

## 2<sup>nd</sup> Agenda

### CONTROLLED SUBSTANCES ADVISORY COMMITTEE MEETING

September 9, 2013 - 4:00 p.m.

Room 464 – 4th Floor  
Heber M. Wells Building  
160 E. 300 S. Salt Lake City, Utah

*This agenda is subject to change up to 24 hours prior to the meeting.*

#### ADMINISTRATIVE BUSINESS:

1. Call Meeting to Order
2. Sign Per Diem
3. Administer Oath of Office to new Committee member
4. Review and approval of February 25, 2013 and April 29, 2013 minutes

#### DISCUSSION ITEMS:

1. Annual Report to the Legislature
2. Tramadol Report:
  - Marv Sims, Controlled Substance Database Administrator
  - Barbara Crouch, Poison Control report on Tramadol exposures
  - SMART (Substance Misuse and Abuse Reduction Team)
3. Update from:
  - Law enforcement
  - State crime lab
  - Health departments and hospitals
  - Utah Poison Control
  - Medical Examiner
4. National trends and policies
5. Discussion regarding the recent legalization of marijuana in Colorado and Washington and the letter from the Office of National Drug Control Policy.
6. Open and Public meetings Act Training

**NEXT SCHEDULED MEETING:** To be announced

**Note:** In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify, Dave Taylor, ADA Coordinator, at least three working days prior to the meeting. Division of Occupational & Professional Licensing, 160 East 300 South, Salt Lake City, Utah 84115, 801-530-6628 or toll-free in Utah only 866-275-3675.

# REVISED CHECKLIST FOR PUBLIC MEETINGS

(Fill in the blanks to correspond to each respective board, commission, or committee.)

✓

I am, David Sundwall, chairperson of the CONTROLLED SUBSTANCE ADVISORY COMMITTEE.

✓

I would like to call this meeting of the CSAC Committee to order.

✓

It is now (time) 4:05 (am / pm) on September 9, 2013.

✓

This meeting is being held in room 464 of the Heber Wells Building, 160 E 300 S Salt Lake City Utah.

✓

Notice of this meeting was provided as required under Utah's Open Meeting laws.

✓

In compliance with Utah's Open Meetings laws, this meeting is being recorded in its entirety. The recording will be posted to the Utah Public Notice Website no later than three business days following the meeting.

✓

In compliance with Utah's Open Meeting laws, written minutes will also be prepared of this meeting. Appropriately marked "*pending approval*" minutes will be available to the public no later than 30 days after the close of the meeting. "*Approved*" minutes will be posted to the Utah Public Notice Website no later than three business days after approval.

✓

The following (Board / Committee / Commission) members are in attendance:

	YES	NO
<u>David N. Sundwall, MD</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Jeff Carr</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Glen R. Hanson, PhD, DDS</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Jeffrey Wright, ND</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>David C. Young, R.Ph</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Blaine Winters, APRN</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Scott Reed</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Elizabeth F. Howell, MD</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Todd C. Grey, MD</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Jeffrey Paul Clark, MD</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Darin M Vercillo, MD</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Kenneth Schaecher, MD</u>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Vacant</u>	<input type="checkbox"/>	<input type="checkbox"/>

✓

The following (Board / Committee / Commission) members are absent: (Refer to the above list.)

✓

The following individuals representing DOPL and the Department of Commerce are in attendance:

	YES	NO
<u>Mark B. Steinagel</u> , Division Director	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Debra Hobbins</u> , Bureau Manager	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Shirlene Kimball</u> , Board Secretary	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Marv Sims</u> , CSD Administrator	<input checked="" type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>

✓

We welcome any visitors and interested persons at this time. Please be sure to sign the attendance report for the meeting and identify yourself before speaking.

✓

As a courtesy to everyone participating in this meeting, at this time we ask for all cell phones, pagers, and other electronic devices to be turned off or changed to silent mode.

✓

Board motions and votes will be recorded in the minutes.

✓

Let us now proceed with the agenda.

✓

(End of the Meeting) It is now (time) 5:30 (am / pm), and this meeting is adjourned.

*David Sundwall*  
9/9/13



**MINUTES**  
**UTAH**  
**CONTROLLED SUBSTANCES ADVISORY COMMITTEE**  
**MEETING**

**February 25, 2013**

**Room 474, 4<sup>nd</sup> Floor – 4:00 P.M.**  
**Heber M. Wells Building**  
**Salt Lake City, UT 84111**

**CONVENED:** 4:03 p.m.

**ADJOURNED:** 5:20 p.m.

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

Debra Hobbins, DNP, APRN  
Shirlene Kimball

**Division Staff:**

Ray Walker, Division Enforcement Counsel

**Committee Members Present:**

David N. Sundwall, MD, Chairperson  
Major Jeff Carr  
Elizabeth Howell, MD  
David Young, Pharm.D  
Glen R. Hanson, DDS  
Kristen Ries, MD  
Scott Reed,  
J. Paul Clark, MD

**Committee Members Excused**

Jeffrey Wright, ND  
Elizabeth Howell, MD  
Darin M. Vercillo, MD  
Todd C. Grey, MD  
Blaine Winters, APRN

**Guests:**

Beth Johnson, Pharmacy  
Rich Burch, Pharmacy  
Phil Olsen, UPhA – Pharmacy  
Michael Wright, UPhA – Pharmacy  
Kye Nordfelt, SMART, Utah County Coalition  
Darrell Bingham, SMART, Utah County Coalition  
Dan Stapleton, SMART, Utah County Coalition  
Kurt H. Price, UPhA  
Jenni Buu, Pharmacy  
M. Bauer, Medicine  
Camille Hollifield, U of U PhD student  
Anna Dillingham, UT Assoc of Local Health Depts.  
Jennifer McNair, UT DPS – Crime lab  
Katie Carlson, U of U

Tyson Rakwell, U of U Pharmacy student  
Marty Malheiro, Utah Poison Control  
Ben Sperry

## TOPICS FOR DISCUSSION

### **ADMINISTRATIVE BUSINESS:**

Oath of Office administered to J. Paul Clark,  
MD:

January 24, 2013 Minutes:

Vote on the recommendation from the last meeting to add the new substances referenced by Ms. McNair to the Controlled Substances list:

Discussion regarding Tramadol:

## DECISIONS AND RECOMMENDATIONS

Dr. Hobbins administered the Oath of Office to J. Paul Clark. Committee members welcomed Dr. Clark.

