

Awaiting Formal Approval
MINUTES

UTAH
OSTEOPATHIC
PHYSICIAN AND SURGEON'S
LICENSING BOARD MEETING

November 29, 2012

Room 402 – 4th Floor – 9:00 A.M.
Heber Wells Building
Salt Lake City, UT 84111

CONVENED: 9:00 A.M.

ADJOURNED: 12:02 P.M.

Bureau Manager:
Board Secretary:
Compliance Assistant:

Noël Taxin
Karen McCall
Debra Troxel

Board Members Present:

Keith Ramsey, DO
Layne A. Hermansen, DO
Noel C. Nye, DO

Board Members Absent:

Lynsey J. Drew, DO
Vacant Position

TOPICS FOR DISCUSSION

DECISIONS AND RECOMMENDATIONS

ADMINISTRATIVE BUSINESS:

Board Chairperson

Dr. Hermansen nominated Dr. Ramsey for Board Chairperson. Dr. Nye seconded the nomination. **The Board vote was unanimous.**

MINUTES:

The minutes from the July 19, 2012 Board meeting were read.

Dr. Nye made a motion to approve the minutes as read. Dr. Hermansen seconded the motion. **The Board vote was unanimous.**

APPOINTMENTS:

9:20 am

Debra Troxel, Compliance Update

Ms. Troxel updated the Board regarding the compliance or non-compliance of probationers.

Ms. Troxel reported **Dr. Larry G. Andrew** is currently in compliance with his Stipulation and Order. She reminded the Board that Dr. Andrew's probation ending date will be December 7, 2012. Ms. Troxel stated the reports from Ms. Davis and Dr. Kronmiller were positive and both support termination of probation.

Ms. Taxin stated Dr. Andrew will meet today but the Board may recommend termination on December 7, 2012 when he has completed the full term of his probation.

Ms. Troxel reported **Dr. Bruce D. Latham** is currently in compliance with his Stipulation and Order. She stated there was an amendment to the New Hampshire Order which identified Dr. Latham would not be required to continue further psychotherapy treatment. She stated New Hampshire does require monitoring for Dr. Latham. She stated he will be on probation with Utah until New Hampshire terminates their public reprimand/probation.

Ms. Taxin reminded the Board that Dr. Latham was debating some of the New Hampshire charges at his last appointment but therapy was the only requirement terminated in New Hampshire. She stated Dr. Latham will need to update the Board regarding his status.

9:30 am

Dr. Larry G. Andrew, Probationary Interview

Dr. Andrew met for his probationary interview.

Dr. Ramsey conducted the interview.

Dr. Ramsey informed Dr. Andrew that his probation period is scheduled to terminate December 7, 2012. He stated the reports from Dr. Andrew's therapist and supervisor were received and both were positive with recommendations of termination of probation.

Dr. Ramsey recommended Dr. Andrew continue to

maintain the chaperone log, maintain his boundaries with patients and staff by not treating staff and not using himself as a model.

Dr. Andrew responded his plan is to continue with having a chaperone and to document in the patient charts the name of the chaperone. He stated he would like to have someone practice with him but has not yet been successful in finding a partner. He stated he will no longer be treating staff and he informs them they will need to go elsewhere for treatment. Dr. Andrew stated he plans to continue with peer review if he has any questions. He stated he did not see the benefit of the surveys and was hoping patients would talk more freely with the staff. Dr. Andrew stated he now makes sure all consent forms are properly filled out prior to doing any procedure.

Dr. Ramsey asked if Dr. Andrew has any concerns regarding any of the mistakes he made.

Dr. Andrew responded he believes he has done well during his monitoring and probation, he has learned a lot and is more comfortable in his practice than he has felt for a long time.

Dr. Ramsey asked if there were any recommendations Dr. Andrew would give to the Board in regard to other probationers.

Dr. Andrew responded no. He stated the Board monitored his probation well.

Dr. Ramsey commended him as it was a good experience to watch Dr. Andrew's improvement and progress. He voiced being pleased with the cooperation of Dr. Andrew and doing all that was asked of him.

Ms. Taxin encouraged Dr. Andrew to be sure to seek peer review and ask questions if he has any. She stated she believes Dr. Andrew was a little frustrated when he first met but has grown by working hard to make corrections. Ms Taxin thanked Dr. Andrew for taking his probation

seriously and for consistently being in compliance with his Stipulation and Order.

Dr. Ramsey made a motion for termination of probation on December 7, 2012 as Dr. Andrew has complied with all conditions of his probation.

Dr. Nye seconded the motion.

The Board vote was unanimous.

