

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

IN THE MATTER OF THE LICENSE OF	:	
STEVEN KENT BOOTH	:	
TO PRACTICE AS A	:	ORDER
HEALTH FACILITY ADMINISTRATOR	:	
IN THE STATE OF UTAH	:	Case No. DOPL-2007-202

The attached Findings of Fact, Conclusions of Law and Recommended order are hereby adopted by the Director of the Division of Occupational and Professional Licensing of the State of Utah.

Dated this 7 day of August, 2008.



F. David Stanley
F. David Stanley
Director

review of this Order may be obtained by filing a request for agency review with the Executive Director, department of Commerce, within thirty (30) days after the date of this Order. The laws and rules governing agency review are found in Section 63G-4-301 of the Utah Code, and Section R151-46b-12 of the Utah Administrative Code.

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OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE OF
STEVEN KENT BOOTH
TO PRACTICE AS A
HEALTH FACILITY ADMINISTRATOR
IN THE STATE OF UTAH

:
:
: FINDINGS OF FACT
: CONCLUSIONS OF LAW
: AND RECOMMENDED ORDER

Case No. DOPL-2007-202

Appearances:

Lenore Epstein for the Division of Occupational and
Professional Licensing

Joseph B. Hatch for Respondent

BY THE BOARD OF NURSING:

A May 24, 2008 hearing was conducted in the above-entitled proceeding before J. Steven Eklund, Administrative Law Judge for the Department of Commerce, and the Board of Nursing. Board members present were Pamela Ann Rice, Mary Williams, Susan M. Kirby, Barbara Jeffries, Debra A Schilleman and John R. Killpack. The remaining Board members (Diane Forster-Burke, K. Joel Allred, Marie Partridge, Laurie Simonsen and M Peggy Brown) were absent. F. David Stanley, Director of the Division of Occupational and Professional Licensing, was also absent

The Division and Respondent had agreed that this proceeding and a companion case regarding Respondent's licensure as a registered nurse (Case No. DOPL-2007-194) should be consolidated

Given the common factual issues, the parties also agreed a single hearing should be conducted as to both cases. The Division thus appointed the Board of Nursing as the presiding officer in each case to render Findings of Fact, Conclusions of Law and a Recommended Order to the Division for its review and action.

The May 24, 2008 hearing was thus conducted, during which time evidence was offered and received. At the conclusion of the hearing on that date, the record was left open to permit Respondent to submit any written comments regarding proposed probationary conditions which the Division had identified during its closing argument.

Respondent thus submitted a May 30, 2008 letter to address those proposed conditions and provided a copy of that letter to the Division. The Division did not file a response to the May 30, 2008 letter. Accordingly, the record of the proceeding was closed.

The Court provided the May 30, 2008 letter to the Board for its review during the Board's deliberations in this proceeding. 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 health facility

1 administrator in this state. Respondent initially obtained that license on March 17, 1997. No prior disciplinary action has been taken as to that license. This record does not reflect Respondent's employment history as a health facility administrator.

2. Respondent commenced employment as a registered nurse with Good Shepherd Home Care and Hospice (hereinafter referred to as "GSHCH") on October 1, 2006. During the course of that employment, Respondent was assigned to provide nursing care for a patient referred to herein as E.B. Two home health care nurses were generally assigned to each patient. However, those nurses were not usually together when working with a patient and no on-site supervision was provided when Respondent performed nursing care for E.B.

3. A contract pharmacist alerted GSHCH with his concerns that Respondent was obtaining numerous Endocet (a Schedule II controlled substance) prescriptions for E.B. GSHCH had a patient assessment and drug evaluation conducted at E.B.'s residence on May 23, 2007 by another staff nurse. During two home visits by that nurse, E.B. denied taking Endocet and none of that medication could be located in E.B.'s home

4. Respondent resigned from his employment with GSHCH on or about June 7, 2007 after he was confronted by management

concerning medication discrepancies as to E.B. Respondent had refused to submit to urine testing at that time.

