

MINUTES

UTAH PHARMACY BOARD MEETING

July 31, 2012

Room 474 – 4th Floor – 8:30 a.m.

Heber Wells Building
Salt Lake City, UT 84111

CONVENED: 8:40 a.m.

ADJOURNED: 4:30 p.m.

Bureau Manager:
Board Secretary:

Debra Hobbins, DNP, APRN, LSAC
Shirlene Kimball

Conducting:

David Young, Pharm D, Chair

Board Members Present

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

Board Members Excused:

Andrea Kemper, Pharm D

DOPL Staff Present:

Jake Corsi, Investigator
Connie Call, Compliance Specialist
Karl Perry, Assistant Attorney General

Guests:

Roger Fitzpatrick, Midtown Pharmacy
Kathleen Hoffman, U of U
Shayley East, U of U
Brad Winter, U of U
Chris Cardoza, U of U
Reid Barker, Utah Pharmacists Association
Jaime Petersen, Walgreens
Betty Yamashita, Intermountain Health
Linda Sandberg, Omnicare
Mark Munger, U of U
Greg Jensen, Target
Missy Duke, USHP
David Nay, Express Scripts
Dave Davis, URMA/UFIA
Brock Bates

James Ammon
Drew Allen, DMV UVMA
Bret Rawson, attorney for Layne Kilpatrick
John Roaker, attorney for Scott Williams

TOPICS FOR DISCUSSION

May 22, 2012 Minutes:

Mark Munger,
Physician dispensing study:

DECISIONS AND RECOMMENDATIONS

Dr. Lundberg made a motion to approve the May 22, 2012 minutes with corrections. The motion was seconded. All Board members voted in favor of the motion.

Mr. Walker indicated that S.B. 161 directed the Division to evaluate the prescribing practitioner exemptions from licensure for dispensing drugs and to report the findings of the evaluation to the Legislature. The Division developed an RFP for this study and the University of Utah was awarded the RFP.

Dr. Munger met with the Board to explain how the University will be proceeding with the study. Dr. Munger stated this will be the first study across the country to review physician dispensing. The individuals conducting the study will include Scott Silverstein, Jim Ruble and Dan Cripe. This comprehensive study will look at individual state statutes that allow practitioners to dispense, review NABP law, review individual Board of Pharmacy and Board of Medicine web sites, and search legal databases. Dr. Munger stated since funds are limited, only 150 prescribers across the nation will be included in the study. There will be thirty prescribing practitioners in the following areas: dermatology, family medicine, plastic surgery, APRNs and optometry. The survey will ask if the practitioners dispense and if so, why. These practitioners will also be asked if there are additional stressors associated with dispensing. The second part of the study will involve the UPhA association. It is hoped that there will be enough pharmacists from around the state to visit the dispensing practitioner office and observe the dispensing practice. The pharmacist would be looking to determine whether or not the practitioner is meeting the dispensing requirement of Rule. Dr. Munger stated the third part of the study will be looking at safety issues and will focus on all groups of

practitioners who have the authority to dispense. Dr. Munger stated they hope to have a response close to 50%. Dr. Munger indicated they also hope to have a survey of patients who have undergone physician dispensing. However, this part of the study will require physician authorization.

Dr. Munger indicated the study will not answer all the questions, but will allow the Division to be able to utilize the data to describe practitioner dispensing issues and the real or potential impact on patient safety. When additional specialties request dispensing, there will be a study to refer to that has looked at the issues for patient safety. Representative Vickers has reported there will be a moratorium on adding additional specialties until the study comes out.

E-Mail from Sandy Hess:

Dr. Hobbins indicated that due to an error on the Division's part, a Class A Pharmacy license was issued to a pharmacy in Southern Utah that should have been a Class B, closed door pharmacy. Dr. Hobbins questioned whether or not the Board feels a new application should be submitted with the fee waived; or should the Division switch the license to a Class B pharmacy? Mr. DeRose made a motion to allow for a switch from Class A to Class B without submitting a new application. Mr. Garn seconded the motion. All Board members voted in favor of the motion.