Ms. Taxin explained the process and reminded Dr. Andrew that he will need to complete his CME courses by May 31, 2014, like all other licensees. She stated the termination of probation is also reported to the national databank. Ms. Taxin stated he may reapply for insurance panels and if he needs a letter from the Division to let her know.

Dr. Andrew thanked the Board for their assistance and support.

9:45 am

Dr. Bruce D. Latham, Telephonic Probationary Interview

Dr. Latham met for his telephonic probationary interview.

Dr. Nye conducted the interview.

Dr. Latham stated he sent some information to Ms. Troxel and asked if it had been received.

Ms. Troxel responded yes, it was received.

Dr. Latham stated New Hampshire sent him to a program in Albany and he saw three therapists based on the New Hampshire Board believing he should continue his medical education as his faith beliefs might be too rigid in practicing medicine. He stated he refers people out to other practitioners if they request an abortion. He stated he does not just drop patients, he refers them. Dr. Latham stated a friend recommended he have a forensic psychiatrist so he hired one who said some counseling would be fine. He stated the New Hampshire Board chose a Psychiatrist, Dr. Khan, to complete another evaluation.

He stated after the first visit Dr. Khan said he did what he should. He stated he has his beliefs and Dr. Khan had said he would not try to change those and sent a letter of support of Dr. Latham to the Board with a copy of the evaluation. He stated he then received the letter saying he no longer needed counseling. Dr. Latham explained the New Hampshire Board wanted him to see an Allopathic Physician and said his CME in Osteopathic was worthless but the Allopathic Physician stated he attends most of the courses he attends. He stated the Allopathic Physician reviewed his CME and sent a support letter to the Board regarding the CME he completed. Dr. Latham stated he is also being asked to retake this family practice board examination again and will take it early in 2014. He stated Vermont has an Osteopathic Board but New Hampshire does not and they don't always have one DO member present on the Allopathic Board.

Dr. Nye asked if Dr. Latham thinks New Hampshire is pushing all these requirements because he is a whistle blower or because he is an Osteopathic Physician.

Dr. Latham responded he believes it is because of both.

Dr. Nye asked if he is required any peer modeling or if he just needs CME.

Dr. Latham responded CME only.

Dr. Nye asked if there a date for termination of probation.

Dr. Latham responded 2015 is the date but after the CME and the Board examination are completed then the probation is to be terminated. He stated he believes the Boards are offered in April and October with scores available by December.

Ms. Taxin informed Dr. Latham that some of the documents he mentioned have not been received, such as Dr. Khan's evaluation. She requested he submit a copy of the evaluation and stated he will

also need to submit a copy of the examination score report and any Board termination documentation.

Dr. Latham asked if he could fax the evaluation.

Ms. Taxin responded yes.

Dr. Ramsey suggested Dr. Latham meet again May 30, 2013.

The Board agreed.

Ms. Taxin suggested Dr. Latham send a letter to Ms. Troxel in February regarding his compliance.

Dr. Latham voiced appreciation for the way the Utah Board has handled his situation.

10:00 am

Matthew White, E-Prescription

Mr. White met to discuss the e-prescription guidelines.

Mr. White explained all Utah prescribing practitioners need to provide patients with the option of an e-prescription. He stated the DEA has standards for controlled substances only but Utah State requires the option for all e-prescriptions. Mr. White stated practitioners will need to have the computer software program certified for auditing. He stated there are currently four companies who are approved for the audits:

1. DrFirst;
2. NewCrop;
3. NextGen; and
4. RxNT.

He stated the DEA approved three of these companies. He stated the Utah State Law does give the right to issue exemptions if there is a hardship for the practitioner. Mr. White stated the Division's plan is for the Board to review the proposed Rule and make any recommendations. He stated when Mr. Steinagel met with Representative Menlove, the sponsor, there were concerns that prescribers would not be able to meet the obligations. Mr. White stated Mr. Steinagel

had said he will be liberal in issuing exemptions and laid back in enforcement but citations or fines may be issued to those out of compliance after a established period of time. Mr. White stated the Federal requirements will not allow e-prescriptions to be faxed. He stated Utah Law will allow faxing. He stated over the next few years DOPL will be looking at clinic's/practitioners with small patient loads. Mr. White requested a recommendation from the Board regarding the proposed Rule and compliance with the Law and proposed Rule.

Dr. Hermansen asked if practitioners are required to offer e-prescriptions by July 2013.

Mr. White responded yes. He stated the Legislature believes e-prescribing should be available to all patients.

Dr. Hermansen asked if a fax would be considered an e-prescription.

Mr. White responded no.

Dr. Nye stated he has been using NextGen for several years but believes if someone does not want to do electronic prescribing they should not be required to do it.

