



1 notified by separate notice of the date, time, and place of that evidentiary hearing and of any other hearings.

During the evidentiary hearing, you will have the opportunity to present evidence, argue, respond, conduct cross-examination and submit rebuttal evidence to the fact finder. After the hearing, unless otherwise specified by the Director of the Division, the fact finder will issue findings of fact, conclusions of law and a recommended order to the Director of the Division of Occupational and Professional Licensing for his review and action.

The presiding officer for purposes of conducting hearings will be J. Steven Eklund, Administrative Law Judge, Department of Commerce, who will preside over any evidentiary issues and matters of law or procedure. If you or your attorney have any questions as to the procedures relative to the hearing, Judge Eklund can be contacted at P O Box 146701, Salt Lake City, UT 84114-6701. His telephone number is (801) 530-6648.

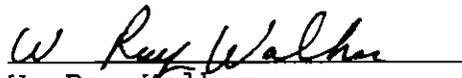
Counsel for the Division in this case is Karl Perry, Assistant Attorney General at (801) 366-0310 or P O Box 140872, Salt Lake City, UT 84114-0872. Within ten (10) days after the filing of your response, Mr. Perry will request the scheduling of a prehearing conference.

You, or if you have an attorney, your attorney, may attempt to negotiate a settlement of the case without proceeding to a hearing by contacting Mr. Perry.

Should you fail to timely file a response, as set forth above, or fail to attend or participate in any scheduled hearing in this case, including prehearing conference(s), you may be held in default without further notice to you. If you are held in default, the maximum administrative sanction consistent with the terms of the Verified Petition may be imposed against you. The maximum administrative sanction in this case is revocation of licensure.

Please conduct yourself accordingly.

Dated this 9<sup>TH</sup> day of February, 2007.

  
W. Ray Walker  
Regulatory & Compliance  
Officer

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

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IN THE MATTER OF THE LICENSE OF )  
**GARY WHITLEY, D.C.** ) **P E T I T I O N**  
TO PRACTICE AS A )  
CHIROPRACTIC PHYSICIAN ) Case No DOPL-~~2006~~ 2007-33  
IN THE STATE OF UTAH )

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The Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah ("the Division"), by and through its counsel, Karl G Perry, Assistant Attorney General, submits the following petition against Gary Whitley, D C ("Respondent")

PRELIMINARY STATEMENT

These claims were investigated of action were investigated by the DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING (the "Division") upon complaints that GARY WHITLEY, D C ("Respondent"), a licensee of the Division, has engaged in acts and practices which constitute violations of the Division of Occupational and Professional Licensing Act, Utah Code Ann §§ 58-

1-101 to 58-1-504 (West 2004) and the Chiropractic Physicians Licensing Act, Utah Code Ann §§ 58-73-101 to 58-73-602 (West 2004)

The allegations against Respondent in this Petition are based upon information and belief arising out of that investigation

Each cause of action in this Petition shall be deemed to incorporate by reference the allegations set forth in the other paragraphs of the Petition

### PARTIES

1 The Division is a division of the Department of Commerce of the State of Utah and is established pursuant to Utah Code Ann § 13-1-2 (West 2004)

2 Respondent is licensed by the Division as a Chiropractic Physician and was so licensed at all times material to the allegations contained herein

### STATEMENT OF ALLEGATIONS

3 On or about July 2, 1990, Respondent completed a Division Ordered probation The probation resulted from a disciplinary proceeding in which the Division found, by Stipulated Agreement, that Respondent had performed gynecological services to a patient which were outside of his scope of practice as a chiropractic physician

4 On or about November 17, 2001, Respondent was arrested by South Salt Lake Police after being observed masturbating by another person On April 14, 2003 the Respondent entered into a Plea and Abeyance agreement with the South Salt Lake Justice Court On April 21, 2003, Respondent entered

into a Diversion agreement with the court Respondent completed the Diversion agreement and the charges were dismissed

