

## MINUTES

### UTAH PHARMACY BOARD MEETING

January 24, 2012

Room 474 – 4<sup>th</sup> Floor – 8:30 a.m.  
Heber Wells Building  
Salt Lake City, UT 84111

**CONVENED:** 8:38 a.m.

**ADJOURNED:** 4:30 p.m.

**Bureau Manager:**  
**Board Secretary:**

Debra Hobbins, DNP, APRN, LSAC  
Shirlene Kimball

**Conducting:**

Dominic DeRose, R.Ph Chairman

**Board Members Present:**

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

**DOPL Staff Present:**

Debra Troxel, Compliance Specialist  
Mark Steinagel, Division Director  
Tony Patterson, Attorney Generals Office  
Ray Walker, Enforcement Counsel  
Mitchell Jones, Assistant Attorney General  
Brittany Butsch, Division Investigator  
Bryson Brey, Division Investigator

**Guests:**

Rebecca Petersen, Roseman University student  
Roger Fitzpatrick, Midtown Pharmacy  
Kyle Crutcher, Harding University student  
Hyunjo Lee, pharmacy student  
Linda Sandberg, Omnicare  
Betty Yamashita, IHC  
Stephanie Hughes, Pharm D student  
Alan Minson, Pharm D student  
Greg Jensen, Target  
Reid Barker, UPhA  
Michael Conger, Reeds Pharmacy  
Susan Chasson, UCASA  
Bill Stilling, College Pharmacy/Parsons Behle Latimer

**TOPICS FOR DISCUSSION**

October 25, 2011 Minutes:

December 13, 2011 Minutes:

Tony Patterson, Attorney Generals office,  
Board Training:

Pharmacy Licensing Issues:

**DECISIONS AND RECOMMENDATIONS**

The October 25, 2011 minutes were approved with corrections.

The December 13, 2011 minutes were approved with corrections.

Mr. Patterson presented training on conflict of interest and how to handle those conflicts. Mr. Patterson stated that if a Board member is approached with questions about licensing, the individual should be directed to contact DOPL. If a Board member is approached in regard to unprofessional or unlawful conduct of a licensee, the individual should also be directed to contact DOPL. The Board member should not discuss the unlawful or unprofessional conduct. Mr. Patterson stated that if a Board member discusses unprofessional/unethical conduct of a peer, that Board member would need to be recused if the action came to a hearing. If the Board member is approached regarding clarification of Statute or Rule, the Board member can report what was discussed at a Board meeting, but if giving advice, must do so as an individual, not as a Board member. Mr. Patterson stated there could be a potential for bias by having discussions outside the Board meeting.

If a Board member feels he/she should be recused from a hearing, he/she should inform the Division of the potential conflict. If a Board member feels it is necessary to be recused from the discussion or a recommendation for a probationer, the Board member states for the record that they are recusing themselves. If a Board member has personal or professional knowledge of a probationer but believes there is no conflict of interest, there must be full disclosure, the probationer given time to consider the disclosure and then the disclosure entered into the record. The probationer would have a choice to determine whether or not they would feel comfortable with that Board member hearing the discussion or voting on a decision.

Dr. Hobbins questioned whether or not the 1999 Hospital ER Guidelines were still appropriate. This

document was prepared for rural hospital pharmacies that dispense medication from the ER after hours and on weekends when the pharmacy is closed. Patients are given medication in a baggy with a label which includes the required label information. A 48-hour supply is provided and never more than a 72-hour supply. The medication is included with the ER visit charge.

Dr. Hobbins stated that the investigator had a question regarding whether or not the medication needs to be in a bottle or is a baggy or paper envelope acceptable? Dr. Young indicated that as long as the medications in the baggies are child proof, or sealed in unit doses, or prepackaged and labeled correctly, it would be acceptable.

The second question was whether or not the APRN, PA, MD or DO needs to be the practitioner handing the medication to the patient. Can the RN or LPN give the medication? Board members indicated the APRN, PA, MD or DO must dispense the medications.

