

MINUTES

**UTAH
BOARD OF NURSING
MEETING**

January 10, 2013

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

CONVENED: 8:33 a.m.

ADJOURNED: 4:55 p.m.

Bureau Manager:
Board Secretary:
Division Regulation/Compliance Officer:
Conducting:

Debra Hobbins
Shirlene Kimball
Ray Walker
Peggy Brown, Chair

Board Members Present:

Peggy Brown
Cescilee Rall
Diana Parrish
Sue Kirby
Barbara Jeffries
Ralph Pittman
Marie Partridge
Alisa Bangerter

Board Members Excused:

Tonya Bailey
John Killpack
Sheri Palmer

Guests:

Michael Beck, Utah Society of Anesthesiologists
Michelle McOmber, UMA
Michael R. Bartlett

TOPICS FOR DISCUSSION

DECISIONS AND RECOMMENDATIONS

ADMINISTRATIVE BUSINESS

November 15, 2012 minutes:

Ms. Parrish made a motion to approve the November 15, 2012 minutes with correction. Ms. Bangerter seconded the motion. Ms. Jeffries abstained. All other Board members voted in favor of the motion.

December 13, 2012 minutes:

The December 13, 2012 minutes were tabled.

Nomination for Chair Elect:

Ms. Parrish nominated Ms. Rall for Chair Elect. All

Board members voted in favor of the nomination.

Ms. Brown:

Ms. Brown stated the NCSBN Midyear and Annual meetings are coming up in March and August. Ms. Brown requested the Division consider sending Board representatives to these meetings. Ms. Parrish indicated she would send an email to Francine Giani, Department Director, and let her know how valuable these meetings are for Board members. Board members indicated Ms. Brown and Ms. Rall should attend a meeting if approval is granted.

Rules:

Dr. Hobbins indicated that the current Rule does not require the APRN to provide medical records to other practitioners if requested by the patient. She indicated the Medical Practice Act requires the physician to provide medical records as requested and the wording from the Medical Practice Act Rule was added to the Nurse Practice Act Rule. Section R156-31b-402 (41) and (42) will allow the Division to administer administrative penalties for failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another licensed practitioner. Board members discussed number R156-31b-402(38). Mr. Walker questioned if this administrative penalty applies to all classification of nurses, or is it meant to be specific to APRN. Mr. Pittman indicated number (38) should be for the APRN and numbers (39), (40), (41), (42) and (43) would include all classifications of nurses. Board members also suggested adding number (38) to R156-31b-502, Unprofessional Conduct.

Ms. Brown stated it does not address the nurse that forges a prescription. She stated that a nurse that forges a prescription should also receive a fine. Mr. Pittman stated he thinks number (35) covers this issue. Ms. Brown stated that the fine is not consistent with forging and should be higher. She suggested the fine be the same amount as list in number (34).

Joel Hoffman and Carmen Richins,
Department of Health,

Mr. Hoffman, Director of Health Facility Licensing, and Ms. Richins, Licensing Manager, met with the Board of Nursing to explain who can administer medication in facilities regulated by the Department of Health. Mr. Hoffman stated his department oversees and enforces the laws and rules for health facility licensure. However, he indicated that due to budget

cuts, they do not have as many staff members as in the past to ensure compliance. Mr. Memmott outlined a number of concerns that DOPL's investigators have. He stated that investigators are finding instances where there are no RNs in the facility. Mr. Memmott stated the biggest issues appear to be in assisted living with the aides passing medications. Mr. Hoffman stated that Health Facility Licensure Rules changed in 2000. He indicated there were numerous discussions with assisted living and Ms. Poe from DOPL. Ms. Richins reported medication administration is found in Health Facility Licensure Rule; section R432-470-19. Ms. Richins indicated that the RN is required to complete an assessment on the patient upon admittance and then reassess the patient every 6 months. She indicated the RN has to be in the building at some point to complete the assessment. The RN must delegate according to the delegation section of the Nurse Practice Act. The RN supervises, follows up and monitors the patient. The RN has to be available 24 hours a day, but not necessarily in the building. The RN cannot delegate nursing assessment, such as sliding scale insulin; the patient must be medically stable. The aide would not be able to offer blood pressure medications if the medication is based on blood pressure measurement levels. However, if the patient takes a set amount every day, the aide can offer the medication because they are not completing an assessment. Mr. Hoffman stated his Department completed 28 surveys last year and issued one Class 1 deficiency. He stated Assisted Living Level 1 is for those individuals who do not require much assistance. Assisted Living Level 2 patients need more assistance, however, they can evacuate on their own if necessary. Mr. Hoffman stated during a survey, the investigator observes the aides and looks at paperwork. Aides are required to have training, but the health department does not indicate what that training needs to include. The RN is aware that the responsibility falls on them. Ms. Brown stated that medication aide training is defined in the Nurse Practice Act. Ms. Richins stated they are not medication aides, but following delegation.

