

MINUTES

**UTAH
PHARMACY
BOARD MEETING**

March 22, 2011

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

Convened: 8:03 a.m.

Adjourned: 12:07 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
Mitchell Jones, Assistant Attorney General
Jared Memmott, Division Investigator

Board Members Present:

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

Board members Excused:

Jan Bird, CPhT, pharmacy technician

Guests:

Robert Hansen, Wal-Mart
Linda Sandberg, Omnicare
Jennifer Scothern, USN student
Heather Hafen, University of Utah student
Greg Jensen, Target
Judy Nielsen, Walgreens
Betty Yamashita, Intermountain Health
Heather Martz
Amany Souwed, Walgreens

TOPICS FOR DISCUSSION

ADMINISTRATIVE BUSINESS:

February 22, 2011 Minutes:

DECISIONS AND RECOMMENDATIONS

The February 22, 2011 Board minutes were approved

with corrections. All Board members were in favor.

Connie Call,
Compliance Report:

Ms. Call reported the following individuals were in compliance with the terms and conditions of their Orders: Diann Millikan, Trent Decker, David Barrow, Dennis Beasley, Brent McFadden, Mary Jo Cates and Heather Palmer.

Ms. Call reported Paul Martz is out of compliance because he has not paid his fine or made arrangements to pay the fine.

Discussion regarding Diann Millikan:

Mr. Ormond discussed with Board members the Motion last month to reduce the number of hours Ms. Millikan works per week to maintain probation. Mr. Ormond stated he was not aware of Ms. Millikan's history at the last meeting and after reviewing her file and background information, four hours of work per week is not sufficient time to monitor her practice. Dr. Lundberg stated the Board has lowered the number of hours per week for other probationers. Dr. Lundberg stated it seemed reasonable to allow Ms. Millikan to volunteer the four hours per week. There are no controlled substances at the clinic in Provo or at 4th street clinic. Mr. Young questioned what makes the 16 hours acceptable. Mr. Ormond stated he feels a minimum of 16 work hours per week allows the supervisor to monitor performance and behaviors and his concern is that four hours a week does not provide enough time for the supervisor to detect changes in behavior. Mr. Garn stated that at least she would be working and we can see how she is functioning. Mr. Jones stated the environment has changed and jobs are hard to find, especially for the probationers. The 16 hours per week is proving to be problematic. Dr. Lundberg stated the four hours will be enough to help her start the probation, and if a probationer is going to succeed, they need to start the process. Dr. Lundberg stated Ms. Millikan was doing fairly well in her probation, had the car accident which triggered a relapse and she is just easing back into a pattern. Board members feel she is progressing in her recovery and the four hours would be acceptable. Mr. Steinagel stated he appreciates the Board trying to find a way to help the probationer and protect the public.

Brent McFadden,
Discussion:

Ms. Taxin stated she received the information to amend Mr. McFadden's Order to require therapy reports and have Mrs. McFadden, the pharmacy technician and the PRN pharmacist submit monthly reports for the first six months, then quarterly thereafter. Ms. Taxin stated she contacted Mr. McFadden to confirm that he agreed with amending the Order. Mr. McFadden stated he was uncomfortable with the amendments but agreed. He stated he was already seeing a therapist and he agreed to have the current therapist submit reports. He stated he also felt uncomfortable with having the therapist submit a report because the reason for seeing the therapist does not apply to his probation. Ms. Taxin reported Mr. McFadden has an attorney and Mr. McFadden will have the attorney review the amendments before signing the amendments. Ms. Taxin stated Mr. McFadden had been scheduled for a telephone interview and she initially informed him it would be best if he met with the Board in person. Ms. Taxin stated after the discussion and also due to the bad weather, she decided the Board could re-address the issue without Mr. McFadden being present in person. However, he would have to be available by telephone. Dr. Young stated he felt the Board made it clear to Mr. McFadden the concern with Mrs. McFadden providing supervision and that by providing the therapy reports and also having the pharmacy technician and PRN pharmacist submit the reports, the Board would be more comfortable with the proposed supervision. Dr. Lundberg reported Mr. McFadden indicated he was already seeing a therapist, and would agree to amend the Order as long as he could continue to see his current therapist. Dr. Lundberg stated it is on record that the Board could say no to the practice plan and supervision proposal and it would be up to the Division to make the final decision. Ms. Taxin stated she understands and agrees with the Board's concerns; however, Mr. McFadden has complied with the terms and conditions of the Order and has submitted a practice plan that is awaiting approval.