Review Division E-mails:

Dr. Hobbins indicated she received an e-mail questioning the stock of epinephrine not labeled for a specific patient. The request was in reference to epinephrine in the schools. Dr. Young stated the NABP supports having all medications administered in schools in a central location and having a nurse administer the medication. However, in Utah one nurse covers a number of schools in a district and the nurse may not be available in an emergency situation. Mr. DeRose stated the schools must be willing to take responsibility, make sure the epinephrine has not expired and make sure staff is current on all training. Board members suggested that the individual sending the e-mail contact the association, see what the needs are for the schools and ask for their suggestions.

Report on the Notification of Physician Intent to Dispense:

The “Notification of Physician Intent to Dispense” form was reviewed. Mr. Barker questioned whether or not the Division publishes the names of the practitioners who have notified the Division that they are going to dispense? Mr. Walker indicated it is public information and the information would be available upon request. It was reported that only three individuals have submitted the intent to dispense notification. Mr. Davis indicated there are a lot of practices dispensing HCG and it is a concern that only three have submitted notification. Since this is a new process, the Division may want to send a letter out to the practitioner letting them know their responsibility.

Mr. Davis questioned whether or not those offices that have submitted notification have been inspected. Mr. Walker indicated he would need to check with Mr. Steinagel or Division investigators.

Discussion regarding definition of “extensive” compounding and adopting compounding rules consistent with the CFR:

Mr. Corsi, Division investigator, met with the Board to discuss the definition of “extensive” compounding. Many pharmacies are interpreting “extensive” in different ways. Some pharmacies have indicated the compounding process is extensive and others believe extensive is the number of compounded medications. Investigators would like the Board’s input on what is “extensive.” The USP 795 lists a description of categories: simple, moderate and complex. Mr. Corsi questioned whether or not the Board would consider adopting the same language. Dr. Young indicated R156-17b-614(a) includes the word “extensive” and it is also found in the self inspection report, question number 15. Dr. Young suggested just removing the word “extensive” from the Rule and from the self inspection report because the compounding pharmacy is held to the USP 795 or 797 standards. Mr. Corsi suggested adding the description of categories from the USP 795 standards. Mr. Fitzpatrick stated at the time the Rules were adopted, reference was made to the USP 795 and 797 standards to avoid placing a large volume of information into Rule. Dr. Lundberg made a motion to add to the non-sterile compounding section of Rule the USP descriptions for moderate and complex non-sterile compounding. Mr. Jones seconded the motion. All Board members voted in favor of the motion. Mr. Jones stated it would be nice

if the Division notified the pharmacies of the changes to the self inspection forms.

Break at 10:00 a.m.
Reconvened at 10:15 a.m.

James Ammon,
Re-licensure application:

Dr. Hobbins indicated Mr. Ammon submitted a complete application with all documentation that was requested. Mr. Perry stated Mr. Ammon meets the terms and conditions of the surrender Order. However, Dr. Hobbins stated when an individual surrenders their license, all rights are gone and the applicant needs to meet all current requirements for licensure. She indicated the current educational requirement is a Pharm.D, which Mr. Ammon does not have. Mr. Walker read the section of the statute that states when an applicant re-applies for licensure the individual has to meet the requirements of a new applicant. In 2006 the Statute was changed to require a Pharm D. If the individual graduated prior to 2006, they met the requirement due to graduation from an ACPE accredited program. Mr. Ammon is currently licensed in Wyoming and if he applies by endorsement, he would have to work 2000 hours in the last 5 years and can not have a pharmacist license restricted for 10 years prior to application unless determined by the Board and the Division. Mr. Garn stated Mr. Ammon would still meet the educational requirement because he graduated from an ACPE accredited program. Mr. Karl Perry, assistant attorney general, indicated that at the time Mr. Ammon made initial application he met the requirement; however, he is re-applying and does not meet the current requirement. Mr. Jones stated he feels that Mr. Ammon meets the educational requirement, and if we were to accept only the Pharm D, then very few individuals could transfer into the state. Mr. Ammon stated he has completed the court requirements, submitted the psychological evaluation indicating he would be safe to practice, and will have completed 400 intern hours by the end of August in Wyoming. He has passed the MPJE and NAPLEX examinations and feels he meets the requirements. Dr. Lundberg reviewed the evaluation submitted and indicated there are no concerns with the evaluation. Mr. Jones stated he has satisfied the terms of the surrender and the Board should consider issuing the