Dr. Hermansen commented he does cash patients only and he will have to notify his patients if they want the e-prescription he will need to charge them extra.

Mr. White responded the Legislature wanted practitioners to have the option of offering e-prescriptions.

Dr. Hermansen asked how practitioner will be notified of these requirements.

Mr. White responded a letter will be sent to all prescribing practitioners. He stated the proposed Rule is broken down for prescribers, Pharmacies and DOPL. Mr. White stated Mr. Steinagel met with

Representative Menlove, the sponsor of the Bill, and with the UMA. He stated Representative Menlove suggested DOPL take a loose approach to the Law. He stated practitioners will be given time to get this in place in their practices.

Ms. Taxin suggested having the patient's signatures on an information notification form and retain it in their file.

Dr. Hermansen stated maybe a new patient could sign something that they will be charged extra for that service.

Dr. Ramsey stated there is a large expense involved to obtain the hardware, internet service, etc.

Dr. Nye responded there are programs available to set up EMR's.

Dr. Ramsey stated some practitioners do not have the high volume of Medicare patients so do not qualify for the EMR reimbursement.

Mr. White stated there are a lot of questions regarding this Law but it is what was needed to get started on the process.

Ms. Taxin commented she suggested including the summary Mr. White reviewed today and letter on the DOPL website so it is available to practitioners and patients.

Dr. Ramsey asked if DOPL could include a link regarding exemptions.

Ms. Taxin responded maybe something could be included regarding exemptions for now but practitioners will still need to plan and prepare for e-prescribing as it is the Law.

Dr. Ramsey commented there should be an exemption if your practice is smaller than a specific number. He stated he believes e-prescribing should be optional but good for those who want to use it

and can afford it.

Ms. Taxin stated the Board could say they don't agree with giving patients a choice being mandatory and it should be optional but Mr. White will need a motion of support or motion not to support the proposed Rule as written.

Dr. Ramsey asked if the Board could recommend exemptions if a practice is less than a specific amount of practitioners and/or patients.

Mr. White stated one of the Divisions concerns is recommending exemptions which would require people to contact the Division for information and the Division is not staffed to handle those large numbers of inquiries. He stated that is the reason the proposed Rule is generic so the Division could offer a waiver. He stated the Division could add a section regarding if there is a financial hardship the Division could offer an exemption and then outline what is considered a hardship.

Dr. Ramsey commented if a practitioner does not have the electronic files it will be difficult but won't be a huge expense to upgrade for those with the electronic files. He stated it is about \$30 to \$40 thousand dollars for an electronic system.

Dr. Hermansen commented if a practitioner does not accept Medicare there are no grants available.

Dr. Ramsey made a motion for a change in the proposed Rule to include automatic exemptions for offices without electronic records and exemptions for the size of the office, three or less practitioners, less than 50 prescriptions per month or EMR's who may not have the module.

Dr. Hermansen seconded the motion.

The Board vote was unanimous.

Dr. Nye questioned the meaning behind patients being fully informed on rights, restrictions and

obligations in the Statute language.

Mr. White thanked the Board for their comments and the recommendation.

10:30 am

Dr. Hisham A. Al-Arshani, Application
Review

Ms. Taxin explained Dr. Al-Arshani applied for temporary licensure in October 2012 and was requested to submit additional information to complete his application. She listed her concerns as Dr. Al-Arshani had one yes answer on the qualifying questionnaire and he took part 3 of the NBOME four times before passing. She stated she requests a narrative of explanation when an examination is taken several times. She read the narratives of the yes answer and the examination to the Board. Ms. Taxin then read the NPDB comments.

Ms. Taxin stated she could deny the application based on the competency issues, examination scores and the restriction with the Veterans Administration. She stated the Division is still waiting on the FCVS packet.

Dr. Hermansen noted Dr. Al-Arshani was a PGY 4, which means he had an additional four years and still could not pass the examination.

Dr. Ramsey stated when he was in school they only took a week off to prepare for the examinations and Dr. Al-Arshani has said he wanted to take two months to prepare.

Dr. Hermansen stated Dr. Al-Arshani could be an assistant but not a surgeon on his own at the VA hospitals as these hospitals do not want him in the OR working on his own.

Ms. Taxin read the narrative again and stated Dr. Al-Arshani alluded that the restriction is based on several other issues. She stated if Utah licenses him and there is an issue in Utah then it is difficult to go back and restrict the license. She stated she could also write a legal request to the VA for additional information but she is not sure the answer will resolve the issues as Patty Sloan from the Veterans Administration stated

they are limited on what they can release.