A motion was made to approve the January 24, 2013 minutes as written. The motion was seconded. All Committee members voted in favor of the motion.

Dr. Sundwall reported Committee members discussed new substances last month and made a recommendation to add those substances to the list for Representative Ray's bill. However, a quorum was not present last month and Dr. Hobbins requested the Committee make a motion to add the substances to the list. A motion was made to add the analogs of those currently in the proposed bill: Spice 5F-AKB48; 1-(5-fluoropentyl)-N-tricyclo[3.3.1.1<sup>3,7</sup>]dec-1-yl-1H-indazole-3-carboxamide. Bath salts and Others: ethylphenidate 25B-NBOMe; 2-(4-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine 25C-NBOMe; 2-(4-Chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine. The motion was seconded. All Committee members voted in favor of the motion.

Dr. Sundwall questioned Ms. McNair if there were any additional substances to add. Ms. McNair stated she does not have any new substances to add at this time.

Dr. Sundwall indicated this agenda item was at the request of Dr. Howell. However, Dr. Howell was unable to attend this meeting. There are a number of guests here for the discussion and Dr. Sundwall invited those guests to speak to the issue. Mr. Nordfelt, SMART, Utah County Coalition, indicated the SMART Coalition is the Substance Misuse and Abuse Reduction Team for Utah County. He indicated the coalition is working hard to implement

strategies that target the causes of prescription and alcohol abuse in Utah County. He indicated coalition members would like to recommend Tramadol be added to the controlled substances list. He reported there are currently eight states that schedule Tramadol as a Schedule III or IV drug. Dr. Clark stated according to his research, there are thirteen states that have added Tramadol as a controlled substance. Mr. Bingham, SMART Coalition, indicated it would be helpful to law enforcement if Tramadol were a scheduled drug, even if it was a Schedule V. The scheduling of a drug could mean the difference of a misdemeanor or felony. The drug could then be tracked through the Controlled Substance Database. Mr. Nordfelt stated he would prefer Tramadol be a Schedule III or IV. Another guest stated she works in a treatment center. She reported they are finding patients with a dependence on Tramadol. A few patients will go through withdrawal from the drug. Dr. Hansen stated there are a number of physicians who prescribe Tramadol and he has not heard of any problems being reported. Dr. Hansen stated he would like to see the hard-core data regarding Tramadol abuse. Dr. Sundwall stated he prescribes Tramadol and has had no problems, however, he stated he understands the need for a tool for law enforcement. Mr. Bingham stated if Tramadol were a scheduled drug, it would give law enforcement an ability to prosecute the illegal use. Dr. Young stated that if Tramadol becomes a Schedule V, the pharmacy would have to report it to the Controlled Substance Database; but not much would change for the prescriber. A Schedule V means the practitioner can write a prescription for one year (with refills) like any other drug. The prescriber would need to have a DEA number. Dr. Ries stated she does not feel Tramadol is a good drug and it would be helpful to find out how much it is actually used. Dr. Sundwall stated he disagrees and indicated it has an opioid type affect. Dr. Hansen stated he would like to see if abuse is escalating and why the federal government has not scheduled it yet. He indicated he would like to see specific evidence regarding the use or abuse of Tramadol. Dr. Clark stated he feels it is a dangerous drug because of the abuse. Pharmacist guest stated that Tramadol is one of the top drugs his pharmacy

dispenses. A second pharmacist guest stated that at the pharmacy where he is employed, Tramadol is treated like a controlled substance. It was also reported the Utah Department of Health lists Tramadol as the fifth highest cause of death. Dr. Hansen stated that many times forensics only identifies one drug and uses that as the cause of death.

Dr. Ries made a motion to add Tramadol as a Schedule V controlled substance in Utah. Dr. Clark seconded the motion. Mr. Reed abstained. All other Committee members voted in favor of the motion. Mr. Reed stated he does not feel making Tramadol a Schedule V will provide that much help. Dr. Hansen suggested putting in a stipulation to make Tramadol a Schedule V and track the data for one year to determine if it should remain a scheduled drug and which schedule it should be listed under. Dr. Ries made a motion to amend her original motion to add Tramadol as a Schedule V controlled substance for one year and gather data for review to determine if Tramadol should remain a Schedule V, or moved to a Schedule III or IV. Dr. Clark seconded the amended motion. All Committee members voted in favor of the amended motion. Dr. Hobbins indicated she would speak with Senator Vickers to see if he can add the recommendation to a draft bill.

Dr. Sundwall also recommended adding this language to the letter sent to Representative Ray. All Committee members voted in favor of the recommendation. Dr. Sundwall will speak to Representative Ray to see if these additional substances can be added to his bill.

Discussion regarding Hydrocodone:

Committee members discussed the FDA recommendation to reschedule pain medication's that contain hydrocodone as Schedule II Controlled Substances. Hydrocodone is currently a Schedule III. Dr. Young reported the DEA has not made a decision regarding the recommendation. This discussion will be placed on a back burner to see what happens with the DEA.

Updates:

Law Enforcement: Major Carr reported the Drug Free America Foundation is sponsoring a webinar regarding synthetic/designer drugs on May 23, 2013.

Major Carr stated he did not have anything new to report.

Utah Crime Lab: Ms. McNair reported all crime lab reports now have to include the law word for word. The report must also provide the chemical structure of the drug and cannot just state the drug is an analog. Ms. McNair also reported the canine officers program received funding to train dogs to identify spice drugs. She stated she has no new substances to recommend today.

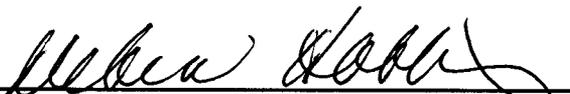
Poison Control: Marty Malheiro, Utah Poison Control, reported there are only 3 new substances to report, one bath salt, 1 "food coloring" and 1 ecstasy. Dr. Crouch had provided Committee members with web sites to review videos regarding "food coloring". Ms. Malheiro reported in addition to the "food coloring," they are finding "liquid spice" which is a third generation of spice.