license on probation. Dr. Young stated he agrees that Mr. Ammon needs to be supervised on probation for a period of time. Mr. Ammon stated it would be difficult to find employment with a license on probation. Mr. Walker indicated that the argument that an individual should not be placed on probation because of the difficulty finding a job is not an acceptable reason to issue a license without probation. He indicated the Board's directive is to protect the public and the private market decides who they will hire. Dr. Lundberg questioned whether or not the Board and the Division can accept his application. Mr. DeRose stated he feels he meets the requirements and as long as he is placed on probation with supervision and other conditions. Dr. Lundberg made a motion to issue the license on a three-year probation with general supervision, completion of a thinking errors course, audits of billing practice and other conditions at the discretion of the Board such as not being allowed to own a pharmacy. Include the typical terms and conditions such as self assessment reports, supervisor reports, supervisor free of discipline and submit a practice plan for Board approval. Ms. Bird seconded the motion. All Board members voted in favor of the motion.

Division E-Mail and Environmental Scan:

Dr. Young reported that the NABP has developed a remediation test for those individuals who have been out of practice for a period of time. The Board could have the individual take this examination instead of retaking the NAPLEX. Mr. Walker indicated this examination would have to be required in statute or rule.

Review application submitted by Victoria Levinzon:

Ms. Levinzon submitted an application for licensure as a pharmacist. She is currently licensed in New Jersey, but has not practiced since 2005. Ms. Levinzon submitted documentation of continuing education hours. Board members recommend that if Ms. Levinzon meets the requirements for initial licensure she could be licensed. If she has been out of practice for a period of time, she would need to document that she has completed an internship as required by rule and meet initial application requirements.

Drew Allen, DVM,
Utah Veterinary Association:

Dr. Allen met with the Board to discuss concerns from the Utah Veterinary Medical Association regarding the increase in pharmacies stocking, selling and promoting veterinary specific medication. Dr. Allen stated there are concerns that medications are being dispensed to veterinary patients without the pharmacist having additional species-specific training. There is also concern about substitutions and dosing differences with animals. He stated they are also concerned with the large chain stores advertising veterinary supplies. Board members questioned whether or not the concern is the dispensing of the medications or the advertising? Dr. Allen stated it is the advertising without the knowledge base. Mr. Walker stated the statute clearly allows the pharmacy to dispense veterinary supplies. The Veterinary Practice Act was changed several years ago to say veterinarians didn't have to be licensed as a pharmacy to dispense the medications. Mr. Jones questioned what the association would like from the Board? Dr. Allen stated the UVMA is considering going to the Legislature and wanted input from the Board of Pharmacy. He indicated the UVMA would like to protect their patients, but do not want to be adversarial. There is concern that the pharmacist may dispense alternative drugs, not knowing it is contraindicated in that species. He stated pharmacists are the only non-veterinarians that can expand into the practice of veterinary medicine without additional training. Mr. Walker suggested Dr. Allen contact Reid Barker at the Utah Pharmacist Association to discuss how to balance the different issues. Mr. Jones stated it is up to the pharmacist to contact the veterinarian if there are any questions and if the pharmacist can not answer the questions, the client should be referred back to the veterinarian.

Adjourned to Lunch at 12:00 noon
Reconvened at 1:00 p.m.:

Connie Call, Compliance report:

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

-Colton Dale did not submit a self-assessment or therapist report.