Ms. Brown stated national statistics indicate a large number of medication errors. She stated the studies did not find objectives were met giving those with less

education more expanded roles. Ms. Brown questioned how medication errors are reported in Utah. Ms. Richins stated the nurse at the facility fills out a form and the error must be reported as soon as it is discovered.

Board members questioned what happens when the Department of Health writes a deficiency to a facility. Ms. Richins stated that with a Class 2 deficiency, the investigator goes back to the office, writes a statement of the observed deficiencies, a letter is mailed to the facility, the facility mails back a plan of correction and the investigator determines if the plan of correction is acceptable. The investigator does not return to the facility. She indicated that a Class 1 deficiency occurs if a survey is conducted and significant problems are found that could cause immediate harm. She reported the same process is used for the Class 2 deficiency with the exception that the investigator goes back on site. She reported civil penalties could be issued to the facility. If there is a third deficiency, the Department of Health can put a sanction on the license, but in order to close down a facility, the deficiency has to be egregious. She reported they are complaint driven and received 100 plus complaints last year. The Department does not issue warnings to the aide or to the nurse but the facility may chose to do so. Mr. Hoffman stated there is no action they can take against the aide or nurse unless there is criminal behavior. Ms. Richins stated that if the nurse makes an error, he/she might be reported to DOPL. If an aide makes an error, they may be referred to the Nurse Aide Registry. Ms. Richins indicated employees that have direct contact with patients are required to undergo background checks. The facility also reviews the DOPL web site and the Attorney General's exclusion list. She reported they can also check with child protection. Mr. Hoffman stated they are aware there is a hole in the system and that facilities push the limits, but the Department of Health can only focus on abuse due to budget constraints. Ms. Brown questioned if there is a tracking system on the web for facilities that have been cited. Mr. Hoffman stated the Department of Health no longer posts a report card on the web. He indicated an individual can call the office and get a report.

Mr. Hoffman stated he meets with the Assisted Living Association once a month. There are approximately 189 assisted living facilities in Utah. Board members questioned if Assisted Living facilities are accredited. Ms. Richins stated there is an accrediting body, but it is very expensive to become accredited and most facilities are not accredited.

Mr. Pittman questioned whether there is a rule that says who can dispose of medications. Ms. Richins stated controlled substances could not be destroyed without two people being present; however, there are some medications that cannot be destroyed. Mr. Memmott indicated they have to abide by the Code of Federal Regulations and the DEA rules.

Mr. Memmott stated that the way the delegation section is written it is hard to determine where the division is between a CNA, unlicensed individual and nursing. Ms. Brown stated nursing happens anytime a judgment or an assessment requires nursing knowledge. Ms. Brown stated the standards should be clarified. Ms. Parrish indicated a position paper might need to be developed to help clarify the differences. Mr. Memmott stated it would need to define the types of medications, the judgment factors, and it would require an assessment. Mr. Pittman stated there is wording in the section regarding medication in schools. Ms. Brown stated this is different from the problem in the schools and there is no easy fix to the problem since every facility is different and each facility has different training policies.

Mr. Walker stated the delegation section needs to be addressed to make sure it is not in conflict with Statute. The statute indicates that the delegation can only be to a Medication Aide, LPN or RN and not to an unlicensed individual.

Lynn Hooper,
Division Investigator:

Mr. Hooper stated that he supports the Rule change that the APRN needs to provide medical records if requested.