Mr. Steinagel stated Ms. Taxin and Mr. Mitchell Jones are concerned because there is a Stipulation in place and there has been a hold up in approving the

supervision. He stated the Division and Mr. McFadden have signed the agreement and if Mr. McFadden does not want any amendments, he does not have to agree to the additions. He stated for whatever reasons, those standard terms were not part of this Order. The Division would like to find an agreeable ground. Mr. Greg Jones stated he would not approve the practice plan without the additional amendments because the violations were not trivial. Dr. Lundberg stated the Board does not know what happened in the negotiations resulting in the Stipulated terms, but would like to go on record that the only way the Board has to monitor his probation is the review of supervisor reports. She indicated the Board has a responsibility to the public. The Board is not happy with the Order, not blaming the Division, not blaming Mr. McFadden, but members are uncomfortable with the way the Order was written.

David Barrow,
Probation interview:

Mr. Barrow reported his recovery is going well. He stated he is doing some consulting on the phone and providing drug utilization review. He stated he still can not find full time employment and continues to take care of his special needs child. He stated his daughter recently had surgery and was prescribed pain medication. Dr. Lundberg questioned how he is dealing with having the pain medication available in his home. He stated he never had any thoughts of taking her medication and has not been tempted to take the medication. He reported he has been sober 400 days. Mr. Barrow stated he feels he is doing well and questioned when the probation could be terminated. Board members indicated he has only been on probation 1 ½ years of the five year probation. He is making great progress; however, it would be too early to terminate the probation. **Mr. Barrow is in compliance with the terms and conditions of his Order.** He will be seen June 28, 2011.

Paul Martz,
Probation Interview:

Mr. Martz and his wife, Heather, met with the Board. Mr. Martz reported things were going well, however he still can not find employment. Board members suggested that if he is having difficulty with finances, he may want to write a letter to the Board requesting that his fine be placed on hold until he finds employment.

Dr. Kemper questioned whether or not he has had a relapse. Mr. Martz stated he has not relapsed and has no thoughts of relapse. He reported he has been clean and sober 250 days. Dr. Kemper indicated he needs to be more careful filling out his self assessment reports because he indicated on the form that a relapse had occurred. Mr. Martz stated he would be more thorough when reading the questions.

Mrs. Martz stated she feels addiction is a disease and was upset when the University of Utah said they would not hire an individual on probation. She stated she came with her husband today because she wanted to understand the role of DOPL and the purpose of the Board. Mr. Steinagel stated that in order to practice, an individual has to demonstrate he/she meets minimum standards for licensure, continues to meet the minimum standards to maintain the licensure, and if the individual has been placed on probation for violation of unlawful or unprofessional conduct, allow the individual to maintain a license while being monitored. Dr. Lundberg stated the Board and the Division is concerned with helping the licensee, but also with protecting the public. The goal is to have the probationer recover and return to practice. Mrs. Martz expressed appreciation for the clarification and stated she was confused because she looks at addiction as a disease. Dr. Lundberg stated the research indicates that legal accountability helps people with addiction. **Mr. Martz is in compliance with the terms and conditions of his Order.** He will be seen again June 28, 2011.

Diann Millikan,
Probation Interview:

Ms. Taxin left the room. Mr. Ormond sat in for the interview. Ms. Millikan stated she is in the process of sending out resumes and looking for employment. She stated she continues to volunteer at the clinic in Provo and is still waiting to hear back from the 4th Street Clinic. She also stated she continues her volunteer work with hospice. Ms. Millikan stated she is moving forward and working her recovery. Mr. Ormond stated he was concerned last month with her request to be allowed to work four hours per week in order to keep the probation moving forward. However, this issue has been resolved and the Order

will be amended. She stated she would like to meet with the Board again next month. **Ms. Millikan is in compliance with the terms and conditions of her Order.**

James Ammon,
Request for Discussion regarding changes to
58-17b-307:

Ms. Taxin returned to the meeting. Mr. Ammon reported he had an emergency and canceled his meeting with the Board. Ms. Taxin indicated Mr. Ammon requested a meeting to discuss the section of the statute regarding the five year period of time after absolute discharge of everything associated with a felony conviction. Ms. Taxin reported she spoke to Mr. Ammon who indicated Reid Barker was the individual who wanted to discuss this Statute change. Ms. Taxin stated to Mr. Ammon that if Mr. Barker would like this added to the agenda, he would need to call and request the discussion be added to the agenda under his name. Since the Division did not hear from Mr. Barker, Mr. Ammon was listed as wanting to discuss this issue. Ms. Taxin reported Mr. Ammon has spoken to Mr. Steinagel and Mr. Karl Perry regarding making changes to 58-17b-307. Dr. Lundberg indicated Mr. Ammon met with the Board previously because he felt this Statute was arbitrary and capricious. Mr. Garn stated this section of the Statute prevents an individual convicted of a felony from applying for licensure for a period of five years after completion of everything associated with the felony. If the wording is changed an individual could spend five years in prison, be released and apply for licensure. Ms. Taxin questioned whether this language should be amended or if it should remain. Board members indicated Ms. Poe had indicated that the five year absolute total discharge was based on research. The Board stated it would help to have more information regarding the research to determine the history and basis for the language.

Brent McFadden,
Discussion:

It was determined that Mr. McFadden would not be called today, that the Board and Division would come up with language for an amendment to the Order and Mr. Mitchell Jones would contact him and his attorney to discuss the recommendations. Mr. Steinagel and Mr. Mitchell Jones, Assistant Attorney General, were present for the discussion. Mr. Steinagel indicated Mr. McFadden stated he has an attorney and we will need

to let the attorneys do the negotiating. Ms. Taxin stated the Board needs to make a Motion regarding the amendments. Mr. Mitchell Jones will make the amendments and send it back to the Board for review. If Mr. McFadden does not agree to the amendments, he does not have to sign the Order. Mr. Greg Jones stated that the Motion from last month, page 13 of the minutes, is what needs to be added. The Motion last month was to have the pharmacy technician, Mrs. McFadden and the PRN pharmacist fill out the form, fax their reports separately on a monthly basis for the first six months and have the therapist submit a monthly report indicating Mr. McFadden is addressing the issues that lead to his unprofessional conduct. Mr. Young stated the Board has been attempting to resolve this for three months and we need to work it out. Ms. Taxin stated she agrees. Mr. McFadden can not wait another month without employment. Mr. Greg Jones indicated Board members have stated what they would like to see and Mr. McFadden needs to make a decision. Dr. Young questioned whether or not it would be possible for an independent audit, be specific to what should be included and submitted on a quarterly basis. A review of the Order indicates that he already is required to have an audit by an outside source. There would also be a new pharmacy opening audit that could be provided. Mr. Mitchell Jones will draft the document and bring it back before the Board for review. Mitchell Jones and Mr. Steinagel left the meeting.

Mitchell Jones and Mr. Steinagel re-joined the meeting. Mitchell Jones stated Mr. McFadden has been out of practice for five months now and the Board needs to address the practice plan. Mr. Mitchell Jones stated the vote can be “no” if there is a problem with the practice plan, however, the Board can not vote “no” because they don’t agree with the Stipulation language. The practice plan can not be denied because the Board hopes for something additional in the Stipulation. If the practice plan is unacceptable, it needs to be made clear to him why it is unacceptable. Dr. Young read the practice plan to Board members. The practice plan provided by Mr. McFadden indicated he would like to enter into a partnership with his wife to open Brent’s Pharmacy

and work as a staff pharmacist. Mrs. McFadden would be the PIC and he would work under Mrs. McFadden's supervision. There would be two full time pharmacy technicians in place and Mr. McFadden would never be alone in the pharmacy. He would work under the terms and conditions of the Stipulation and remain in compliance with the rules and regulations. Mr. Mitchell Jones questioned whether or not this practice plan would be acceptable and if not, why. Mr. DeRose stated it is the supervision piece that is not acceptable. Mr. Mitchell Jones stated the Stipulation indicates the supervisor has to be a pharmacist licensed in good standing and Mrs. McFadden meets that qualification. Mr. Steinagel stated the Stipulation requires a pharmacist licensed in good standing and also requires a practice plan approved by the Board. Mr. Steinagel stated he is hearing they share equal standing. Dr. Lundberg stated the Board will allow Mrs. McFadden to supervise, but there needs to be additional supervision from an outside pharmacist, and reports from the pharmacy technician. Ms. Taxin stated that having an additional pharmacist and the pharmacy technician would be the amendment to the Stipulation. Mr. Mitchell Jones stated he believes the Stipulation is above the practice plan and that the Board and the Division is opening itself to legal action if the Board says he can not practice because we don't like the Stipulation. If the Board does not approve the practice plan because it doesn't like the Stipulation, the Board could be held liable. Mr. Steinagel stated Mitchell Jones' concern is requiring something that is not in the Order and feels this is a significant legal risk. Board members questioned what it would mean if the Board were sued. Mr. Mitchell Jones stated if the Board is sued for willful misconduct, Board members would have to find legal representation themselves. If the Board has acted within the bounds of the Boards responsibility, the Division would represent the Board.