-Rachael Arnold did not appear for her scheduled

interview last month and has not scheduled a meeting with Ms. Call.

-James Bee has been non-compliant for one year. He passed the MPJE examination and the probation was scheduled to be terminated. Ms. Lundberg made a motion that due to missed meetings, his probation be extended one year. Ms. Bird seconded the motion. All Board members voted in favor of the motion. Dr. Hobbins indicated she will check with Mitchell Jones to see if the probation can be extended.

Layne Kilpatrick,
Probation interview:

Mr. Kilpatrick and his attorney, Bret Rawson, met with the Board. Mr. Kilpatrick requested the due date for completion of the continuing education be extended until August 31, 2012. Mr. Kilpatrick explained the reason for the request and stated he submitted continuing education courses for approval as required in his Stipulation. However, by the time the Division approved the continuing education courses, the CE credits had expired. Mr. Kilpatrick submitted additional continuing education courses for review. Mr. Garn made a motion to accept the continuing education courses submitted as meeting the requirements in Mr. Kilpatrick's Order. Mr. Jones seconded the motion. All Board members voted in favor of the motion. Mr. Kilpatrick stated he will have the continuing education courses completed by the end of August 31, 2012.

Mr. Kilpatrick also indicated he has other issues to bring before the Board. He stated he did not receive an answer to his request for termination of probation and to reduce his fine to \$1.00. Mr. Rawson indicated the initial request was not a request for the Board to revisit the actions, but to consider termination of probation and reduce the fine to \$1.00. Mr. Jones indicated Mr. Kilpatrick was placed on probation for three-years and he has completed one year of the probation. Mr. Jones stated he feels it is necessary to continue to monitor the probation for a longer period of time. Mr. Rawson stated this is an unusual case and Mr. Kilpatrick did not have benefit of counsel when he signed the Stipulation. He stated Mr. Kilpatrick entered the Stipulation because if he had gone through due process he would have been evicted from the pharmacy. Mr. Rawson stated the business has now

been transferred to Mrs. Kilpatrick. Mr. Rawson stated they understand the three year probation is the usual term for probation; however Mr. Kilpatrick no longer owns the pharmacy, the pharmacy has hired a PIC and Mr. Kilpatrick has spent a great deal of money coming into compliance. Mr. Rawson stated it is moot for Mr. Kilpatrick to continue to report at this time. Dr. Young indicated early termination requests are based on compliance and also on attitude. Mr. Kilpatrick signed off on the agreement and he needs to take ownership of what happened. Board members do not feel he has taken that ownership. The Board has heard the facts for a fourth time and we should be moving forward. Mr. Kilpatrick stated he does not know why the Board feels he asked the Board to revisit the facts. Mr. Perry stated there are two parts of the letter, one asking for early termination and the other to reduce the fine. Mr. Perry indicated that reducing the fine would be the decision of the Division Director. The Board could consider the request for early termination of probation. Board members indicated Mr. Kilpatrick needs to take ownership of his actions. A role of the Board is to monitor probation. Mr. Kilpatrick's demeanor and interaction with the Board has been a roadblock.

Mr. Kilpatrick questioned what happens when the Division and the Board doesn't comply and doesn't respond to a probationer. Mr. Kilpatrick stated he does not feel his letter was defensive. He stated the Order and the probation is posted on the internet and will be a lifelong situation that will follow him wherever he goes. He stated he did enter into a lease agreement, did ship compounded medications out of the state when he wasn't licensed to do so and will take responsibility for those actions. Ms. Bird made a motion to deny early termination of probation and to deny reducing the fine to \$1.00. Dr. Lundberg seconded the motion. Mr. Jones abstained. All other Board members voted in favor of the motion.