*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.*

September 9, 2013  
Date Approved

(ss) David N. Sundwall, MD  
David N. Sundwall, Chairperson, Controlled  
Substances Advisory Committee

9/9/13  
Date Approved

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

**MINUTES**

**UTAH  
CONTROLLED SUBSTANCES ADVISORY COMMITTEE  
MEETING**

**April 29, 2013**

**Room 474, 4<sup>nd</sup> Floor – 4:00 P.M.  
Heber M. Wells Building  
Salt Lake City, UT 84111**

**CONVENED:** 4:10 p.m.

**ADJOURNED:** 5:15 p.m.

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

Debra Hobbins, DNP, APRN  
Shirlene Kimball

**Division Staff:**

Marvin Sims, Controlled Substance Database Admin

**Committee Members Present:**

David N. Sundwall, MD, Chairperson  
Major Jeff Carr  
Elizabeth Howell, MD  
Glen R. Hanson, DDS  
Jeffrey Wright, ND  
Blaine Winters, APRN

**Committee Members Excused:**

Darin M. Vercillo, MD  
Todd C. Grey, MD  
J. Paul Clark, MD  
David Young, Pharm.D  
Kristen Ries, MD  
Scott Reed

**Guests:**

Bryan Hoden, State Crime Lab  
Katie Carlsen, MD U of U Outpatient Addiction Services  
Michele Baurer, MD, VA/SLC  
Barbara Crouch, Utah Poison Control  
Robert Rolfs, Deputy Director Dept of Health

**TOPICS FOR DISCUSSION**

**DECISIONS AND RECOMMENDATIONS**

**ADMINISTRATIVE BUSINESS:**  
February 25, 2013 Minutes:

Due to lack of a quorum, the February 25, 2013 minutes were tabled.

Dr. Sundwall, Legislative Update:

Dr. Sundwall reported all substances recommended by the Board were added to the controlled substances list. In addition, Tramadol was added as a Schedule V.

Presentation of Policy Projects – Camille Hollifield and Benjamin Sperry, University of Utah graduate students in public health:

Dr. Sundwall indicated Camille Hollifield and Benjamin Sperry could not attend to give their reports. Dr. Sundwall provided a brief overview of the reports. Dr. Sundwall reported Mr. Sperry's report is in regards to temporary regulatory authority for designer drugs. The report indicated the Federal government has given power to the Attorney General to temporarily schedule drugs in the United States. New York has given this authority to the Department of Health, Oregon the Board of Pharmacy and Hawaii the State Attorney General's office. Mr. Sperry indicated in his report that prior to 1979 the Utah Attorney General had authority from the legislature to add, remove and reschedule substances. A change in 1979 took away the regulatory power from the Utah Attorney General's office. The Court was concerned with separation of powers. The power to temporarily schedule drugs was then placed with the Federal government and was challenged. The Supreme Court decided that this was a violation of the Utah Constitution and the authority to regulate new drugs was given exclusively to the Utah Legislature. This decision affected law enforcement and other agencies in controlling the new drugs. In his report, Mr. Sperry indicated the solution would be to give the Controlled Substance Advisory Committee temporary regulatory authority. Dr. Sundwall indicated this suggestion merits discussing again with the Legislature; however, we do not want to be perceived as trying to grab authority.

Camille Hollifield's report addresses recommendations to ensure better surveillance and reporting of synthetic drug use. She listed a number of recommendations such as capturing "overdoses" in the ER across the state; provide outreach and education; and update laboratory tests for detection. Dr. Sundwall stated he would write an article for the UMA publication so that clinicians can better understand the problems. Mr. Rolfe stated that there was a law passed to mandate ERs to report to the Controlled Substance Database.

Marvin Sims,  
Controlled Substance Database  
Administrator:

Mr. Sims reported that two laws regarding the Controlled Substance Database went into effect this last year. The first requires the Courts to report DUI's involving controlled substances; and the second required any acute care hospital to report a poisoning or overdose of

controlled substances. The Division then searched the database and sent out letters to the prescribing practitioner. Mr. Sims provided a copy of the letter to Committee members and indicated it is an educational letter. Mr. Sims stated the statute is very specific and each practitioner identified for that patient is sent a letter. Mr. Sims reported that the patient has to be admitted to the hospital, not just seen in the ER. Mr. Sims reported 1081 individual reports were received from the hospitals/medical centers, 28 different facilities reported (there are 41 facilities); 757 individuals were identified with CSDB information, 167 individuals had no CSDB information and 157 individuals could not be positively identified in the CSDB and no letter was sent out. The hospital does not have to provide any identifying information, only the name. Dr. Hanson questioned whether the database is seeing multiple providers getting a letter multiple times. Mr. Sims stated we they have not seen that yet. Dr. Howell stated most practitioners might just not be knowledgeable. Dr. Howell questioned if the Physician's Licensing Board can query the database. Mr. Sims stated that there is nothing in the law that addresses how to use the data. Mr. Sims reported we are just 10 months into this program. Dr. Howell indicated her concern is if one physician has 25 patients overdose, and it is not reported to the Board, how is that information helpful. Mr. Sims stated that type of information may be reported to investigations. Dr. Howell recommended that the hospitals/medical centers and others reporting provide a date of birth to make it easier to match.

The second bill requires the Courts to report for a conviction for driving under the influence of a prescribed controlled substance. The Division then searches the database and sends out the letter to individual on the report. The individual must have been convicted of the DUI. Mr. Sims reported from July 1, 2012 (the effective date of the statute) through April 23, 2013, 273 reports have been received from the courts. There have been 41 different courts reporting, 169 individuals have been identified with CSDB information; 104 individuals identified without CSDB information. There have been 666 letters mailed. Dr. Sundwall stated he would think that most DUI would be mixed. Mr. Sims stated it would be strictly for controlled substances. Mr. Rolfe stated if the individual does not have a blood alcohol level, then

they look for controlled substances.

Updates:

Law Enforcement: Major Carr reported on the conference call with members of different Drug Task Force. They reported they are mostly dealing with methamphetamine and marijuana and have a concern with the synthetics. There is concern with the marijuana coming in from Colorado and the frustration with synthetics.

Utah Crime Lab: Mr. Holder, State Crime Lab, indicated they have not seen any new compounds yet, but once the law goes into effect with the list of analogs, they expect new analogs to appear. He reported they now have a portable, preliminary scanning device and are training narcotics officers to identify the controlled substances instead of having to wait 12 days.

Poison Control: Dr. Barbara Couch, Utah Poison Control, reported they have had 16 calls so far this year regarding Spice-type compounds. She reported they have one individual who ended up in the hospital for using K-Mex, but they were not sure what it was. Mr. Holder, State Crime Lab, indicated he has seen K-Mex once or twice; it is powder form and is an analog two-steps away and similar to Ketamine.