5. Respondent met with the Division investigators on or about July 6, 2007. Respondent thus admitted he had taken 360 Endocet tablets which had been prescribed for E.B. However, Respondent denied he had self-administered any of that medication. Rather, Respondent stated he took the medication for his significant other, whom he further stated was dying of cancer and unable to obtain pain medications.

6. An observed urine specimen was obtained from Respondent on July 6, 2007 and thus submitted for testing. Respondent stated to the Division investigators that he had not used any prescription drugs. However, the test results reflected the presence of Tramadol, a prescriptive medication which is not a controlled substance.

7. Respondent met again with Division investigators on July 18, 2007. Respondent thus signed a statement, whereby he attested that he took three (3) bottles of Endocet 10mg tablets, each containing 120 tablets, which he obtained from the pharmacy for E.B. while he was working as a registered nurse at GSHCH. Respondent also attested he took that medication for his partner who was ill and could not afford pain medication.

8. Division investigators confronted Respondent during their July 18, 2007 meeting with him regarding his positive drug

test results and personal use of drugs. Respondent then admitted the drugs he had misappropriated were not for his partner, but for himself. Respondent also stated he had begun abusing Lortab, a Schedule III controlled substance, and Oxycodone approximately one (1) year earlier.

9 Respondent also stated he initially took medications from two (2) patient's homes when the medication had been discontinued or the patients had died. He further stated he initially consumed four (4) to six (6) 7.5mg tablets daily and his use increased to eight (8) and subsequently ten (10) tablets per day.

10. Respondent stated he began taking the Lortab prescriptions that were delivered to E.B.'s home in September 2006. Due to his concerns with acetaminophen levels in Lortab, Respondent requested the prescriber to change E.B.'s pain medication to Endocet 10mg tablets, which would contain less acetaminophen. Respondent further admitted he misappropriated all of E.B.'s Endocet prescriptions for his personal consumption.

11. Pharmacy records reflect that prescriptions for 1,562 Endocet and/or Oxycodone 10mg tablets were filled for E.B. between January 13, 2007 and May 23, 2007. Those records also reflect prescriptions for 630 Hydrocodone 10mg tablets were filled for E.B. between October 2, 2006 and January 26, 2007.

All of those prescriptions were obtained by Respondent for his personal use.

12. Respondent had a substance abuse and mental health assessment through the University of Utah's Assessment and Referral Services program on August 7, 2007. Based on that assessment, Respondent commenced an outpatient program through a company known as Clinical Consultants on August 15, 2007. Respondent successfully completed that program as of January 31, 2008 and he began aftercare treatment at that time. Respondent attends one (1) aftercare meeting each week, he participates in individual therapy once a week and he attends two (2) Alcoholics/Narcotics Anonymous meetings each month.

13. Respondent is presently employed as a registered nurse at Harmony Home Health & Hospice. Most of Respondent's duties in that employment are administrative in nature, although he provides some nursing care in a home health setting. There is no evidence Respondent is presently employed as a health facility administrator.

CONCLUSIONS OF LAW

The Division contends Respondent diverted numerous pain medications for his own use and he obtained prescriptions for those medications in E.B.'s name to facilitate his secretive use of those medications. The Division acknowledges Respondent has been subject to a drug evaluation and he has received drug

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treatment and counseling. The Division also acknowledges Respondent has participated in aftercare counseling for approximately 6-8 months. The Division urges Respondent's license should be placed on probation, subject to standard probationary terms for licensees who have engaged in unauthorized use of controlled substances.

Respondent concedes he obtained and used controlled substances on an unauthorized basis. Respondent asserts he has been engaged in drug treatment for approximately ten (10) months. Respondent acknowledges there is a proper basis to impose various restrictions on his license. However, Respondent urges that on-site supervision of his practice should not be required when he is working as a health facility administrator, provided he is not in close proximity to patients or controlled substances in that administrative setting.