Sherry Mack,
Agency Action:

Mr. Jones indicated that the Agency Action notice was mailed to the address on record with the Division on November 19, 2012. DOPL received evidence that

Jack Mack signed for the notice on November 21, 2012. Ms. Mack had thirty days in which to file a written response; however, the Division is not in receipt of a response. Mr. Jones reported Ms. Mack was placed on a Stipulation and Order on March 15, 2007 for receiving hydrocodone from two different practitioners, from her housekeeper and for diverting medications from her employer. Ms. Mack was placed on probation for 5 years on March 15, 2007. Two years later she signed an indefinite suspension due to being physically unfit to practice. In June 2012, she was able to demonstrate fitness to practice and the indefinite suspension was lifted. Almost immediately, she was out of compliance for failing to submit paperwork, failure to submit urine screens, failure to submit prescriptions, and having three prescribers. Based upon the evidence the Division is requesting that her license be revoked and that she not be allowed to reapply for a period of five years. Ms. Parrish made a motion that based on the non-compliance outlined in the Notice of Agency Action for failure to submit paperwork, failure to submit urine screens on June 5, 2012 and October 2012, failure to submit prescriptions, and having three prescribers that Ms. Mack's license be revoked as recommend and she cannot reapply for a period of five years. Mr. Pittman seconded the motion. All Board members voted in favor of the motion.

The meeting was closed at 11:10 a.m. in accordance with the Open and Closed meetings Act, section 52-4-205(1)(a) to discuss the character, professional competence, or physical or mental health of an individual.

Mr. Pittman made a motion to close the meeting in accordance with 52-4-205(1)(a) to discuss the character, professional competence, or physical or mental health of an individual. The motion was seconded. All Board members voted in favor of the motion. The meeting was closed at 11:10 a.m.

Meeting opened at 11:36 a.m.

Ms. Jeffries made a motion to open the meeting. Ms. Bangerter seconded the motion. All Board members voted in favor of opening the meeting. The meeting was opened at 11:36 a.m.

Debra Pittman,
New Order:

Ms. Pittman explained the circumstances that brought her before the Board. Ms. Pittman indicated her Order states she had an inappropriate interaction with a patient at the Utah State Hospital. Ms. Pittman stated the patient refused to go to the bathroom. She stated that during the incident there were two males in

bathroom. She was standing at door and would not let the patient leave until he used the bathroom. Ms. Brown questioned the behaviors described by the witnesses, what did she attribute them to and why did he do these things? Ms. Pittman stated she is not sure why. Ms. Brown questioned whether she felt the patient was doing this on purpose. Ms. Pittman stated he was a patient that came from the court and she had been told not to cater to these individuals. Ms. Pittman stated she did not do anything wrong. Board members indicated there must have been something because she has a Stipulation and Order. Board members questioned whether she understands the terms and conditions of the order. Ms. Pittman stated she understands the terms and conditions.

Ms. Pittman is currently working in a home with a child. Her Order allows her to continue in this employment. However, if she is assigned to another patient she will need to receive approval from the Board. Ms. Brown indicated that the Board normally does not approve home health and she may not be allowed to work at the home health agency after this assignment ends. Board members requested that the monthly reports from the employer include the age of the patient and the initials of the patient so they can make sure she has not changed patients. Ms. Parrish indicated she is concerned because Ms. Pittman does not seem to be accepting any responsibility for her actions. Ms. Pittman will be seen April 11, 2013.

Adjourned to Lunch at 12:06 p.m.
Reconvened at 12:45 p.m.

Connie Call,
Compliance Report:

Ms. Call indicated Scott Hirschi's supervisor has requested the number of supervisory meetings be reduced to once a month. Ms. Parrish made a motion to approve the request. Ms. Jeffries seconded the motion. All Board members voted in favor of the motion.

Stacia Frank: Ms. Frank is requesting termination of therapy. Her therapist has indicated she has met the maximum therapy. Board members questioned whether this means she is not receiving any benefit from the meetings. The therapist report also indicates that Ms. Frank cannot work in nursing. Board

members indicated Ms. Frank will be invited to meet with the Board next month. Mr. Pittman made a motion to contact the therapist to find out why the recommendation is that she cannot work in nursing. Ms. Parrish seconded the motion. All Board members voted in favor of the motion.