Sheryl Ledet,
Quarterly probation interview:

Ms. Ledet stated her recovery is going well. She indicated she will be having surgery and her addiction physician will provide a medical release to the surgeon. She will be using a morphine pump while in the hospital and hopes to be off all pain medications

two months after the surgery. Ms. Ledet will let Ms. Call know how she is doing week by week and determine whether or not she is able to attend 12-step meetings. **Ms. Ledet is in compliance with the terms and conditions of her Order. She will be seen October 2012.**

Danny Carter,
Quarterly probation interview:

Mr. Carter indicated he works part time at the detox center. Mr. Garn made a motion to approve the practice plan providing pharmacy counseling. Mr. Jones seconded the motion. All Board members voted in favor of the motion. Mr. Carter stated he has been approached by the supervisor at the detox center to review charts regarding medications. He will not have access to controlled substances. Board members suggested he add this to his practice plan. Mr. Carter indicated requiring a narcotic log puts a burden on his employer and he requested he be allowed to do hair testing quarterly instead of submitting a narcotics log. Dr. Young stated the log is also to protect him if medications come up missing and feels it would be in his best interest to have the log. Board members denied the request to submit quarterly hair testing in lieu of quarterly narcotic logs. **Mr. Carter is in compliance with the terms and conditions of his Order. He will be seen again October 23, 2012.**

Waseland Scott Williams,
New Order:

Mr. Williams and his attorney, John Roaker, met with the Board. Mr. Williams explained the circumstances that brought him before the Board. He indicated that the pharmacy failed numerous inspections and he decided to close the pharmacy. Mr. Williams stated he is not working at this time, but has a commitment from a pharmacy to allow him to work on a part-time basis. Board members reminded him he needs to submit a practice plan when he becomes employed. Dr. Lundberg stated in the past he has struggled to be in compliance and questioned what support he has to help him successfully complete the probation. Mr. Williams stated he feels since he is no longer the owner of the pharmacy and does not have as many responsibilities, he will do better. Board members reminded Mr. Williams to read and re-read his Order, and become familiar with the laws and rules so he doesn't make the same mistakes. He needs to make sure all reports are submitted to the Division on time.

Mr. Williams submitted a supervisory plan and Dr. Lundberg made a motion to approve the plan. Mr. Jones seconded the motion. All Board members voted in favor of the motion. **Mr. Williams is in compliance with the terms and conditions of the Order. He will be seen October 23, 2012.**

Rachel Arnold,
New Order:

Ms. Arnold did not appear for her scheduled interview and did not show for the June 26, 2102 meeting. Mr. DeRose made a motion to refer her for an Order to Show Cause Hearing due to non compliance with the terms and conditions of her Order. Mr. Garn seconded the motion. All Board members voted in favor of the motion. **Ms. Arnold is out of compliance with the terms and conditions of her Order.**

Cynthia Asher,
Quarterly probation interview:

Ms. Asher indicated she has completed the physical and psychological evaluations. Ms. Asher also needs to renew her suspended license. Ms. Asher questioned whether or not she could volunteer at the 4th Street Clinic. Board members stated volunteer work as a pharmacist is acceptable as long as she meets the conditions of the Order. Once the evaluations are received, the Board will determine the conditions of the probation. If the recommendation is made from the physician that she is physically able to practice, the suspension could be lifted. **Ms. Asher is in compliance with the terms and conditions of her Order. She will be seen again October 2012.**

Kyle Rootsart,
Probation Interview:

Mr. Rootsart is currently working 15 hours per month at Healthwise. Board members indicated his Order requires he work at least 16 hours per week. Mr. Rootsart stated he has renewed his California license and may have to go to work in California because he can not find employment here due to the probation. Board members indicated in order to count the probation, California would have to place his license on the same or higher conditions and would have to monitor his probation. Mr. Rootsart stated he has completed the law continuing education course; however, he can not find an ethics only course. Board members reviewed the continuing education presented and a motion was made to accept the *Ethical Decision Making in Pharmacy* as meeting the ethics continuing education requirement. The motion was seconded.