Utah Code Ann. §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 who:

- (a) . . . has engaged in unprofessional conduct, as defined by statute or rule under this title;
- (b) . . . has engaged in unlawful conduct, as defined by statute under this title.

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

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

(e) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee . . . to safely engage in the occupation or profession

§58-15-2 specifically provides unprofessional conduct to include.

(b) acting in a manner inconsistent with the health and safety of the patients of the health facility in which he is the administrator.

§58-1-501(1) generally defines unlawful conduct to include:

(e) . . . dealing with the division . . . through the use of fraud, forgery, or intentional deception, misrepresentation, misstatement, or omission . . .

§58-37-8(2)(a) also provides it is unlawful:

(1) for any person knowingly and intentionally to possess or use...a controlled substance unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of his professional practice, or as otherwise authorized by this chapter.

The Board duly notes no evidence was presented that Respondent practiced as a health facility administrator during the time under review. Accordingly, no proper factual or legal basis exists that Respondent engaged in unprofessional conduct violative of §58-15-2(b) or §58-1-501(2)(e) regarding his licensure as a health facility administrator.

However, the Board finds and concludes Respondent engaged in unlawful conduct, violative of §58-37-8(2)(a), when he obtained, possessed and used controlled substances which were not legally prescribed for him. The Board also finds and concludes Respondent engaged in unlawful conduct violative of §58-1-501(1)(e). Specifically, Respondent made oral and provided written statements to the Division which he knew contained false information regarding his use and misappropriation of prescription drugs, the reasons he misappropriated those drugs and the quantity of drugs which he misappropriated.

Based on the foregoing, the Board finds and concludes Respondent also engaged in unprofessional conduct violative §58-10-501(2)(a). The Board duly notes Respondent's unlawful and unprofessional conduct occurred in a home health care setting incident to his practice as a registered nurse rather than in the context of any practice as a health facility administrator. Further, neither that license nor any employment in that regard facilitated Respondent's misconduct.

However, it is evident Respondent's misconduct was prompted by his potential for substance abuse and resulting addiction. Moreover, Respondent was not candid with Division investigators as to his unauthorized use of controlled substances. Accordingly, the Board concludes Respondent's health facility

1 administrator's license should be placed on probation, subject to appropriate terms and conditions.

Commendably, Respondent has completed an outpatient drug treatment program and he currently participates in aftercare treatment and individual therapy. Given those efforts, the Board concludes the Recommended Order set forth below is warranted to recognize Respondent's prior and present rehabilitative efforts. Moreover, Respondent's ongoing participation in such treatment, therapy, attendance in professional support group meetings and a 12-Step program should continue as to adequately protect the public and promote Respondent's committed efforts toward further recovery.

RECOMMENDED ORDER

WHEREFORE, IT IS ORDERED Respondent's license to practice as a health facility administrator in this state shall be revoked, effective the date this Recommended Order may be adopted by the Division of Occupational and Professional Licensing.

It is further ordered a stay of enforcement shall enter as to that revocation and Respondent's license shall be placed on probation for five (5) years, subject to the following terms and conditions:

1. Respondent shall abstain from the personal use or possession of controlled substances and prescription drugs, unless such a controlled substance or prescription drug is lawfully prescribed to Respondent for a current bona fide illness or condition by a licensed practitioner

and taken by Respondent in accordance with that practitioner's instructions. Respondent shall abstain from the use of any and all other mood-altering substances or use of mood-altering substances for any purpose other than that for which the substance is intended.

2. Respondent shall provide samples of his urine, blood, saliva, hair or any other type of sample requested for drug analysis upon the request of the Division. That analysis shall be conducted by any company with which the Division is contracted to conduct drug testing. The designated company may also request such samples and Respondent shall comply with such requests. The Division shall determine when and where Respondent is to submit himself for testing.