Karen Burton requested she be allowed to terminate her suspension. Ms. Parrish made a motion to deny the request. Mr. Pittman seconded the motion. All Board members voted in favor of the motion.

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

- Shauna Tall missed drug screens on November 29, 2012 and December 3, 2012 and has not paid her fine for non-compliance in November.
- Tyler Miller failed to notify his employer of his probationary status; failed to notify the division of his employment and worked without supervision and with access to controlled substances.
- Suzanne Menatti missed a urine screen, failed to call into Affinity and failed to submit reports due December 1, 2012.
- Amy Nau submitted her paperwork late.
- Jason VanDaam had a positive urine screen.
- Dale Hullinger submitted his paperwork late.
- Teresa Williams submitted her paperwork late.
- Brent Pace submitted his paperwork late. He will be invited to meet with the Board next month.
- Debra Davenport is out of compliance for submitting her paperwork late. She will be scheduled to meet with the Board next month.
- Marc Haldin submitted his paperwork late.
- Via Panter was late submitting her paperwork and will be seen next month.
- Lauren Moger failed to submit evaluations by the extended date of December 31, 2012. She will be invited to meet with the Board next month.

Tracy Johnson,
Re-licensure application:

Ms. Johnson reported she was placed in Diversion in 2005. She indicated she failed diversion and was placed on probation in 2008. Ms. Johnson stated she was on court probation, was addicted to a number of drugs and did not feel she could continue with her DOPL probation. She surrendered her nursing license

so she could work on her recovery. She indicated she signed up with Affinity two years ago and has been doing urine screens since that time. She indicated she did miss calling into Affinity seven or eight times in the last two years. She also indicated she has been attending 12-Step meetings, has a sponsor and is a sponsor. Ms. Johnson stated she last worked in nursing in 2008 and has completed her 30 hours of continuing education. She reported her last relapse was in 2005. She stated her goal would be to only work 2-3 days per week as a nurse.

Board members separated into groups at 1:50 p.m.

Group 1
Conducting: Marie Partridge
Secretary: Shirlene Kimball

Board members present: Cescilee Rall, Marie Partridge, Sue Kirby and Ralph Pittman.

Shauna Tall:

Ms. Tall called in sick and will be seen next month.

Tyler Miller:

Mr. Miller requested amendments to his Order. He stated, for the most part, he has been in compliance with the terms and conditions of his Order. He indicated his place of employment was sold and he went on unemployment in March of last year. He indicated he has been job hunting, however, has not been able to find a nursing position. He stated he feels this is due to the restrictions in the Order. Mr. Miller indicated he found nursing employment and accepted the position prior to letting them know he was on probation. He failed to inform the Division of the position. He stated he gave the employer the license that had probationary status on it. He also indicated he tried to contact Ms. Call as soon as he was offered the position. Dr. Hobbins stated that by the time the Division received his e-mail; he was already working and had not shown his Order to the employer. Committee members indicated it was not okay that he accepted the position without providing the employer and the Division with all the information. Ms. Kirby stated this is not just a little mistake, he has been on probation long enough to understand how the process works. Mr. Pittman questioned why the employer did not question the license that indicated it was a probationary license. Mr. Miller stated in his interviews, he does not hand over the Order. Mr.

Miller stated he understands the seriousness of his actions; however, it is just not possible to find a job with the restrictions on the license. Ms. Kirby stated the Board understands the frustrations; however, he cannot get something to happen by being dishonest. Dr. Hobbins stated she sees the same behavior that was in the original charge. Mr. Miller stated he feels access to controlled substances would help him obtain a nursing position. He stated the addiction is behind him and he is no longer depressed. Mr. Miller reported his sobriety date is February 2010. He stated he has no thoughts of relapse and has not relapsed. He stated he attends 12 step meetings once a week and 4 NA meeting a month. **Mr. Miller is out of compliance with the terms and conditions of his probation.**

Suzanne Menatti.
Out of compliance:

Ms. Menatti missed calling into Affinity and has never submitted a therapist report. Ms. Menatti indicated she thought she did not need to submit a therapist report after speaking with the Board in May of 2011. Committee members reviewed the file and did not find where approval to stop attending therapy was given. Ms. Menatti stated she attends Four AA meetings per week, and two PIR meetings per month. Ms. Call will review the file and the minutes to determine whether Ms. Menatti will need to attend therapy. She missed a urine screen on December 10, 2012. She stated she just forgot to call and missed the drug screen. She reported her sobriety date is the second Wednesday, May 2011. She stated she has had thoughts of relapse, but has not relapsed. She reported she has a sponsor, has family support and doing well in recovery. **Ms. Menatti is out of compliance with the terms and conditions of her order for not calling into Affinity and missing the December drug screen.** Committee members indicated she may receive a fine for non compliance.

