

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

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IN THE MATTER OF THE LICENSES OF	:	FINDINGS OF FACT
<b>CODY R. BEAUMONT</b>	:	CONCLUSIONS OF LAW
TO PRACTICE AS A PHARMACIST AND TO	:	AND RECOMMENDED ORDER
DISPENSE CONTROLLED SUBSTANCES	:	Case No.
IN THE STATE OF UTAH	:	DOPL-OSC-2005-17
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**Appearances:**

Karl G. Perry for the Division of Occupational and  
Professional Licensing  
Cody R. Beaumont for Respondent

**BY THE BOARD:**

An April 24, 2007 hearing was conducted in the above-entitled proceeding before J. Steven Eklund, Administrative Law Judge for the Department of Commerce, and the State Board of Pharmacy. Board members present were Roger B. Fitzpatrick, Shawna Hanson, Mark A. Munger, Betty Yamashita, Marty Val Hill, Dominic DeRose, Jr. and Edgar Cortes. F. David Stanley, Director of the Division of Occupational and Professional Licensing, was also present. Thereafter, evidence was offered and received.

The Board now enters its Findings of Fact, Conclusions of Law and submits the following Recommended Order for review and action by the Division:

## FINDINGS OF FACT

1. Respondent is, and at all time relevant to this proceeding has been, licensed to practice as a pharmacist and to dispense controlled substances in this state. Respondent was initially so licensed on October 29, 2003.

2. Pursuant to a January 24, 2005 Order (Case No. DOPL-2005-17), Respondent's controlled substance license was revoked. Respondent's license to practice as a pharmacist was also revoked. However, a stay of enforcement was entered as to that revocation and Respondent's pharmacist license was suspended until he completed an in-patient drug treatment program.

3. The January 24, 2005 Order also provides Respondent could then submit a written request to lift the suspension, reinstate his pharmacist license and, if so reinstated, the license would be placed on probation for five (5) years.

4. The January 24, 2005 Order further provides Respondent was to abstain from the personal use or possession of alcohol, controlled substances or prescription drugs unless such drug were lawfully prescribed for him for a bona fide illness or condition by a licensed practitioner. The January 24, 2005 Order sets forth numerous other probationary terms and conditions governing Respondent's license to practice as a pharmacist.

5. The January 24, 2005 Order was entered based on a stipulation between the Division and Respondent, wherein the

latter admitted he had engaged in unlawful and unprofessional conduct. Specifically, Respondent had been employed as a pharmacist at three (3) different pharmacies between August 2004 through December 2004. Respondent admitted he had stolen various controlled substances from two (2) of those pharmacies.

6. Respondent also admitted his employment at the third pharmacy was terminated due to a positive drug test which reflected the presence of Morphine. Respondent acknowledged he had a substance abuse problem which, if left untreated, may place the public at jeopardy were he to continue to practice pharmacy.

7. Respondent completed the in-patient drug treatment program and the suspension of his license to practice as a pharmacist was terminated on March 11, 2005. That license was then placed on probation for five (5) years, subject to the terms and conditions set forth in the January 24, 2005 Order.

8. The March 11, 2005 Amended Order also required Respondent to submit a practice plan for Board approval prior to commencing work as a pharmacist. Moreover, Respondent was to notify any employer of his probationary status and his employer was to submit quarterly performance evaluations to the Board.

9. Pursuant to a January 31, 2006 Amended Order, Respondent's license to dispense controlled substances was reinstated. That license was then placed on probation for five

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(5) years, subject to the existing terms and conditions governing Respondent's pharmacist license as of January 31, 2006.

10. Respondent completed his aftercare therapy and the requirement that he participate in such therapy was terminated pursuant to an April 3, 2006 Amended Order. Respondent relocated to Oregon on or about April 2006 and he entered into an agreement with the Oregon Pharmacy Recovery Network (PRN) Program. The Division issued a June 29, 2006 Amended Order, whereby various aspects of Respondent's Utah probation would be tracked by Oregon and reported to the Division.

11. Respondent and the Oregon Board of Pharmacy (hereinafter, Oregon Board) entered into a September 25, 2006 Consent Order, whereby Respondent's Oregon pharmacist license was placed on probation for five (5) years, subject to the same terms and conditions which governed his Utah pharmacist license. The September 25, 2006 Oregon Consent Order was based on the prior disciplinary action entered in Utah as to Respondent's licenses in this state.

12. The September 25, 2006 Oregon Consent Order provides Respondent must continue his contract with PRN and participate in that program in good faith. The Consent Order also provides Respondent must comply with all conditions of the PRN contract and complete that contract at his expense. Respondent was also required to provide all present and prospective pharmacy related

! employers and any pharmacists-in-charge with a copy of the notice of proposed disciplinary action by the Oregon Board and the September 25, 2006 Consent Order.