Board members reviewed the guidelines and indicated that they would still apply; however, the Division would need to make sure that the sections of Rule referenced were correct. Dr. Young questioned whether or not this would apply only to rural hospitals? Board members indicated it would apply to a majority of the ERs. Dr. Young suggested the guidelines be placed in Rule.

Division E-mails:

Dr. Hobbins indicated she received an e-mail from the Bear Lake and Cache Valley Community Health Centers that they are interested in establishing a branch pharmacy in the Hyrum area. Dr. Hobbins indicated she was also contacted by an individual who had concerns that this area is not a rural area and did not meet the qualifications as a branch pharmacy. He had also indicated he would like to discuss the 340B Drug Pricing Program. Mr. Memmott stated he spoke with Cache Valley Community Health representatives and indicated they do not meet the requirements for a branch pharmacy and branch pharmacies must be approved by the Board. The individuals from Cache Valley Community Health had questions regarding the

340B Drug Pricing Program. Mr. Memmott indicated that the 340B Drug Pricing Program is a federal program. Board members reviewed the information and Mr. Jones made a Motion to deny Cache Valley Community Health Center Pharmacy the opportunity to apply as a branch pharmacy because they do not meet the requirement of statute and rule. Dr. Lundberg seconded the Motion. All Board members voted in favor of the Motion.

Mr. Conger, the concerned citizen that responded to Dr. Hobbins was present for the discussion. He indicated his concern is that this area does not meet the criteria as a rural, underserved area. He stated he is concerned with the 340B drug pricing program as it currently exists. Mr. Fitzpatrick stated that Community Health provides services to individuals that may not be able to obtain prescription coverage. Mr. Fitzpatrick reported that Smith's is the only chain to step forward to provide this service. These pharmacies do not make money on the service, they provide services only to those that qualify and patients go only to those pharmacies. The government opened up more areas to help additional individuals receive services. Mr. Conger stated he is concerned that this program will be misused.

Dr. Hobbins indicated the next e-mail is in regards to medication recalls, specifically a Dexamethsone recall. The e-mail indicates that the medication had a manufacturer expiration date stamped on the vial, but the pharmacy listed the expiration date as one year from the date of purchase. Board members indicated there is no formal system or requirement for pharmacies to notify patients in the event of a recall listed in Rule. Manufactures and wholesalers are required to have procedures of how to notify providers and pharmacies of recalls. Mr. Garn stated that there are two classes of recall. Class 1 recall is where the patient is notified. Class 2 recall is where only the pharmacy is notified. Mr. Garn stated he does not feel this needs to be placed into rule.

Dr. Hobbins indicated another e-mail received was in regards to a deceased provider and what happens to the prescription if it was written before the death of the

prescribing practitioner. Board members agree that if the prescription was written by an appropriate practitioner with a valid license, the prescription is valid until the prescription expires. The provider makes a clinical judgment at the time the prescription is written and the prescription should remain valid for whatever length of time the practitioner determines.

E-mail regarding online transfer. Mr. Garn stated that the transfer must be from pharmacist to pharmacist or pharmacy intern.

David Young, report on his meetings with the Physicians Licensing Board and the Board of Nursing regarding the Vaccine Protocol:

Dr. Young stated the Physicians Licensing Board requested the list of vaccines be left in as part of the vaccine protocol. The physicians suggested allowing all ages for the Tetanus-Diphtheria Acellular Pertussis vaccines. They also suggested adding the vaccine for polio. The physicians suggested if the practitioner wants the pharmacist to provide additional vaccinations, the practitioner could write a prescription for those vaccinations. The Physicians Board also suggested that the pharmacy intern reference in the protocol also include a statement that the pharmacy intern must have the required training. Dr. Young indicated that the Physicians Board liked the reporting requirement and Mr. Jones questioned whether or not there should be a report date added. Mr. Walker indicated that the document should be referenced in Rule with an approval date. Dr. Young will revise the document and present it at the next Board meeting.