3. Respondent shall pay for the cost of drug testing and shall accurately complete and sign any and all release forms requested by the Division or the drug testing company with request to drug testing, including but not limited to forms authorizing the company to send the drug test results to the Division.

4. Any report from a drug testing company which indicates Respondent failed to provide a sample for drug analysis as directed will be considered a positive drug test result for Respondent and will subject Respondent to additional sanctions. Any drug test result or pattern of results which indicates the sample provided by Respondent for drug analysis is diluted to the extent that it cannot be analyzed, will be considered a positive drug test for Respondent and will subject Respondent to additional sanctions.

5. Respondent shall continue to participate in aftercare treatment for eighteen (18) months from the date of the issuance of this Order. Further, Respondent shall continue to participate in individual therapy on a weekly basis. Respondent shall authorize his aftercare provider to submit reports to the Division which address Respondent's treatment and progress.

Respondent shall also authorize his therapist to submit reports of Respondent's treatment and prognosis to the Division. The reports from Respondent's aftercare provider and his therapist shall be submitted every three (3) months during the probationary term set forth herein.

6. Respondent shall participate in a professional support group to address his use of controlled substances and he shall submit documentation which reflects his ongoing and regular attendance at such support group meetings. Respondent shall submit such documentation to the Division every three (3) months. Regular attendance for the purpose of this requirement shall be at least twice a month.

7. Respondent shall continue to participate in a 12-Step program and have a sponsor with that program. Respondent shall attend at least two meetings per month and he shall submit reports documenting that participation to the Division every three (3) months.

8. Respondent shall receive prescriptions from only one (1) prescribing practitioner and Respondent shall fill prescriptions at only one (1) pharmacy. Respondent shall not obtain the same or equivalent prescription drug or controlled substance from more than one (1) practitioner. All prescribing practitioners must be informed of Respondent's addiction/abuse problems. Respondent shall not undertake, under any circumstance, to obtain prescription drugs in quantities or types that are not legitimately required.

9. Respondent shall submit the names of his prescribing practitioner and pharmacy to the Division for approval. Respondent shall provide the Division with a copy of his prescriptions for prescription drugs, controlled substances or any other mood altering substance within forty-eight (48)

hours after the prescription has been written.

10. Prescriptions from an emergency practitioner or referral practitioner must be submitted to the Division within forty-eight (48) hours of being issued. Respondent shall report to the Division within forty-eight (48) hours of any medications and controlled substances administered or dispensed to Respondent by any other individual.

11. Respondent shall report to the Division within forty-eight (48) hours all medications or controlled substances ingested by Respondent from any source.

12. Respondent shall provide a copy of the Order entered in this proceeding to his primary prescribing practitioner and Respondent shall cause the practitioner to acknowledge to the Division in writing that a copy of the Order has been provided to the prescribing practitioner.

13. Respondent shall not contact any pharmacy or drug supplier by telephone for the purposes of filling a prescription order. This applies regardless of whether Respondent is acting in the capacity of his nursing employment.

14 Respondent shall initially meet with the Health Facility Administrators Board (hereinafter, the Board) on August 12, 2008 and as thereafter required by the Board or the Division. During the August 12, 2008 meeting, Respondent shall submit a plan to the Board for its review and approval to implement the prescribing practitioner and dispensing pharmacy requirements set forth herein Respondent shall also review his employment history as a health facility administrator with the Board since he became licensed in that regard. Respondent shall further address whether he expects to resume any practice as a health facility administrator If Respondent has no present

intent to resume such employment, he shall provide written notice to the Division prior to commencing any subsequent employment as a health facility administrator

15. Respondent shall restrict any subsequent practice as a health facility administrator to duties and surroundings which do not allow Respondent access to - or require him to account for - controlled substances. If Respondent is employed as a health facility administrator, he shall submit a practice plan to the Division for review and approval by the Board. That plan shall identify the means by which Respondent shall be precluded from having any access to or accounting for controlled substances.