Mr. Steinagel stated he is hearing that the Board is not ready to approve the practice plan because of the structure. Dr. Young stated the Board just wants to protect the public. Mr. Steinagel stated Mr. McFadden thought the Board was going to approve the practice plan and is upset that it has not been approved. Ms.

Taxin stated if there are any changes in his practice, Mr. McFadden would have to submit a new practice plan. Dr. Lundberg stated the practice plan is required so that the Board can adequately evaluate the individual. If the Board does not feel the practice plan meets requirements, the Board will not accept it until changes are made. Mr. Mitchell Jones stated that Mr. McFadden is not agreeable to any amendments at this point and he has stated he felt pressured by the Board to agree. Mr. Steinagel stated he will review future Orders more thoroughly, however, at this point, the practice plan needs to be approved or let Mr. McFadden know what needs to be done so it can be approved, and the discussion regarding supervision needs to be finalized. Mr. Greg Jones stated the Board should at least ask him if he would change the practice plan to include the forms from the outside pharmacist and the pharmacy technician. We need to let the community know that we do take what he has done seriously, even though the Stipulation and Order does not reflect that. Dr. Lundberg stated she sees his unwillingness to mean he will continue to do what he is doing, engaging in the same thinking and not taking any responsibility. Mr. Steinagel stated he appreciates the discussion and the Board needs to move forward. Ms. Taxin questioned if the Board would like to see Mr. McFadden next month. Dr. Lundberg indicated she would like to meet with him monthly in person to understand what he is doing. Once he is on track, he could alternate and be interviewed by telephone.

Review letter regarding continuing education from Mr. Steinagel:

Mr. Jones stated he requested this item be placed on the agenda for discussion. Mr. Steinagel stated after a meeting with Mr. Barker and Dr. Munger, he thought it would be nice to let licensees know that continuing education does matter and that the Division takes continuing education seriously. This was meant to be an informative letter reminding the pharmacy profession of the continuing education requirements. He stated that historically, the Division has picked a percentage of licensees to be audited before the renewal. Dr. Young reported the NABP has an e-profile system that will keep track of any continuing education the individual submits. Dr. Young stated he was not sure if the Board/Division would have access to the information. Dr. Young stated he will be

attending the NABP meeting and will find out this information. Mr. Steinagel stated that the construction trades have a similar model, where they have to have the continuing education approved, have them banked, and if not banked, the individual can not renew the license. Mr. Steinagel left the meeting.

Trent Decker,
Request for termination of Probation:

Mr. Decker submitted a letter requesting termination of probation and included in the letter what he has learned from the probation. Mr. Decker has completed two years of the three year probation and has always been in compliance. Mr. Jones stated Mr. Decker entered treatment and started the recovery process about two years before being placed on probation. Dr. Lundberg made a Motion to terminate the probation. Mr. Garn seconded the Motion. All Board members in favor of the Motion.

Pharmacy Technician Program approval requests:

Birch Family Pharmacy: The pharmacy technician program for Birch Family Pharmacy was approved.

Moab Regional Hospital: Dr. Kemper stated this is one of the best pharmacy technician programs she has seen. The pharmacy technician program for Moab Regional Hospital was approved.

Mr. DeRose stated the Board may want to get out of the business of approving pharmacy technician programs and go to a national approval. Dr. Young stated one NABP resolution on the agenda for the May meeting will be to look at the training for the pharmacy technician.

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.

April 26, 2011
Date Approved

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

April 26, 2011
Date Approved

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