slowly. He indicated there is no work available for an individual on probation. Mr. Strebel stated he works the minimum number of hours required to keep his probation going and questioned whether or not the Division would be willing to reconsider his request for termination of probation. Mr. Garn suggested he continue to remain in compliance and he could submit another request for termination at his next meeting. **Mr. Strebel is in compliance with the terms and conditions of his Order.** His next meeting with the Board will be scheduled for August 23, 2011.

Mr. Beasley submitted a copy of his physical examination. He stated he has met all terms and conditions required in the suspension and requested the suspension be terminated. Ms. Bird made a Motion to terminate the suspension and place Mr. Beasley's license on probation with the terms and conditions outlined in the Order. Dr. Lundberg seconded the Motion. All Board members were in favor of the Motion. His next meeting will be a telephone interview and will be scheduled June 28, 2011. **Mr. Beasley is in compliance with the terms and conditions of his probation.**

Greg Jones is her supervising pharmacist and he indicated he would recuse himself from any voting. Ms. Palmer indicated she feels comfortable with Mr. Jones and it was not necessary for him to be recused. Ms. Palmer submitted an updated practice plan which was approved by Board members. She stated she is attending therapy, learning new behaviors and modifying thought patterns. She stated she attends 12-step meetings once a week and feels they are helpful for the most part. She stated she does not have a sponsor, but keeps in touch with members of the 12-step group. She will be seen again May 24, 2011.

Ms. Palmer is in compliance with the terms and conditions of her Order.

Agenda Items for Discussion:

Mr. DeRose requested the next agenda include a discussion regarding the number of hours needed to work to keep a probation going. He suggested that 16 hours per month instead of 16 hours per week be the standard. This item will be placed on the next agenda for discussion.

Diann Millikan,
New Order:

Ms. Millikan stated she understands the terms and conditions of her Stipulation and Order. She submitted a practice plan for the United Way Volunteer Care Clinic in Provo. She also requested the number of hours she is required to work per week be reduced to 4 hours in order to keep the probation moving forward.

Ms. Millikan reported she is very active in recovery and is busy with her community service. She stated she continues to volunteer at Hospice Care and at the United Way Volunteer Care Clinic in Provo. She reported the clinic in Provo is open two days per week for four hours per day and is very busy during that time. Ms. Millikan stated she would work under direct supervision two of the four days at the Provo Clinic. The other two days she would volunteer as a pharmacist answering questions regarding drug therapy, medications, costs and other drug information requested by the providers or by patients. She stated she understands that the clinic in Provo will need to provide employer and supervisor reports. She stated they are aware of her probation and have received copies of her Order. She indicated she has applied to do volunteer work at the 4th Street Clinic, but has not heard back from them.

Dr. Lundberg made a Motion to require direct supervision when volunteering in the pharmacy and to allow general supervision when volunteering as a pharmacist answering questions regarding drug therapy, medication, costs and drug information; modify the Order to allow her to work four hours per week instead of 16 hours per week in order to have the probation continue; and to approve her practice plan. Mr. Jones seconded the Motion. All Board members

were in favor of the Motion.

She reported she is having pain, but is managing the pain with homeopathic remedies, exercise and meditation. Ms. Millikan stated she would like to meet with the Board on a monthly basis. She will be seen March 22, 2011. **Ms. Millikan is in compliance with the terms and conditions of her Order.**

James Bee,
Telephone Interview:

Ms. Call reported Mr. Bee worked from February 2010 to September 2010, however, has not worked any hours since September 2010. The probation period will be tolled to the last time he worked. He has been non compliant twice, once for not meeting with the Board (he had a new address and did not notify the Division), one non-compliance for late paperwork.

Mr. Bee reported he worked in December 2010. Ms. Call informed him that according to the paperwork she received he has not worked since September 2010. Mr. Bee stated he will contact the employer and have him submit the number of hours worked each month since October. Mr. Bee stated he would like to request early termination of probation. Mr. Bee stated he understands he has been on actual probation for one year, but feels he has been on probation for the last three years. He stated he would be willing to continue to send in reports but would like the probation to be terminated. He indicated he can not find a job because of the supervision requirement. Mr. Bee stated he received the letter regarding the definition of general supervision and will provide it to IHC and his supervisor. He stated he cannot provide volunteer hours because of the supervision requirement. His Order has not been amended to allow him to work less than 16 hours per week and his probation time will stop until he works at least 16 hours per week. Dr. Young stated he would consider lowering the number of hours he needs to work per month, but he does not have a good track record for early termination of probation. Mr. Bee also needs to take and pass the MPJE examination. He stated he would take the MPJE as soon as he has paid off his fine in June. Board members indicated he can not terminate probation because he has not paid off his fine and has

not taken and passed the MPJE examination. Ms. Bird made a Motion to amend the hours worked to 16 hours per month to keep the probation going and to deny the request for early termination of probation. Dr. Lundberg seconded the Motion. All Board members were in favor of the Motion. Board members stated when he passes the MPJE and pays off his fine, and if he is in complete compliance, he could again request termination of probation. **Mr. Bee is out of compliance with the terms and conditions of his Order.**

Brent McFadden,
Caroline McFadden:

Mr. McFadden stated he recognizes he made a mistake and does not feel he will make the same mistake again. He stated he feels better knowing he owns his own pharmacy instead of working for another company. Dr. Lundberg questioned how he has adjusted his thinking and what is different now. He stated he exercises and spends more time with his horses. He submitted a substance abuse evaluation and the evaluation indicated Mr. McFadden does not have a substance abuse problem.