Susan Chasson,  
Utah Coalition Against Sexual Assault:

Ms. Chasson stated the purpose of the UCASA is to provide adequate health care for those individuals who have been sexually assaulted. She indicated initiating treatment as quickly as possible is essential for helping to prevent HIV. The medications to prevent HIV must be started within 24 hours; but no more than 72 hours. Ms. Chasson indicated that the medication becomes ineffective 72 hours after exposure. This means that if a prescription is written for the individual to fill at a pharmacy, the medications would cost the assault victim \$800.00. This fee is covered by the Utah Office of Victims of Crimes; however, the victim must contact the office for a purchase order, which is provided directly to a pharmacy. The office is only

open Monday-Friday and if the individual is sexually assaulted on a Friday, it may be too late to start the medications the following week.

Ms. Chasson would like to request that the Board consider amending the Rule to allow hospitals to give a 5 day starter pack of HIV prophylaxis medications to victims of sexual assault. She stated most hospitals have the medications on hand and the hospital could bill for the starter pack.

Dr. Hobbins questioned whether not this could be added to the previous motion to allow ER to dispense, then the hospital could bill for the medications. Dr. Young made a Motion to incorporate the HIV non-occupational prophylaxis into the guidelines and then add to rule. The Motion was seconded. All Board members in favor of the Motion.

#### Technicians-In-Training:

Dr. Hobbins reported the issue we are having is that the Rule requires the technician-in-training to complete the program and be licensed within one year. Then the rule states that if the individual has been out of the pharmacy for more than 6 months, he/she must complete a 180 hour refresher program. Dr. Hobbins questioned what happens between the one year and the 6 month time period. Board members indicated that the intent of the rule is that the program must be completed within one year (no longer). Then, within that one year, if it has been more than 6 months since exposure to pharmacy practice, the tech in training must repeat 180 hours. The 6 months is part of the training program.

#### Compliance Report Debra Troxel:

Ms. Troxel reported the following individuals are out of compliance with the terms and conditions of their Order: Danny Carter needs to submit a physical examination that was due in July. Cynthia Asher used multiple pharmacies and multiple prescribing practitioners.

Ms. Troxel indicated Sheryl Ledet is in compliance with the terms and conditions of her Order; however, there is a question regarding the pharmacy inventory report which has multiple discrepancies. Board members will clarify this with Ms. Ledet during her

interview.

College Pharmacy,  
Jerry Gillick, New Order:

Mr. Gillick and William Stilling, attorney, met with the Board for Mr. Gillick's initial interview. Mr. Gillick explained the circumstances regarding the probation placed on the pharmacy. Mr. Gillick stated College Pharmacy is located in Colorado and the Utah probation is based on the Colorado Board action. **College Pharmacy is in compliance with the terms and conditions of the Order.** Board members indicated the next quarterly interview in April 2012 would be by telephone.

Sheryl Ledet,  
Quarterly interview:

Ms. Ledet reported she is now working 40 hours per week. Dr. Lundberg stated Ms. Ledet is doing well; however, questioned the discrepancies in the inventory report. Ms. Ledet indicated she was not aware of the discrepancies. Mr. Garn indicated the discrepancies in the December report is a concern. Ms. Ledet stated she will have the pharmacy provide another inventory report and address any discrepancies. **Ms. Ledet is in compliance with the terms and conditions of her Order.** She will be seen again April 24, 2012.

Danny Wildon Carter,  
Quarterly interview:

Mr. Carter reported things are going well. He indicated he just finalized his divorce and has graduated from the outpatient treatment program. Mr. Carter stated he continues to look for a job and is willing to move if he can find employment anywhere in Utah. Mr. Carter requested his Order be amended so that he is not required to have supervision. Dr. Lundberg indicated he is doing well and she is comfortable with his request. Dr. Lundberg made a Motion to amend the Order to allow for general supervision. Mr. Jones seconded the Motion. All Board members voted in favor of the Motion. **Mr. Carter is in compliance with the terms and conditions of his Order** and he will be seen again April 24, 2012.