All Board members in favor of the motion. **Mr. Rootsaert is in compliance with the terms and conditions of his Order.**

Mark Akagi
Annual probation interview:

Mr. Akagi reported things are going well and he is enjoying retirement. He indicated he has not been looking for employment but would like to keep his license in case he needs to return to work. **Mr. Akagi is in compliance with the terms and conditions of his Order.** He will be scheduled to meet with the Board again July 30, 2013.

David Abrams
Quarterly probation interview:

Mr. Abrams stated he is volunteering ten hours per week to keep the probation going. Mr. Abrams indicated the Board approved the ten hours per week; however, the Stipulation was not amended. Dr. Lundberg made a motion to amend the Order to allow ten hours per week to continue the probation. Mr. Jones seconded the motion. All Board members voted in favor of amending the Order. Mr. Abrams submitted a request for termination of probation. Mr. Abrams indicated he had no knowledge of the actions by Mr. Kilpatrick and was not aware of taking HCG to physician offices. He also indicated he was sited for not having a thermometer in the pharmacy. Mr. Abrams included in his request for early termination what he has learned from the probation. Dr. Lundberg stated other probationers are working with restricted licenses. His indication that it is amoral to be on probation because it interferes with finding employment is not a good reason to terminate the probation. Dr. Lundberg stated he has always been in compliance, he is good to work with, but he has worked as a pharmacist for less than 1000 hours. The reason for the probation is to monitor his practice. Mr. Jones stated as a PIC he should have known what was going on in the pharmacy. His letter requesting termination of probation does not address what he has learned and that it will not happen again. Mr. Jones made a motion to deny the request at this time. Mr. DeRose seconded the motion. All Board members voted in favor of the motion. Board members agree that his attitude has been great and that he has taken ownership for his actions. **Mr. Abrams is in compliance with the terms and conditions of his Order.** He will be seen again October 23, 2012.

Dennis Beasley,
Probation interview:

Mr. Beasley did not appear for his scheduled interview. Dr. Lundberg made a motion to refer Mr. Beasley for an Order to Show Cause Hearing due to non compliance with the terms and conditions of his Order. Ms. Bird seconded the motion. Mr. DeRose abstained. All other Board members voted in favor of the motion. **Mr. Beasley is out of compliance with the terms and conditions of his probation.**

Alan Winter, request for early termination of probation:

Mr. Winter has completed three years of his probation and has always been in compliance with the Order. Dr. Lundberg made a motion to approve the request to terminate probation. Mr. Garn seconded the motion. All Board members voted in favor of the motion. **Mr. Winter is in compliance with the terms and conditions of his Order.**

Dr. Lundberg:

Dr. Lundberg suggested adding to Stipulations that a pharmacist on probation can not work for a spouse owner or have a spouse supervisor. She stated she would also add additional terms at the discretion of the Board, such as requiring a thinking errors course. Dr. Lundberg also indicated she would prefer that the probationers be brought before the Board in the morning, rather than in the afternoon. Dr. Young stated the reason for the switch was to have a dedicated time to discuss pharmacy issues. Dr. Lundberg suggested beginning probationers at 11:00 a.m. Dr. Hobbins questioned Board members how they would feel having a Board meeting every other month? Board members indicated there are significant rules that need to be developed and they do not believe that a meeting every other month would be possible at this time. Dr. Hobbins questioned whether or not the probationers have to come in every quarter. Dr. Lundberg stated that yes, especially with those that have substance abuse problems. However, they could meet quarterly for the first year and if doing well, meet with them yearly unless they are out of compliance.

Pharmacy Technician Programs:

Alpine Apothecary was approved as a pharmacy technician program.

Ms. Bird was assigned to review the following

programs: Lenny's Richfield Family Pharmacy,
PassAssured and Cache Valley Pharmacy.

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.

Date Approved

David Young, chair,
Pharmacy Licensing Board

Date Approved

Debra Hobbins, Bureau Manager,
Division of Occupational & Professional Licensing