13. The Oregon Board issued a notice of proposed disciplinary action to Respondent on December 18, 2006. The notice was sent to Respondent by certified mail and informed Respondent of his right to a hearing upon a written request made to the Board within twenty-one (21) days. Respondent received the notice on December 26, 2006. However, Respondent did not submit a timely request for a hearing in that proceeding.

14. Pursuant to a February 14, 2007 Order, Respondent's Oregon pharmacist license was revoked by default. The Order recites Respondent failed to comply with all conditions of the PRN contract, he failed to participate in the PRN program in good faith and he did not complete the PRN contract. The Order also recites that Respondent was found to be noncompliant with the PRN program on or about November 2006.

15. The February 14, 2007 Order generally recites Respondent was noncompliant with the PRN program because he delayed taking a drug test, he submitted low temperature urine specimens in a drug test and he failed to submit to a required inpatient evaluation. The February 14, 2007 Order fails to specifically set forth the underlying facts or circumstances which might establish that Respondent was noncompliant in those

] respects. Accordingly, there is a lack of sufficient and credible evidence to find Respondent delayed taking any drug test, he submitted low temperature urine specimens in any drug test or that he did not submit to any required in-patient evaluation.

16. The February 14, 2007 Order recites Respondent worked at Campus Drugs on September 18, 2006, September 20, 2006 and September 23, 2006. The Order also recites Respondent failed to notify the pharmacist-in-charge and management of Campus Drugs of his probationary status and to verify that such notification was submitted to the Oregon Board.

17. The February 14, 2007 Order recites Respondent was employed at Merle West Medical Center Pharmacy on or about October 5, 2006. The Order also recites Respondent tested positive for Oxycodone in a drug test initiated by his employer on that date after a loss of drugs at Merle West Medical Center Pharmacy. The February 14, 2007 Order further recites Respondent was not able to submit a valid prescription for the Oxycodone.

18. The February 14, 2007 Order recites Respondent had stolen controlled substances, including Oxycontin and Hydrocodone/APAP, from Merle West Medical Center and Campus Drug between September 2006 through October 2006.

19. Respondent was subject to two (2) urine tests on October 5, 2006. He provided the first specimen at 11:05 a.m. on

1 that date, which was tested by Oregon Medical Laboratories. That test result reflects the presence of Oxycodone.

20. Respondent provided a specimen at 3:40 p.m. on October 5, 2006 to RSS Testing. The test results on that specimen reflect no presence of Oxycodone. Based on the conflicting test results of urine specimens provided by Respondent on October 5, 2006, there is a lack of sufficient evidence before this Board that Respondent used Oxycodone on or about that date.

21. There is a lack of sufficient and credible evidence before this Board that Respondent took any controlled substances from either Merle West Medical Center Pharmacy or Campus Drugs. Specifically, there is no evidence that any audits were conducted of controlled substance inventories at those pharmacies during the times Respondent was employed between September 2006 through October 2006.

22. There is no credible evidence before this Board that Respondent failed any drug test which may have been conducted during those two months. Despite the recitals of the February 14, 2007 Order, including that the contested case record in that matter contains evidence of the facts necessary to support the Order, there is lack of sufficient and credible evidence before this Board that Respondent engaged in any unauthorized controlled substance usage as recited in the February 14, 2007 Order.

23. Respondent resided in Oregon until late October 2006, at which time he relocated to Utah. Respondent has not been engaged in any pharmacy practice in this state since that time.

#### **CONCLUSIONS OF LAW**

The Division contends Respondent has violated the terms and conditions of the September 25, 2006 Oregon Consent Order and he has thus engaged in unprofessional conduct violative of Utah Code Ann. 58-1-501(2)(a). Based on the February 14, 2007 Order entered by the Oregon Board, whereby Respondent's pharmacist license in that state was revoked, the Division asserts Respondent's Utah licenses should be similarly revoked.

Respondent acknowledges he failed to comply with the September 25, 2006 Oregon Order when he failed to duly notify the personnel of Campus Drugs of that Order. Respondent also admits he received the February 14, 2007 Order. However, Respondent urges no contested hearing was ever conducted either prior to or after the entry the February 14, 2007 Order. Respondent asserts he did not seek any reconsideration of that Order because he had left Oregon and returned to Utah.

Respondent contends he never took any controlled substances on an unauthorized basis from the two pharmacies in Oregon where he was employed. Respondent asserts the inconsistent test results of two urine samples which he provided on October 5, 2006 precludes any finding that he used Oxycodone on or about that

date. Respondent admits he has no present desire to work in either a retail or hospital pharmacy and that he is awaiting the results of this proceeding to determine whatever employment prospects may be available to him as a pharmacist in this state.

§58-1-401(2) provides:

The division may . . . revoke, suspend, restrict, place on probation, issue a public or private reprimand to, or otherwise act upon the license of any licensee in any of the following cases:

(a) the . . . licensee has engaged in unprofessional conduct, as defined by statute or rule under this title . . . .

§58-1-501(2) defines unprofessional conduct to include:

(a) violating . . . any statute, rule, or order regulating an occupation or profession under this title . . . .