Layne Kilpatrick,  
Quarterly interview:

Mr. Kilpatrick received a good supervisor report. On question number 12 of his self assessment report he indicated that he had a new criminal conviction. Mr. Kilpatrick stated he made a mistake on question number 12 and indicated he does not have any criminal convictions. Mr. Kilpatrick requested

termination of probation and to reduce his fine to \$1.00. Mr. Kilpatrick read a letter he prepared. Mr. Kilpatrick stated that DOPL needs to approach the individual being investigated first and stated he feels he was singled out because of a previous action. Board members indicated Mr. Kilpatrick signed the Order and if he wanted a hearing, he should have not signed the Order and requested a hearing instead. Dr. Lundberg stated the Board does not hold a hearing after an Order is signed. She indicated that the Board may consider his request at a later date. Mr. Walker stated the Order is issued and becomes final when the Director signs the Order. Modifications to the Order can be requested and amendments made if the Board deems it appropriate. Mr. Walker indicated that the Board does not have to act on Mr. Kilpatrick's request today and could make a Motion to table the request and gather more information. Mr. Walker indicated the investigator could be invited to discuss the issue. The Board can decide to ask for more information, or leave the Order as it is. Board members questioned Mr. Walker on how much information Mr. Memmott could share with the Board. Mr. Walker responded whatever information the Board needs. Ms. Bird made a Motion to deny the request and see Mr. Kilpatrick at the next quarterly meeting. There was no second and the Motion died. A Motion was made to table the request and gather more information from DOPL. Mr. Jones seconded the Motion. All Board members voted in favor of the Motion. Mr. Memmott will be requested to meet with the Board to discuss these issues.

Mitchell Jones met with the Board to discuss Mr. Kilpatrick's request. Mr. Jones questioned why the Board or the Division did not stop Mr. Kilpatrick from reading his letter. Mr. Jones stated Mr. Kilpatrick is only here to review the probation. He stated there is nothing wrong with considering a modification request, however, Mr. Kilpatrick signed the Order with Karl Perry and Mr. Perry should have been brought in when Mr. Kilpatrick started to read the letter. Mr. Jones stated that by reading the letter, Mr. Kilpatrick was requesting a retrial. Mr. Jones stated Mr. Kilpatrick had his chance for a hearing, and asking the Board to look at what happened is asking for a retrial.

The Board can consider his request for termination and to drop the fine to \$1.00; however the Board can not retry the Stipulation. Mr. Jones stated Mr. Memmott should not meet with the Board. Mr. Kilpatrick had legal means to vacate the Order and did not pursue those means. Mr. Jones stated that if this happens again in the future, Board members need to indicate to the probationer the Board is here to monitor the Stipulation and compliance to the terms and conditions of the Stipulation and will not retry the case. Mr. Jones suggested the Board make a Motion at Mr. Kilpatrick's next scheduled interview regarding his request for termination of probation and to reduce the fine to \$1.00. **Mr. Kilpatrick is in compliance with the terms and conditions of his Order.** He will be seen April 2012.

Cynthia Asher,  
Quarterly interview:

Ms. Asher indicated she is looking for a therapist as the evaluator recommended. She stated she has paid her fine and complete the physical evaluation. Board members indicated Ms. Asher needs to complete and submit a physical evaluation. Once she has completed the physical evaluation she could request that the suspension be terminated. **Ms. Asher is in compliance with the terms and conditions of her suspension.** She will be seen again April 2012.

Andrea Lowry,  
Annual interview:

Ms. Lowry reported things are going well. She stated she just started looking for a job last week. She indicated she is looking for part time work and will submit a practice plan once she has received employment. **Ms. Lowry is in compliance with the terms and conditions of her Order and will be seen in one year.**

Wesley Remund,  
Requesting Reinstatement:

Mr. Remund is requesting reinstatement of his Pharmacist license. Dr. Hobbins indicated she is concern with the evaluation which indicates a high risk of relapse. Mr. Jones indicated he knows Mr. Remund and will recuse himself from the discussion. Mr. Jones left the meeting.