Dr. Couch reported on Tramadol calls. She reported this year to date, they have received 71 calls, and approximately 50% of those calls were from hospital facilities. She reported 162 calls were received regarding Tramadol in 2012. This number includes unintentional overdose, intentional overdose, adverse reactions and unknown reasons. Tramadol abuse was identified at 11% and they will continue to gather data. Dr. Hansen indicated the data needs to be separated. We cannot just take raw data; it needs to be tracked and the abuse issue separated. If it is popular, it will show up in overdoses. Major Carr stated it would be useful to see if the new law makes a difference.

Health Department: Dr. Sundwall reported he still does not receive any information from the local health departments and they do not appear to be interested in this information.

Medical Examiner: No representatives from the Medical Examiner were present.

National Trends:

Nothing new to report.

Open and Public Meeting Act Training:

Tabled.

Next meeting:

The next meeting will be scheduled for early September.

*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.*

September 9, 2013  
Date Approved

(ss) David N. Sundwall, MD  
David N. Sundwall, Chairperson, Controlled  
Substances Advisory Committee

9/9/13  
Date Approved

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



State of Utah  
Controlled Substances Advisory Committee

DAVID SUNDWALL, MD  
*Chair*

February 25, 2013

Health and Human Services Interim Committee  
Office of Legislative Research and General Counsel  
W210 State Capitol Complex  
Salt Lake City, Utah 84114

**SUBJECT: Controlled Substances Advisory Committee--Additional 2013 Legislative Recommendations**

Dear Members of the Health and Human Services Interim Committee:

The Controlled Substances Advisory Committee (CSAC) is pleased to provide for you, as required by law, an update on recommendations for your consideration for action during this 2013 legislative session. Our committee is composed of individuals with a broad range of expertise and/or experience in public health, clinical care, and academia. The CSAC has been meeting monthly to address issues related to use of "recreational drugs", i.e. substances not currently regulated by the Controlled Substances Act (CSA), but which are considered potentially dangerous to health and wellbeing, and legend prescription drugs that might merit being added to a designated schedule in the CSA.

We are sorry to report that the use of these substances continues to be a serious and wide-spread problem throughout the state of Utah and the nation. Notwithstanding our collective efforts to control the use of these substances through regulation and law enforcement, new substances continue to be developed, marketed, and sold to a significant number of ready and willing customers. Therefore, after careful review of such activity in our state, we recommend additional substances be regulated by amending the CSA.

The Controlled Substances Advisory Committee respectfully recommends the following for consideration during the 2013 Legislative session:

1. Add the following spice and bath salts analogs to "listed controlled substances" identified in Utah Code 58-37-4.2:
  - a. **5F-AKB48**; 1-(5-fluoropentyl)-N-tricyclo[3.3.1.1<sup>3,7</sup>]dec-1-yl-1H-indazole-3-carboxamide
  - b. Ethylphenidate
  - c. **25B-NBOMe**; 2-(*r*-bromo-2,5-dimethoxyphenyl)-*N*-[(2-methoxyphenyl)methyl]ethanamine
  - d. **25C-NBOMe**; 2-(4Chloro-2,5-dimethoxyphenyl)-*N*-[(2-methoxyphenyl)methyl]ethanamine

2. Schedule tramadol as a controlled substance, Schedule V. Tramadol was listed as the fifth highest cause of drug overdose deaths in the state of Utah. The committee feels scheduling tramadol would be an excellent strategy to begin data collection on the extent of the use and abuse of this prescription medication. These data and the scheduling of tramadol as a controlled substance, Schedule V, will be reevaluated one year after the effective date of the legislation. In addition, current prescribing practices would not be affected, the only change would be that the pharmacist would report the prescription to the Controlled Substance Database.

The Committee thanks you for your attention to these important items and looks forward to continuing to serve as a consultative and advisory body to the Legislature.

Respectfully submitted,

The Controlled Substances Advisory Committee

David Sundwall, MD, Committee Chair

Todd C. Grey, MD

Major Jeff Carr

Kristen Ries, MD

David Young, PharmD

Alexander Larsen, DDS

Scott W. Reed

Glen R. Hanson, DDS

Elizabeth Howell, MD

Darin Vercillo, MD

Jeffrey V. Wright, ND

Blaine Winters, DNP, APRN

J. Paul Clark, MD

Debra F. Hobbins, DNP, APRN, Committee Administrator



# State of Utah

## Controlled Substances Advisory Committee

DAVID SUNDWALL, MD  
*Chair*

October 25, 2012

RE: The October 17, 2012 Health and Human Services Interim Committee meeting

Dear Members of the Controlled Substances Advisory Committee:

The Utah legislature's Health and Human Services Interim Committee met on Wednesday, October 17, 2012. Rep. Ray asked that the annual report of the CSAC be considered first, as an item under the category of "November Committee Business". Dr. Sundwall provided a brief narrative report of our September letter, including our 3 recommendations, which were: add new substances to the Controlled Substance Act (CSA); make some technical corrections to the current law (correct spelling of a few chemical substances); and consider granting authority to the CSAC to temporarily regulate new substances which come to our attention as being used as "recreational drugs" in Utah during the months when the legislature is not in session. Scott W. Reed from the AG's office, Major Jeff Carr from the Dept. of Public Safety (both CSAC members), and Jay Henry and Scott McDaniel from the state's crime lab were also in attendance. Scott was able to provide some comments and answer questions related to the legal aspects of our proposals.

Rep. Ray proposed that he draft a bill that would accomplish the first two of our recommendations, and this was approved by the Committee without much discussion. However, the third recommendation generated a lot of discussion, with the General Counsel for the Legislature advising them this would not be "constitutional", i.e. delegating such authority to any entity outside of the legislature. However, the challenge of protecting the public from new, potentially harmful substances during the months the legislature was not in session was taken seriously, even to the point of them considering recommending to Leadership that "special sessions" be convened, as needed, during the interim months, to amend the CAS to include the new substances identified by the CSAC as being of significant concern. The bill authorizing our first two recommendations will likely be put forth for the HHS Committee to vote on in November, but whether or not they choose to act on the third recommendation remains to be seen. We will discuss these issues and provide an update when we meet in November.