Mrs. McFadden submitted the supervisor form she developed and explained the form includes items that she felt were objective rather than subjective. She reported they will hire a part time pharmacist to work PRN. Mr. Jones stated part of the Board's role is to protect the public and he is concerned because Mr. McFadden was placed on probation for actions while a staff pharmacist and is now going to work at a pharmacy he owns. Mr. Jones questioned how Mrs. McFadden will make sure the mistakes made don't happen again and indicated he would like the PRN pharmacist do the drug counts. Mrs. McFadden stated there will be a technician in the pharmacy at all times. A security system has been installed and she will have access to it at all times. Dr. Lundberg stated she is concerned that the technician may not be forthcoming for fear of losing her job. Mrs. McFadden stated she feels the technician would be honest with her. Dr. Lundberg stated her concern is that the Order does not require any other reports. It does not require therapy, does not require urine screens and there is nothing other than the supervisor/employer report to help monitor his actions. Those other conditions are

usually put in place to make sure the same mistakes are not happening again, or if they are, there is another individual who would catch the problem. Mrs. McFadden stated she feels the Board is questioning her honesty. Dr. Lundberg stated she does not question the honesty of Mrs. McFadden or the pharmacy technician, she just feels there is no objective evidence and it places Mrs. McFadden in the middle. Mrs. McFadden stated she has chosen to be there. Mr. Ormond indicated to Mrs. McFadden that the Board is not questioning her integrity; but if she were a Board member and Mr. McFadden appeared before the Board, she would have to recuse herself from voting.

Mrs. McFadden stated there is no legal Stipulation that says this can not be done, and apart from the Board's feelings, what prevents her from being the supervisor? Dr. Lundberg stated adding other conditions would be a matter of checks and balances. Or the Board says no, and the Division has to decide what to do. Dr. Lundberg indicated she would like to amend the order to at least include reports from his current therapist. Mr. McFadden stated he signed an Order and is trying to live by that Order. Mrs. McFadden questioned if it would be acceptable if the pharmacy technician also filled out a supervisor report. Dr. Lundberg stated she would still be concerned because the pharmacy technician could be fired. The PRN pharmacist would not be in the pharmacy and would not have much overlap. Mr. Ormond stated Mrs. McFadden could be approved, and if something comes up and she does not take action, both licenses would face further sanction. Mrs. McFadden stated that has been the one thing that makes her say, why can't we do this; you own my license as well. Mr. DeRose stated on the flip side, if something were to happen and both licenses were on the line, there would be a reason to hide the offense. Dr. Young stated the therapy report is an additional piece and the therapist does not have a vested interest. Mr. McFadden stated if he can pick the counselor, he would agree to have therapy added to the Order. Mr. Jones made a Motion to have the form amended to include the name of the individual filling out the form; have the pharmacy technician, Mrs. McFadden and the PRN pharmacist fill out the form separately and fax

the form to the Division independently on a monthly basis for the first six months and amend the Order to require therapy. The pharmacy technician and the PRN pharmacist must also submit notification to the Board that they have seen Mr. McFadden's Order and are aware of the issues. Ms. Bird seconded the Motion. All Board members were in favor.

The only amendment to the Order will be to add therapy and therapy reports. Approve the practice plan pending the amendment to the Order.

Mr. McFadden will be interviewed again March 22, 2011 by telephone. **Mr. McFadden is in compliance with the terms and conditions of the Order.**

University of Southern Nevada notification of name change:

The University of Southern Nevada notified the Board that their name will change to Roseman University of Health Sciences July 1, 2011.

Scott Mecham, IHC

Mr. Mecham's request was whether or not the pharmacy technician could prepare the medication on site at a second location and have the pharmacist remotely check the medication from the first location. Mr. Mecham stated the main campus is staffed by at least one pharmacist 24 hours a day. The second campus is staffed for 13 hours and the request would be for after hours emergency situations.

Board members indicated the request does not meet the qualifications as outlined in the Pharmacy Practice Act, section 58-17b-612(1)(b).

Pharmacy Technician Program approval requests:

Assigned to Dr. Kemper for review and to be reported next month.

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.

March 22, 2011
Date Approved

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

March 22, 2011
Date Approved

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