Mr. Remund indicated he voluntarily surrendered his license December 2006 because he violated the terms and conditions of his 2005 Stipulation and Order by taking medications from the pharmacy where he was

working. Mr. Remund stated his drug of choice was Lortab. Mr. Remund stated he has spent the last five years in recovery and has a good family support system. He reported he has had three surgeries in the last five years and takes Lortab that has been prescribed for him for pain. Mr. Remund stated he was signed up for voluntary urine screens with the Division for awhile, but has not called in and has not had a urine screen since 2010. Ms. Troxel reported during the period he was doing the voluntary urine screens, all urine screens were positive. He did not submit prescriptions for the medications. Mr. Remund stated this was the time period he was having his surgeries. He indicated he still receives injections into his shoulder and takes a Lortab for those injections. He also indicated that he takes Lortab once a day, and some days has to take more for the pain. Dr. Hobbins expressed concern that Mr. Remund is receiving the pain medication that was his drug of choice. She indicated he has a number of choices for the pain, yet he continues to take his drug of choice. Mr. Remund reported he completed a substance abuse evaluation September 2010; however, it appears the individual doing the evaluation was not licensed as a mental health counselor.

Board members recommended Mr. Remund provide documentation of medications prescribed for him for the time period between 2009 and 2010 and dates of surgery; or complete 6 months of clean urine screens; and submit a substance abuse evaluation completed by an appropriate evaluator. Once the information is received, he will be scheduled to meet with the Board to discuss his request for reinstatement.

Tom Harper, Ray Walker, Marv Sims  
Report on the Controlled Substance Database:

Mr. Harper indicated that this discussion will be placed on the February agenda.

Brittany Butsch, Bryson Brey,  
Division Investigators:

Ms. Butsch and Mr. Brey met with the Board to discuss a Class C pharmacy that is currently licensed in Utah. This pharmacy moved to another location and the inspection was completed yesterday. Upon inspection it was found that this pharmacy downsized and only has an office in Utah. They will not handle any medications, they are a clearinghouse handling the records and processing information. They do

distribute samples. In other states this pharmacy would be issued a license as a virtual manufacturer. When this pharmacy was originally licensed in Utah, it met the requirements for licensure as a Class C pharmacy and other states required they be licensed in the state where their headquarters were located. Board members indicated that current law does not require a Class C pharmacy to notify the Division if it changes how they are operating. It was suggested the rule be clarified that the license reflect specific practice, and the Division needs to be notified of any changes.

Reid Barker, UPhA:

Mr. Barker reported on the bills that will go before the Legislature that may effect the pharmacy profession.

David Abrams,  
Quarterly Interview:

Mr. Abrams reported he continues to search for a pharmacist position. He stated he considered a position at a Methadone Clinic; however, they do not have a pharmacist that could provide supervision. Board members stated he would not be allowed to work without the supervision of a pharmacist. In addition, Methadone Clinics fall under federal regulations and an individual with a restricted license may be prohibited from working in a Methadone Clinic. Mr. Abrams indicated he has not paid his fine. He questioned what he needs to do to come off probation. Board members indicated he needs to follow the conditions of his Order and submit his paperwork in a timely manner. **Mr. Abrams is in compliance with the terms and conditions of his Order.** He will be seen again April 24, 2012.

Pharmacy Technician Program Approval:

Dr. Kemper reported the pharmacy technician program at Ridley Drug is acceptable; however, she wanted to review the online program they will be using.

*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.*

February 28, 2012  
Date Approved

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

February 28, 2012  
Date Approved

(ss) Debra Hobbins  
Debra Hobbins, Bureau Manager,  
Division of Occupational & Professional Licensing