Respectfully,

David N. Sundwall M.D.  
Chair – Utah Controlled Substance Advisory Committee [CSAC]  
Professor of Public Health (clinical)  
Division of Public Health - Department of Family and Preventive Medicine  
University of Utah - School of Medicine  
375 Chipeta Way, Suite A  
Salt Lake City, UT 84108  
Phone: 801-585-9075



# State of Utah

## Controlled Substances Advisory Committee

DAVID SUNDWALL, MD  
*Chair*

September 27, 2012

Health and Human Services Interim Committee  
Office of Legislative Research and General Counsel  
W210 State Capitol Complex  
Salt Lake City, Utah 84114

### **SUBJECT: Controlled Substances Advisory Committee 2013 Legislative Recommendations**

Dear Members of the Health and Human Services Interim Committee:

The Controlled Substances Advisory Committee (CSAC) is pleased to provide for you, as required by law, an update on recommendations for your consideration for action during the 2013 legislative session. Our committee is composed of individuals with a broad range of expertise and/or experience in public health, clinical care, and academia, and meets quarterly to address issues related to use of "recreational drugs", i.e. substances not currently regulated by the Controlled Substances Act (CSA), but which are considered potentially dangerous to health and wellbeing, and might merit being added to a designated schedule in the CSA.

We are sorry to report that the use of these substances continues to be a serious and wide-spread problem throughout the state of Utah and the Nation. Notwithstanding our collective efforts to control the use of these substances through regulation and law enforcement, new substances continue to be developed, marketed, and sold to a significant number of ready and willing customers. Therefore, after careful review of such activity in our state, we recommend additional substances be regulated by amending the CSA.

The Controlled Substances Advisory Committee respectfully recommends the following for consideration during the 2013 Legislative session:

1. **Add the following spice and bath salts analogs to "listed controlled substances" identified in Utah Code 58-37-4.2:**
  - a. **AM-2233**
  - b. **AM-679**
  - c. **AB-001**
  - d. **MAM-2201**
  - e. **XLR11**
  - f. **UR-144**
  - g. **AM-1248**
  - h. **2NE1**
  - i. **STS-135**
  - j. **AKB48**
  - k. **A796,260**

- l. UR-144 N-(5-chloropentyl) analog**
- m. 2C-E**
- n. 2C-I**
- o. 2C-P**
- p. 2C-D**
- q. 2C-C**
- r. 2C-T-2**
- s. 2C-T-4**
- t. 2C-H**
- u. 2C-N**
- v. 25I-NBOMe**
- w. 4-Methylethcathinone**
- x. 5-MeO-DALT**
- y. alpha-Pyrrolidinovalerophenone (alpha-PVP)**
- z. 2,5-Dimethoxy-4-chloroamphetamine (DOC)**
- aa. Methoxetamine**
- bb. Fluoroisocathinone**
- cc. Butylone**
- dd. Pentylone**
- ee. Ethylone**
- ff. Pentedrone**
- gg. Naphyrone**
- hh. Fluoromethamphetamine**
- ii. 5-Iodo-2-aminoindane (5-IAI)**
- jj. 4-Methyl-alpha-pyrrolidinopropiophenone**
- kk. Diisopropyltryptamine (DiPT)**

The above are customary abbreviations for the full chemical name of the substances. The CSAC will provide, upon request, more detailed information about these substances.

- 2. Amend the Utah Controlled Substances Act in two minor areas:**
  - a. Correct the spelling of “dimethoxyphenethylamine” in Utah Code 58-37-4 (2)(a)(iii)(C); and**
  - b. Combine the two analogs in Utah Code 58-37-4.2 (16) and (17),**
  - c. 4-Fluoromethcathinone and 3-Fluoromethcathinone, into one reference, “Fluoromethcathinone.”**
  
- 3. Grant the CSAC authority to approve *temporary* placement of substances on the controlled substances list until the following legislative session, when permanent placement would be determined by the Legislature. This would give law enforcement the authority to control the sale of newer substances that are developed and marketed between legislative sessions, but leave it to the legislature to determine if they should be permanently placed on the list of controlled substances.**

***Background:***

The Controlled Substances Advisory Committee, established by Utah Code 58-38a, is a consultative and advisory body to the Legislature. The CSAC met on September 10, 2012 to draft the annual written report listing any substances recommended by the Committee for scheduling, rescheduling, or deletion from the schedules by the Legislature. The following is a rationale for these recommendations.

Since the 2011 enactment of H.B. 23, certain components of bath salts and spice have been added to the list of controlled substances delineated in Utah Code 58-37-4.2. The Utah Bureau of Forensic Services reported over the past several months that the substances listed above have been identified in our state crime lab tests or reported in national data bases, which is why we are recommending they now be included in our state's statute.

We are also seeking your support for the CSAC having authority to temporarily add new drugs to the list of controlled substances when the legislature is out of session. Once substances become illegal, manufacturers create new analogs (drugs similar to, but not identical to those currently regulated), of the banned substances. Prosecutors have reported that it is difficult to prosecute cases involving analogs in that such cases require extra preparation time and costly expert witness testimony. It is the consensus of the Committee that adding the new analog drugs in statute during the legislative interim could help protect the public, encourage prosecution of these cases, and enable law enforcement to be more nimble in responding to these new versions of potentially deadly substances. At the next general session of the Legislature, permanent placement of these substances on the list of controlled substances could then be determined by our elected officials.

The Committee thanks you for your attention to these important items and looks forward to continuing to serve as a consultative and advisory body to the Legislature.

Respectfully submitted,

The Controlled Substances Advisory Committee

David Sundwall, MD, Committee Chair  
Todd C. Grey, MD  
Major Jeff Carr  
Kristen Ries, MD  
David Young, PharmD  
Alexander Larsen, DDS  
Scott W. Reed  
Glen R. Hanson, DDS, Ph.D  
Elizabeth Howell, MD  
Darin Vercillo, MD  
Jeffrey V. Wright, ND  
Blaine Winters, DNP, APRN  
Debra F. Hobbins, DNP, APRN, Committee Administrator