Amy Nau,
Out of compliance:

Ms. Nau indicated she did not think she had to continue to submit her paperwork once she was discharged from Affinity. She stated she now understands she has to continue to submit the paperwork. This is her first time out of compliance and Committee members indicated if it happens again, a fine will be recommended for non-compliance. Ms. Nau stated she has good family support. She stated

she is not taking any medications not lawfully prescribed for her. Ms. Nau also needs to complete a nursing ethics course. **Ms. Nau submitted her paperwork late and is out of compliance for the late paperwork.** She will be seen in April 11, 2013.

Robin Walker,
New Order:

Ms. Walker explained the circumstances that brought her before the Board. Ms. Walker stated she understands the terms and conditions of her Order. She reported her sobriety date is December 31, 2010. She stated she has no thoughts of relapse and has not relapsed. She stated she is attending counseling. She stated she is not working in nursing and is currently running a successful business. She indicated she understands that if she does not work in nursing, the probation period does not toll. She indicated she does not feel she will be able to find a nursing position due to all the restrictions in the Stipulation and Order. Committee members accepted her essay. **Ms. Walker is in compliance with the terms and conditions of her Order** and she will be seen April 11, 2013.

Dana Swindle,
New Order:

Ms. Swindle did not appear for her interview and will be rescheduled next month.

Tina Godbe,
Her request:

Ms. Godbe met with the Committee to request that her urine screen testing be placed on hold for a period. She indicated she is thinking of obtaining her CDL and driving a semi with her husband. It would be difficult trying to drive to the testing sites in the semi-truck and they only have a certain number of hours to reach a destination. However, she does not want to give up nursing and does not want to surrender her nursing license. She is current on all reports, attends 12-Step meetings and has a sponsor that she contacts everyday. She stated she is not taking any medications not lawfully prescribed for her. She stated she has no thoughts of relapse and has not relapsed. She reported her sobriety date is November 28, 2008. Committee members will recommend to the Board that she continue to call into Affinity everyday. If her number comes up, she would call Ms. Call and asked to be excused from testing. All other requirements would have to be met and if she missed calling in, she would have to appear for the urine screen. It could be a two-week trial while she is on the road and she will have to notify Ms. Call when the

Group 2
Minute taker: Connie Call

Jason VanDaam,
Probation Interview:

Dale Hullinger,
Probation interview:

Teresa Williams,
Telephone probation interview:

Christopher Singer,
New Order:

Traci Lujan,
New Order:

two-week period begins.

Board members present: Ms. Brown, Ms. Parrish, and Ms. Jeffries.

Mr. VanDaam has a positive urine screen and stated he cannot explain why it is positive, but it may be due to the environment he is working in. Mr. VanDaam then admitted he had relapsed and signed a surrender document.

Mr. Hullinger indicated he was late submitting his paperwork due to a concussion. He reported his sobriety date is July 25, 2007. Committee members recommended accepting the reason the reports were late and **Mr. Hullinger will be considered in compliance with the terms and conditions of his Order.**

Ms. Williams indicated she is currently on medical disability. She is completing her continuing education hours to maintain the nursing license. She reported her sobriety date is January 2006. Committee members indicated she may receive a fine for being out of compliance with the Stipulation. Committee members also questioned whether she would like to surrender her license until she can return to work. A surrender document will be prepared for her review. **Ms. Williams is out of compliance with the terms and conditions of her Order.**

Mr. Singer explained the circumstances that brought him before the Board. Mr. Singer indicated he completed a psychological evaluation for the court last summer and wanted to know if it would be accepted in lieu of completing another evaluation. Mr. Singer stated he is working at the Montezuma Creek Clinic. He reported his sobriety date is July 9, 2012. He indicated he has no thoughts of relapse and has not relapsed since July 9, 2012. **Mr. Singer is in compliance with the terms and conditions of his Order.**

Ms. Lujan indicated she has completed her evaluation and is working at Highland Ridge. She reported her sobriety date is December 1, 2006. **Ms. Lujan is in compliance with the terms and conditions of her**

Order.