Respondent failed to comply with the September 25, 2006 Oregon Consent Order when he did not duly notify certain personnel at Campus Drugs of his probationary status. This Board also notes the March 11, 2005 Amended Order which governs Respondent's licenses to practice as a pharmacist and to dispense controlled substances in this state. That Order similarly required Respondent to notify any employer in this state of restrictions on his pharmacy practice or his ability to dispense controlled substances.

Given Respondent's admission that he failed to comply with the reporting requirements of the September 25, 2006 Oregon Consent Order, he has thus engaged in unprofessional conduct

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violative of §58-1-501(2) (a). Accordingly, this Board concludes a sufficient factual and legal basis exists to enter disciplinary action as to Respondent's Utah licenses. Significantly, the February 14, 2007 Oregon Order was entered on Respondent's default and the allegations which prompted that disciplinary action were not actually litigated.

Utah Courts have repeatedly set forth those circumstances where collateral estoppel, also known as "the issue preclusion branch of the doctrine of res judicata", can properly be applied. *Searle Bros. v. Searle*, 588 P.2d 689, 691 (Utah 1978). See *Wilde v. Mid-Century Ins. Co.*, 635 P.2d 417 (Utah 1981); *Robertson v. Campbell*, 674 P.2d 1226 (Utah 1983); *Copper State Thrift and Loan v. Bruno*, 735 P.2d 387 (Utah App. 1987); and *Trimble Real Estate v. Monte Vista Ranch*, 758 P.2d 451 (Utah App. 1988). In *Madsen v. Borthick*, 769 P.2d 245 (Utah 1988), the Utah Supreme Court thus stated as follows:

Under the rules of issue preclusion, the adjudication of an issue bars its relitigation in another action only if four requirements are met. First, the issue in both cases must be identical. Second, the judgment must be final with respect to that issue. Third, **the issue must have been fully, fairly and competently litigated in the first action.** Fourth, the party who is precluded from litigating the issue must either be a party to the first action or a privy of a party. Id. at 250. (Emphasis herein added).

Courts have recognized the purpose of the doctrine of issue preclusion "is to prevent the relitigation of issues which a party has once actually litigated". *Wilde v. Mid-Century Ins. Co.*, supra, at 419. See also *Robertson v. Campbell*, supra, at 1231. As the proper means to prevent duplicative litigation, it must be established that the issue in question was "competently, fully and fairly litigated in the first forum", an element which "stems from fundamental due process and requires that litigants have their day in court". *Copper State Thrift and Loan v. Bruno*, supra, at 391.

No issues are actually litigated with regard to judgments entered by confession, consent or default. *Chaney Building Co., v. City of Tucson*, 148 Ariz. 571, 716 P.2d 28 (1986). Since the February 14, 2007 Oregon Order was entered on Respondent's default, none of the matters set forth therein were actually litigated and should not be afforded preclusive effect in this proceeding.

Beyond Respondent's admission that he failed to comply with the reporting requirements of the September 25, 2006 Consent Order, the Board finds and concludes there is a lack of sufficient and credible evidence in this proceeding that Respondent violated any other requirement of either that Order or the January 24, 2005 Order which governs his Utah licenses.

Clearly, Respondent should have diligently complied with every requirement of the Oregon Consent Order. However, the Board concludes that Respondent's failure to inform an employer of the probationary status of his Oregon licensure does not warrant the revocation or suspension of Respondent's Utah licenses.

The Board further finds and concludes that Respondent's licenses to practice as a pharmacist and to dispense controlled substances in this state should remain subject to the current probationary terms and conditions governing those licenses. Moreover, the probation on each license should be extended and thus continue for five (5) years from the date that the Recommended Order set forth below may become effective. The Board also concludes Respondent should not be allowed to resume any practice as a pharmacist in this state until he has complied with the Recommended Order set forth below.

#### **RECOMMENDED ORDER**

WHEREFORE, IT IS ORDERED Respondent's licenses to practice as a pharmacist and to dispense controlled substances in this state shall be placed on probation for five (5) years, commencing the date this Recommended Order may be adopted by the Division.

It is further ordered that Respondent shall not commence any practice as a pharmacist until he has submitted a written

practice plan to the Board for its review and that plan has been approved by the Board and the Division. That practice plan shall identify the nature of any proposed employment of Respondent as a pharmacist. However, the plan shall not allow Respondent any access to controlled substances.

It is further ordered that the extended probation on both of Respondent's licenses shall not commence until Respondent has begun employment as a pharmacist governed by the approved practice plan.

On behalf of the State Board of Pharmacy, I hereby certify the foregoing Findings of Fact, Conclusions of Law and Recommended Order were submitted to F. David Stanley, Director of the Division of Occupational and Professional Licensing, on the 31<sup>st</sup> day of July, 2007 for his review and action.

  
J. Steven Eklund  
Administrative Law Judge