\*\*\*\*Potentially lethal bath salt substance in Southeast Georgia\*\*\*\*

Elizabeth F Howell, MD <efhowell@gmail.com>

Fri, Aug 23, 2013 at 5:15 PM

To: Shirlene Kimball <skimball@utah.gov>

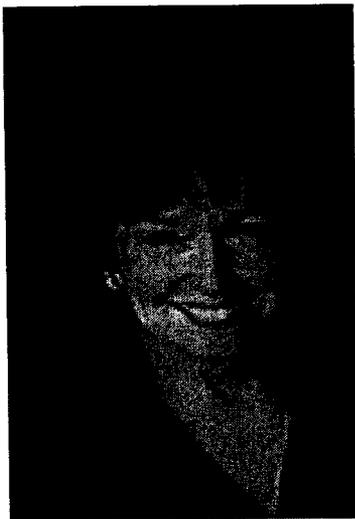
Cc: Barbara Insley <barbara.crouch@hsc.utah.edu>, Blaine Winters <blaine-winters@byu.edu>, Debra Hobbins <dhobbins@utah.gov>, "J. Paul Clark, MD" <jpclark@byu.net>, Major Jeff Carr <jcarr@utah.gov>, "Jeffrey Wright, ND" <utahnaturedoctor@yahoo.com>, Jennifer Mcnair <jmcnair@utah.gov>, "DarinVercillo, MD" <darin@vercillo.com>, "David N Sundwall, MD" <david.sundwall@utah.edu>, "Glen Hanson, PhD, DDS" <glen.hanson@pharm.utah.edu>, "David Young, R.Ph" <david.young@hsc.utah.edu>, Scot Van Wagoner <svanwagoner@updsl.org>, "Scott W. Reed" <scottreed@utah.gov>, "Todd C. Grey, MD" <toddgrey@utah.gov>, KennethSchaecher <brokenspokes2002@aol.com>

Georgia Dept of Public Health sent out this urgent notice this evening:



Important Message from the Commissioner

We Protect Lives.



Brenda Fitzgerald, M.D.  
Commissioner, Georgia  
Department of Public  
Health

Dear Dr. Howell,

The Georgia Department of Public Health (DPH) has become aware of a dangerous, potentially lethal substance surfacing in convenience stores and smoke shops. When ingested or inhaled this neurotoxin can render a person motionless and/or unconscious and cause severe cardiac problems. In the last 24 hours, at least eight patients in Southeast Ga. have been hospitalized; some patients have been admitted to intensive care and are on life support. Two patients have been intubated.

The substance is marketed as "herbal incense," bath salts, or "roll-your-own" tobacco - similar to what public health and law enforcement have seen before containing cannabinoid receptor agonists (THC homologs), **but there are now indications the chemicals or ingredients have been altered.**

First responders have reported unusual strength, agitation and combativeness in some persons followed by sudden hypokalemia, flaccid paralysis, severe hyporeflexia and unconsciousness. Symptoms may present almost immediately after ingestion or inhalation, or may be delayed as users ingest more of the product. Mild to moderate intoxication can result in alterations in mood and perception, reddened conjunctiva, nausea, vomiting, xerostomia, weakness, cardiac abnormalities, hypertension, disorientation and an increase in pulse

Follow Us!



rate, similar to marijuana (THC).

DPH is working closely with the Georgia Bureau of Investigation and the Georgia Drugs and Narcotics Agency to collect these products and remove them from store shelves. Samples of the product have arrived at a secure laboratory and testing to identify the toxins is underway. **At this time, lab tests are continuing and the composition of the product is unknown. Clinicians are advised to treat symptomatically as no specific treatment has been identified.**

Brand names include *Crazy Clown and Herbal Madness Incense*. The products are typically sold at convenience and tobacco stores and may display a clown or "joker face" with the character's tongue out and/or "5X" in product labeling.

Clinicians requiring toxicology assistance should phone the Georgia Poison Center at 800-222-1222.

Thank you for all you do.

Very truly yours,

A handwritten signature in cursive script that reads "Brenda Fitzgerald M.D." followed by a small flourish.

Brenda Fitzgerald, M.D.  
Commissioner

Reader Advisory Notice: Email to and from a Georgia state agency is generally public record, except for content that is confidential under specific laws. Security by encryption is applied to all confidential information sent by email from the Georgia Department of Public Health (DPH). This message is only intended for specific recipient(s) and may contain privileged, private or sensitive information. If you received this message in error, please delete it and contact me.

Sent from my iPad

On Aug 19, 2013, at 11:55 AM, Shirlene Kimball <skimball@utah.gov> wrote:

Dear Committee members:

We will be scheduling a meeting with the Controlled Substance Advisory Committee in September. Please let me know if you would be available Monday, September 9, 2013 at 4:00 p.m., or Tuesday, September 10, 2013 at 4:00 p.m.

Thanks,

Shirlene Kimball, Secretary

Bureau 7, DOPL



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole   
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.<sup>1</sup>

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

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<sup>1</sup> These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.

must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman  
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch  
United States Attorney  
Eastern District of New York  
Chair, Attorney General's Advisory Committee

Michele M. Leonhart  
Administrator  
Drug Enforcement Administration

H. Marshall Jarrett  
Director  
Executive Office for United States Attorneys

Ronald T. Hosko  
Assistant Director  
Criminal Investigative Division  
Federal Bureau of Investigation



**TRAMADOL STATISTICS**  
**Controlled Substance Advisory Meeting**  
**Heber M. Wells Building**  
**September 9, 2013**



Prior to 05/14/2013.....15,273 Rxs  
 05/14/2013 to the present.....104,352 Rxs  
 Total.....118,625 Rxs  
 Number of Prescribers.....5,858  
 Average # of Rxs/Prescriber.....18Rxs  
 Mean.....4

Top 10 Prescribers.....3.25%  
 # of MD's.....6  
 # of DO's.....2  
 # of PA's.....2

Top 25 Prescribers.....6.58%  
 # of MD's.....17  
 # of DO's.....5  
 # of PA's.....3

Top 50 Prescribers.....10.98%  
 # of MD's.....33  
 # of DO's.....8  
 # of PA's.....8  
 # of NP's.....1

**Percentage by Profession:**

MD.....57%  
 DO.....8%  
 PA.....14%  
 APRN/NP.....9%  
 DDS/DMD.....7%  
 DVM.....3%  
 DPM.....1%  
 OD.....0.17%

Hospital Reports

# of Reports from 07/01/2012 through 05/13/2013.....30/3 per month  
 # of Reports from 05/14/2013 to the present.....6/1.5 per month



State of Utah

GARY R. HERBERT  
Governor

GREG BELL  
Lieutenant Governor

## Department of Public Safety

Keith D. Squires  
Commissioner

### Utah Bureau of Forensic Services Emerging Drugs September 9, 2013

The following substances have been encountered at the Bureau of Forensic Services in casework samples since the current law was enacted in May 2013. As most of these substances are analogs of those currently in the state law, it is recommended to the Controlled Substance Advisory Committee that the following be considered for addition to the Utah Controlled Substances Act:

#### Spice

**MAM-2201**; (1-(5-fluoropentyl)-1H-indol-3-yl)(4-ethyl-1-naphthalenyl)-methanone

**PB-22**; 1-pentyl-1H-indole-3-carboxylic acid 8-quinolinyl ester

**5-fluoro-PB-22**; 1-(5-fluoropentyl)-1H-indole-3-carboxylic acid 8-quinolinyl ester

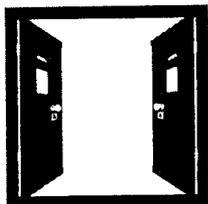
**AB-PINACA**; N-[1-(aminocarbonyl)-2-methylpropyl]-1-pentyl-1H-indazole-3-carboxamide

**AB-FUBINACA**; N-[1-(aminocarbonyl)-2-methylpropyl]-1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamide

#### Other

**25H-NBOMe**; 2-(2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine

## Open and Public Meetings Act Training



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## Training Outline

- Background
- Public Policy
- Definitions
- General Rule
- Notice Requirements
- Minutes of Open Meetings
- Closing a Meeting
- Record of Closed Meetings
- Electronic Meetings
- Disruptive Behavior
- Litigation and Enforcement



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## Background - Training Requirement - §52-4-104

The presiding officer of each public body is responsible to ensure that all members of the public body are provided with annual training on the Open and Public Meetings Act.



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### Background: DOPL Licensing Board Structure - §58-1-201

- Typically consist of 5 members: 4 licensees and 1 public member.
- Members nominated by associations, submitted by the Division, confirmed by the Governor, and appointed by the Executive Director of the Department of Commerce.
- Members serve 4-year staggered terms.
- Duties and responsibilities set forth in Utah Code Ann. Sections 58-1-202 and 58-1-203.
- Members elect a chair annually who conducts meetings using parliamentary procedure: Robert's Rules of Order.
- Board Secretary is provided by the Division.
- Division liaison is the Bureau Manager.

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### Public Policy - §52-4-102

- Public bodies exist to aid in the conduct of the people's business.
- Their actions and deliberations should be taken and conducted openly.



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### Definitions - §52-4-103(4)

- "Meeting" means the convening of a *public body*, with a *quorum* present, whether in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body has jurisdiction or advisory power.
- Includes a workshop or executive session of a public body.
- Does not mean a chance or social meeting.



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**Definitions - §52-4-103(7)**

"Public body" means any administrative, advisory, executive, or legislative body of the state or its subdivisions that:

1. is created by the Utah Constitution, a statute, rule, ordinance, or resolution;
2. consists of two or more persons;
3. expends, disburses or is supported in whole or part by tax revenue; and
4. is vested with the authority to make decisions regarding the public's business.

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**Definitions - §52-4-103(9)(a)**

"Quorum" means a simple majority of membership of a public body, unless otherwise defined by applicable law.



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**Definitions - §52-4-103(8)**

- "Public statement" means a statement made in the ordinary course of business of the public body with the intent that all other members of the public body receive it.



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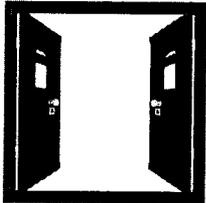
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## General Rule - §52-4-201(1)

Every meeting is open to the public unless closed under Sections 52-4-204, 52-4-205, and 52-4-206.



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## Notice Requirements - §52-4-202(1)-(3)

- Annual public notice of the date, time, and place of regularly scheduled board meetings.
- At least 24 hour public notice of the agenda, date, time and place of each of its meetings.
- The 24 hour public notice is satisfied by:



- posting on a public bulletin board at the Heber M. Wells Building,
- posting a notice on the Utah Public Notice Website created by Section 83F-1-701, provided it is set up to deliver notice to a newspaper or local media correspondent.

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## Emergency Meetings - §52-4-202(5)

- When due to unforeseen circumstances it is necessary for a public body to hold an emergency meeting to discuss matters of an emergency or urgent nature, the notice requirements may be disregarded and the best notice practicable given.
- Before such a meeting is held an attempt must be made to notify all of its members and a majority must vote in favor to hold such a meeting.



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**Agenda Requirements - §52-4-202(6)**

- A public notice that is required to include an agenda must be specific enough to notify the public as to the topics to be considered at a meeting.
- Except for emergency meetings, a public body may not consider a topic that is not listed under a properly noticed agenda.
- A topic not included on an agenda that is raised by the public during an open meeting may be discussed but no final action may be taken at that meeting.

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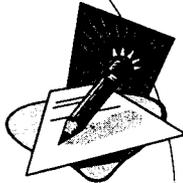
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**Minutes and Recordings of Open Meetings - §52-4-203**

- Except for site visits and field tours, written minutes and recordings must be kept of all open meetings.
- The minutes and recordings are public records, but minutes are the official record of action taken.
- Anyone in attendance can make their own recording unless it interferes with the conduct of the meeting.



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**Minutes and Recordings of Open Meetings - §52-4-203(2)**

Written minutes and recordings must include:

- the date, time and place of the meeting;
- the names of members present and absent;
- the substance of all matters proposed, discussed, or decided, which may include a summary of comments made by members of the public body;
- a record by individual member, of votes taken;

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### Minutes and Recordings of Open Meetings - §52-4-203(2)

(continued):

- the name of each person who is not a member of the public body, and upon recognition by the presiding officer of the public body, provided testimony or comments to the public body;
- the substance, in brief, of the testimony or comments provided by the public; and
- any other information that is a record of the proceedings of a meeting that any member requests be entered in the minutes or recording.

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### Minutes and Recordings of Open Meetings - §52-4-203(2)

Written minutes and recordings of an open and public meeting are public records as follows:

- Pending minutes that have been prepared in a form awaiting only formal approval by the public body are a public record.
- Pending minutes that have not been adopted by the public body shall be marked "awaiting formal approval" or "unapproved" or with some other similar notice that the minutes are subject to change until formally approved.
- Appropriately marked pending minutes must be posted on the Utah Public Notice Website within 30 calendar days after the end of the public meeting.

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### Minutes and Recordings of Open Meetings - §52-4-203(2)

(continued):

- Public bodies are required to establish and implement procedures for the public body's approval of the written minutes of each meeting.
- Written minutes are the official record of action taken at the meeting.
- Within three business days after approving written minutes of an open meeting, a public body is required to post to the Utah Public Notice Website and make available to the public at the public body's primary office a copy of the approved minutes and any public materials distributed at a meeting.
- A recording of an open meeting must be posted to the Utah Public Notice Website within three business days after the end of the meeting.
- Written minutes or recordings of an open meeting have a permanent retention schedule.