Dr. Ramsey commented the New York license is an MD but the Connecticut and Indiana licenses are listed as DO licenses. He then voiced concern regarding the pending case in Connecticut and does not believe Utah should issue a license until that case is resolved.

Dr. Hermansen voiced concern in regard to Dr. Al-Arshani's skills as time in the OR is where skills are obtained. He stated there is also an issue with Laparoscopic skills. He stated if Dr. Al-Arshani did not have time to use the equipment then he can understand the lack of skill.

Ms. Taxin stated she could offer to let Dr. Al-Arshani withdraw his application from temporary licensure and let him reapply later when and if he desires full licensure and the Division has all the information to review. She stated if he withdraws he does not have to report it to any other State where he might apply.

Dr. Ramsey stated he believes it would be reasonable to allow Dr. Al-Arshani to withdraw his application but if Dr. Al-Arshani does not want to withdraw then he would recommend the application be denied.

Following additional discussion Dr. Ramsey made a motion not to approve Dr. Al-Arshani's application for licensure in Utah at this time due to a pending investigation in Connecticut. He further motioned Dr. Al-Arshani be offered the option to withdraw his application until the Connecticut action is resolved or for the Division to hold the application until the beginning of January 2013 in case it is resolved by then.

Dr. Hermansen seconded the motion.

The Board vote was unanimous.

DISCUSSION ITEMS:

Rule Filing for CS Prescribers

Ms. Taxin explained the Law requirement for Controlled Substance prescribing passed. She stated it required a Rule to be file and she wrote the Rule which went into effect after a hearing a few weeks ago. Ms. Taxin explained the Law requires Category 1 CME, ACCME or a program approved by the UMA. She stated the CME must be a 50 minute course with a post knowledge assessment/examination and it cannot be rounds or groups. Ms. Taxin stated the UMA is putting together a program that will have a variety of modules with an examination after each module. She stated the tutorial and examination all prescribing practitioners completed to renew this last time will also be required and prescribers will receive 30 minutes of CE for completing it again.

Dr. Ramsey asked if the CE is completed online will the information be downloaded to DOPL upon completion like the tutorial was.

Ms. Taxin responded no. She stated the UMA will provide a certificate upon completion.

Dr. Hermansen stated DO's only receive Category 2 credit for UMA programs.

Ms. Taxin responded she has discussed the issue with the new Osteopathic Physicians Association president, Dr. Rodgers, and he should be contacting Michele McOmber at the UMA regarding that issue.

The Board thanked Ms. Taxin for the information.

Review FAQ's

Ms. Taxin explained the standard FAQ's on the DOPL website. She stated if the Board wants additional information included she can add it on their website.

Dr. Ramsey asked if Ms. Taxin received a telephone call from the Salt Lake Tribune regarding an article they did on Sunday about three different medical schools being interested in coming to Utah and two of the three were Osteopathic schools. He stated they had a section regarding the differences between Physicians and Osteopathic Physicians. He suggested it would be

good to have a link to those schools if they do come into Utah and also a link to the Osteopathic Association.

Dr. Hermansen stated schools in the planning stages are for Cedar City and in Orem. He stated they are waiting for IHC to complete their signatures as the monies are already in place. He stated the Orem location has been working on this for sometime and the schools will be parent schools for profit. Dr. Hermansen stated the issues are the hospitals they want to sign on as the schools want to fully dominate the hospitals so other schools cannot rotate through those hospitals.

He then suggested a comment explaining what an Osteopathic Physician is would be good to include.

Ms. Taxin responded she will get the information put on the Osteopathic area. She stated the Physicians also have a comment about Board Certification and she will include that on the Osteopathic section.

Dr. Hermansen stated the Board Certification information should refer people to contact the AOA.

Dr. Nye gave Ms. Taxin the AOA website of www.osteopathic.org for the link.

Ms. Taxin thanked the Board for their comments and stated she will add "What is a DO and what is an MD" and then include the link.

Dr. Ramsey read the letter from Mr. Steinagel.

Ms. Taxin briefly explained the three options for disciplinary documents being:

1. Disciplinary documents posted on the DOPL website should only be found through a search within the DOPL website;
2. Disciplinary documents post on DOPL's website should be searchable through DOPL's website and through general internet searches;
or

3. Neither option.

Following a brief discussion Dr. Hermansen made a motion to recommend option 1 to maintain the security of the disciplinary information.

Dr. Nye seconded the motion.

The Board vote was unanimous.

Informal Discipline Process

Ms. Taxin explained there is a new and additional disciplinary process which went into effect October 8, 2012. She stated it is an informal vs. formal disciplinary process. She explained she is not an expert at this point on the process. Then Ms. Taxin provided a quick overview.