Reconvened to Full Board 4:40 p.m.

Report from groups

Shauna Tall: Ms. Tall is completely out of compliance with the terms and conditions of her Order. Committee members recommended Ms. Tall be referred for an informal agency action for non-compliance to the terms of her Order. All Board members voted in favor of the recommendation.

Tyler Miller: Committee members expressed concern that Mr. Miller did not seem concerned that he was dishonest in obtaining a nursing position. Mr. Miller also indicated he has been calling into Affinity every day, however, the report indicates he has missed calling in 28 times. The Board of Nursing has not monitored his probation since May 2012 because he signed an agreement with the Respiratory Board. Board members indicated they feel he should be monitored by the Board of Nursing and questioned how to proceed from here. Dr. Hobbins indicated she will check with the Respiratory Board to find out his status with that Board. Mr. Miller was aware he needed to meet with the Board of Nursing to request a change, so he knew what is in his stipulation. Board members would like to issue a large fine because he out-right lied to the Board. Ms. Partridge stated Mr. Miller has come along way and feels the Board should work with him. Board members indicated this would be an instance where an auditor would look at the action and question why nothing was done. He was in Diversion in 2003, failed out, was placed on probation 2005, had a DUI in 2010, signed another MOU May 2012 and has now lied to obtain a job. He misses calling into Affinity at least twice a month. Board members requested Mr. Jones give the Board an opinion on what needs to happen next. Mr. Pittman made a motion to deny the request for access to controlled substances, deny amending the Stipulation to work without supervision, deny his request to be allowed to contact pharmacies to fill a prescription due to non-compliance. Further action will be tabled until clarification of monitoring from the respiratory board has been received and legal counsel contacted. Ms. Parrish seconded the motion. Ms. Partridge opposed. All other Board members voted in favor of the motion.

Robin Walker: Ms. Walker requested she be allowed to have two prescribers. A motion was made to approve her request for two prescribers; however, only one can prescribe controlled substances. The motion was seconded. All Board members voted in favor of the motion.

Tina Godbe: A motion was made to deny her request for a 60-day leave of absence from urine screen testing. The motion was seconded. All Board members voted in favor of the motion. Committee members recommended Ms. Godbe call into Affinity everyday, and if during a two week period of time while she is out on the road and her number comes up, she call Ms. Call and ask to be excused. She must let Ms. Call know which two weeks she will be gone prior to leaving. All Board members voted in favor of the recommendation.

Dale Hullinger has entered a nursing program at Salt Lake Community College. The school must acknowledge in writing receipt of a copy of his Stipulation and Order.

Traci Johnson request for re-licensure. Ms. Partridge made a motion to issue her license on a MOU for a period of 5 years with the standard drug and alcohol terms and conditions. Mr. Pittman seconded the motion. All Board members voted in favor of the motion.

RN and APRN Continuing Education discussion:

Mr. Pittman made a motion to table the discussion until the Board had time to review the information provided and make an informed decision. Ms. Jeffries seconded the motion. All Board members voted in favor of the motion.

Rules;

Mr. Pittman made a motion to have Dr. Hobbins file the Rules as discussed and approved. Ms. Parrish seconded the motion. All Board members voted in favor of the motion.

Report from Education Committee:

Dr. Hobbins indicated the Education Committee recommends that the NCLEX pass rates be reviewed on a rolling annual period. Mr. Pittman made a motion to include this in the proposed Rules. Ms.

Parrish seconded the motion. All Board members voted in favor of the motion.

DOPL Audit: Informational.

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 14, 2013 (ss) Peggy Brown
Date Approved Peggy Brown, Chair, Utah Board of Nursing

February 14, 2013 (ss) Debra Hobbins
Date Approved Debra Hobbins, Bureau Manager, Division of Occupational & Professional Licensing