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### Closing a Meeting - §52-4-204

Closed meetings are never required, but may be held provided:

- a. a quorum is present;
- b. two-thirds of the members in a properly noticed open meeting vote to close the meeting;
- c. the only matters discussed in the closed meeting are those permitted in Section 52-4-205; and
- d. no ordinance, resolution, rule, regulation, contract or appointment is approved in the closed meeting.



NO ADMITTANCE

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### Closing a Meeting - §52-4-204(4)

The following must be publicly announced and entered on the minutes of the open meeting:

- the reason or reasons for holding a closed meeting;
- the location where the closed meeting will be held; and
- the vote by name, of each member of the public body, either for or against the motion to hold a closed meeting.



NO ADMITTANCE

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### Closing a Meeting - §52-4-205

The purposes for closing a meeting include:

- discussion of the character, professional competence, or physical or mental health of an individual;
- strategy sessions to discuss pending or reasonably imminent litigation;
- deployment of security personnel, devices, or systems; and
- investigative proceedings regarding allegations of criminal misconduct.



NO ADMITTANCE

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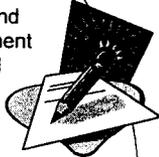
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**Record of Closed Meetings -  
§52-4-206(1) & (2)**

- Except where a sworn statement is required, a recording of the closed meeting is required and detailed written minutes may be kept.
- Recordings must be a complete and unedited record from commencement through adjournment of the closed meeting.



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**Record of Closed Meetings -  
§52-4-206(3)**

The recording and any minutes of a closed meeting must contain:

- the date, time, and place of the meeting;
- the names of members present and absent; and
- the names of all others present except where the disclosure would infringe on the confidentiality necessary to fulfill the original purpose of closing the meeting.

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**Record of Closed Meetings -  
Sworn Statements - §52-4-206(6)**

- Instead of a recording, a sworn statement is required from the person presiding at a meeting if a public body closes a meeting exclusively for the purpose of:
  - discussing character, professional competence, or physical or mental health of an individual; or
  - discussing the deployment of security personnel, devices, or systems.
- DOPL has prepared a sworn statement form to assist the person presiding in closing such a meeting.

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### Electronic Meetings - §52-4-207(2)

A public body may not hold an electronic meeting unless it has adopted a resolution, rule, or ordinance governing the use of electronic meetings. Commerce R151-1-2 provides:



- Such meetings are permitted but may be limited based on budget, public policy, or logistical considerations.
- A director or designee may establish such meetings on his or her own initiative or acting upon a timely request from a board member.
- A quorum of a board is not required to be present at a single anchor location.
- Any number of separate connections are permitted unless limited based upon available equipment, etc.

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### Electronic Meetings - §52-4-207(3)

A public body convening or conducting an electronic meeting must:

- give public notice under Section 52-4-202;
- post written notice at the anchor location(s);
- provide at least 24-hour notice to the public body, including how members will be connected, so members may participate in and be counted as present for all purposes;
- establish one or more anchor locations, at least one of which must be in the normal meeting location; and
- provide space and facilities at the anchor location so interested persons and the public can attend, monitor and participate.

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### Definitions - §52-4-103

- "Electronic meeting" means a public meeting convened or conducted by means of a conference using electronic communications.
- "Anchor location" means the physical location from which an electronic meeting originates or the participants are connected.
- "Participate" means the ability to communicate with all of the members of a public body, either verbally or electronically, so that each member of the public body can hear or observe the communication.

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### Disruptive Behavior at a Meeting - §52-4-301



- A public body may remove any person who willfully disrupts a meeting to the extent that orderly conduct is seriously compromised.
- Such a removal does not constitute closing the meeting.

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### Voiding a Public Meeting - §52-4-302

- Final action in a meeting held in violation of the requirements for open, emergency, and electronic meetings is voidable in court.
- A lawsuit to void any final action must be filed within 90 days after the date of the action.



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### Voiding a Public Meeting - §52-4-302

- A court may not void a final action taken by a public body for failure to comply with posting notice on the Utah Public Notice Web Site if:
  - the public body otherwise complies with the notice requirements in Section 52-4-202; and
  - the failure was the result of unforeseen Internet hosting or communication technology failure.



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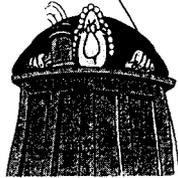
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### **Criminal Penalty for Improperly Maintaining Records - §63A-12-105**

Intentionally mutilating, destroying, or otherwise damaging or disposing of the record-copy of a record knowing it is in violation of the laws governing retention of the record is a class B misdemeanor and the employee involved may also be subject to disciplinary action.



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### **Enforcement of Open and Public Meetings Act - §52-4-303**

- The attorney general and county attorneys are responsible for enforcement of the Open and Public Meetings Act.
- The attorney general is required on at least a yearly basis to provide notice to all public bodies of any material changes to the Open and Public Meetings Act.
- A person denied any right under the Act may bring suit to compel compliance with or enjoin violations or determine the applicability of the Act, and may be awarded attorney fees and court costs if successful.

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### **Action Challenging Closed Meeting - §52-4-304**

- In a lawsuit brought to challenge the legality of a closed meeting a court is required to review the recording or written minutes of the closed meeting in camera, and decide the legality of the closed meeting.
- If the court determines that the public body did not violate the Act regarding closed meetings, it must dismiss the case without disclosing or revealing the information from the recording or minutes of the closed meeting.
- If the court determines the public body did violate the Act regarding closed meetings, it must publicly disclose or reveal from the recording or minutes all information about the portion of the meeting that was illegally closed.

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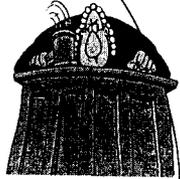
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## Criminal Penalty for Closed Meeting Violation - §52-4-305

A knowing or intentional violation or aiding or advising in the violation of the closed meeting provisions of the Open and Public Meetings Act is classified as a class B misdemeanor.



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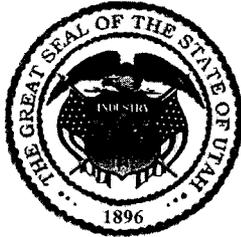
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## Questions?



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