She explained the following actions are now informal:

- Denial of renewal;
- Orders to Show Cause for failure to comply with probation requirements;
- Criminal Convictions;
- Discipline by another jurisdiction; and
- Surrender of Licensure while under investigation in another jurisdiction.

Ms. Taxin stated that the new procedure will hopefully be more efficient and resolve the issue of cases on the books for a long period of time. She explained one big difference from formal to informal will be the issues/violations will be discussed in the next scheduled Board meeting and the Board will make a final recommendation for action or no action.

Ms. Taxin explained the practitioner may be present or not as it will not be a court hearing with the facts being debated. She stated if there is an informal hearing the appeal process will go directly to the District Courts. Ms. Taxin stated she will educate the Board as she learns more regarding the informal process.

The Board thanked Ms. Taxin for the information.

Tentative 2013 Board Meeting Schedule

The Board noted the 2013 Board Meeting schedule dates of: February 21, May 30, August 22 and

December 19, 2013.

Ms. Taxin commented during Dr. Latham's interview the Board scheduled him to meet May 30, 2013. She asked if they were of the opinion that the February 21, 2013, meeting should be cancelled unless there is something Legislative that should be discussed.

The Board confirmed the February 21, 2013, meeting should be cancelled unless there is Legislative information needing to be discussed.

CORRESPONDENCE:

FSMB Item Writing Workshop

Ms. Taxin explained the item writing workshop for FSMB and stated they are requesting volunteers to assist with the process.

Board members voiced no interest at this time.

FSMB Request Regarding Board Sponsorship
Role in USMLE Step 3

Ms. Taxin explained FSMB sent a questionnaire regarding the USMLE Step 3 Examination and if the current model should continue or be discontinued and if the discontinue could be accomplished by 2014. She stated at this time people at the University of Utah are approved by the U of U to sit for the examinations if they are doing their residencies there and IHC also approves those who do their residencies with IHC. She stated if the current model was discontinued then FSMB would take over the function of approval for the examinations.

Dr. Nye asked if it will also affect the NBOME.

Ms. Taxin responded she does not believe so as the letter addresses only the USMLE. She stated there are a number of Osteopathic Physicians who take the USMLE and it may affect them. Ms. Taxin stated the Osteopathic Practice Act Rules would need to be amended if the proposal to discontinue the current model passes as it refers to the USMLE step 3. Ms. Taxin read the Rule:

R156-68-302c (3) Requirements for admission to the USMLE step 3 are:

- (a) completion of the education requirements as

set forth in Subsection 58-68-302(1)(d) and (e);

- (b) passing scores on USMLE steps 1 and 2, or the FLEX component I, or the NBME parts I and II;
- (c) have passed the first USMLE step taken, either 1 or 2, within seven years; and
- (d) have not failed a combination of USMLE step 3, FLEX component II and NBME part III, three times.

(4) Candidates who fail a combination of USMLE step 3, FLEX component II and NBME part III three times must successfully complete additional education as required by the board before being allowed to retake the USMLE step 3.

Dr. Ramsey asked what would need amending in the Rules if the standard was changed.

Ms. Taxin read the Rule again and stated numbers 3 and 4 would have to be amended as Utah could not have our own restrictions.

Dr. Nye asked when someone takes the USMLE are they doing it to apply for licensure in a specific State.

Ms. Taxin responded usually. She stated Utah could require the examination must be passed within a specific time or the person would have to meet with the Board but she does not know how that requirement would affect the U of U or IHC.

Dr. Ramsey commented DOPL and the Board could still control who obtains licensure in Utah but he is not sure if DOPL or the Board should decide who sits for step 3 of the USMLE. He stated he believes FSMB should have probably taken into account the requirements for the different States.

The Board reviewed the questions and responded yes to all three questions with Utah retaining the information in currently in the Osteopathic Rules.

action was taken.

FSMB History of the FSMB Book

Ms. Taxin explained FSMB sent one book and someone from the Physicians Board took the book to review.

Board members voiced no interest in reviewing the book.

Journal of Medical Regulation Information

The Board requested the Journal not be brought before the Board as they receive it themselves.

Nami Information

Ms. Taxin explained the NAMI group sent information for the Board to be informed about their programs.

The Board thanked Ms. Taxin for the overview.

NEXT MEETING SCHEDULED FOR:

May 30, 2013

ADJOURN:

The time is 12:02 pm and the Board meeting is adjourned.

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

Chairperson, Utah Osteopathic Physician & Surgeon's
Licensing Board

January 2, 2013
Date Approved

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