16. If Respondent is employed as a health facility administrator, he shall provide a copy of the Order entered in this proceeding to his employer. Respondent shall also provide his employer with the governing practice plan approved by the Board.

17. If Respondent is employed as a health facility administrator, he shall cause his employer to submit performance evaluations to the Division on a quarterly basis. Those reports shall identify the general nature of Respondent's duties as a health facility administrator and any concerns noted by Respondent's supervisor regarding his employment in that regard.

18 Respondent shall notify the Division in writing within one (1) week of any change of employer, employment status or practice status. That notification shall be required, regardless of whether Respondent is employed in his profession as a health facility administrator.

19. If Respondent leaves this state for longer than sixty (60) days, he shall notify the Division in writing of the dates of his departure and return. The licensing authorities of the jurisdiction to which

Respondent may relocate shall be notified by him in writing of the provisions of this Order. Periods of residency or practice outside this state may apply to the reduction of the probationary period this Order is in effect if the new state of residency places equal or greater conditions upon Respondent as those contained in this Order.

20. If Respondent is arrested or charged with a criminal offense by any law enforcement agency, in any jurisdiction, inside or outside this state, for any reason, or should Respondent be admitted as a patient to any institution in this state or elsewhere for treatment regarding the abuse of or dependence on any chemical substance, or for treatment for any emotional or psychological disorder, Respondent shall cause the Division to be immediately notified of the foregoing.

21. If Respondent at any time during the term of this Order is convicted by a criminal offense of any kind, or enters a plea of abeyance to a criminal offense of any kind, including a criminal charge, the Division may take appropriate action against Respondent, including imposing appropriate sanctions, after notice of opportunity for hearing. Such sanctions may include revocation or suspension of Respondent's license or other appropriate sanctions.

22. Respondent shall maintain a current license as a health facility administrator at all times while Respondent's license remains on probation.

23. Respondent shall complete all terms and conditions of any criminal sanctions, incurred before or during the period of this probation, including a criminal probation or parole. If Respondent has not successfully completed all the terms and conditions of his criminal probation when his administrative probationary period ends, the term of Respondent's administrative probation shall be extended until all the conditions of

Respondent's criminal probation have been successfully completed.

24. Should Respondent's subsequent employment as a health facility administrator cease for a term of sixty (60) days or longer after entry of the Order in this proceeding, Respondent shall notify the Division when that practice was discontinued. The time during which Respondent does not practice as a health facility administrator shall not be counted toward the probationary term applicable in this proceeding. It shall be within the discretion of the Board to modify this requirement if Respondent satisfactorily explains to the Board that compliance in Respondent's case was impractical or unduly burdensome. Respondent must work at least sixteen (16) hours per week and no more than forty-eight (48) hours per week to be considered "practicing" in his profession.

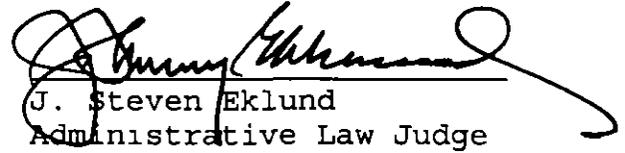
25. Failure to pay any costs associated with this Order constitutes a violation of this Order.

26. The Division may take appropriate action to impose further licensing sanctions if: (i) Respondent tests positive for a prescription drug, controlled substance or any mood-altering substance which cannot be accounted for by an administration or prescription by a lawful practitioner for a current medical condition; or (ii) Respondent violates any federal, state or local law relating to Respondent's practice, the Controlled Substance Act or any term or condition of this Order

Should Respondent fail to comply with the terms and conditions set forth herein, or violates any statute or rule governing his license as a health facility administrator, further proceedings shall be conducted and a determination made whether the stay of enforcement set forth herein should be vacated and

the revocation of Respondent's license to practice as a health facility administrator should become effective.

On behalf of the Board of Nursing, 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 4th day of August 2008 for his review and action


J. Steven Eklund
Administrative Law Judge