5 On or about July 2, 2003, the Respondent was verbally abusive to his patient CH (name withheld to protect confidentiality) The Respondent told CH she was old and ugly, referred to women as witches and/or bitches, and made other verbal comments that were inappropriate During this same office visit the Respondent sat CH up on the examining table and started running his fingers through her hair Respondent then makes some arm and hand gestures like he is pulling something out of her body and throwing it away Respondent then pulls CH up to a standing position and told her that they were lovers in a past life Respondent then stepped forward and kissed CH on the lips and laughed

6 On or about May 12, 2004, in accordance with the provisions of Utah Code Ann 58-73-401(b), Respondent was required by the Division to submit to a mental health examination The evaluator determined Respondent was suffering from a variety of mental health issues that could impact public safety if Respondent's mental health issues are not resolved through treatment

7 The Respondent has rejected the recommendations of Michael D Brunson for therapy, supervision and intensive treatment and educational services in the areas of patient boundaries, unprofessional and unethical behavior If Respondent continues to practice as a Doctor of Chiropractic without any therapy, educational, supervision or other appropriate services he will *present a risk to public safety*

APPLICABLE LAW

8 The division may refuse to issue a license to an applicant and may refuse to renew or 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 applicant or licensee has engaged in unprofessional conduct, as defined by statute or rule under this title

\* \* \*

- (d) the applicant or licensee is unable to practice the occupation or profession with reasonable skill and safety because of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material, or as a result of any other mental or physical condition, when the licensee's condition demonstrates a threat or potential threat to the public health, safety, or welfare

- 9 Utah Code Ann § 58-1-501 (2) (b), (g), and (k) (West 2004)

defines "unprofessional conduct" to include

\* \* \*

- (c) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession,

\* \* \*

- (k) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license

10 Utah Code Ann § 58-73-401 (West 2004) provides in relevant part as follows

(3)(a) If it appears to the board there is reasonable cause to believe a chiropractic physician who has not been judicially determined to be incompetent, mentally incompetent, incapable, or mentally ill is unable to practice chiropractic with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other substance, or as a result of any mental or physical condition, a petition shall be served upon that chiropractic physician for a hearing on the sole issue of the capacity of the chiropractic physician to conduct properly the practice of the chiropractic physician

(b) Every chiropractic physician licensed by this state is considered to have

(i) agreed to submit to a mental or physical examination upon receipt of a written direction given by the division with the approval of the board, and

(ii) waived all objections to the admissibility of the examining chiropractic physician's or other practitioner's testimony or examination reports on the ground they constitute a privileged communication

(4) The terms of revocations, suspension, or probation under this chapter may include

(a) revoking the license to practice either permanently or with a stated date before which the individual may not apply for licensure,

(b) suspending, limiting, or restricting the license to practice chiropractic for up to five years, including limiting the practice of the person to, or excluding from the person's practice, one or more specific

branches of medicine, including any limitation on practice within the specified branches,

- (c) requiring the license holder to submit to care, counseling, or treatment by physicians approved by or designated by the board, as a condition for licensure,
- (d) requiring the license holder to participate in a program of education prescribed by the board,
- (e) requiring the license holder to practice under the direction of a physician designated by the board for a specified period of time, or
- (f) other appropriate terms and conditions determined by the division in collaboration with the board to be necessary to protect the public health, safety, or welfare

#### FIRST CAUSE OF ACTION

#### PLEA IN ABEYANCE TO A CRIME BEARING ON SAFETY TO PRACTICE CHIROPRACTIC

11 Respondent was entered into Diversion Agreement and offered a *plea of guilty, which was held in abeyance, to a crime, that when considered with the functions and duties of a chiropractic physician bears a reasonable relationship to Respondent's ability to practice safely, as described in Paragraph 4* Therefore, Respondent has engaged in "unprofessional conduct" as defined under Utah Code Ann § 58-1-501(2)(c) (West 2004), invoking sanctions against his license pursuant to Utah Code Ann § 58-1-401(2)(a) (West 2004)

#### SECOND CAUSE OF ACTION

#### PATIENT EXPLOITATION

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12 Respondent verbally abused a patient, as described in Paragraph number 5 Based on the foregoing, Respondent engaged in unprofessional conduct through verbal, physical, mental and/or sexual abuse and/or exploitation of patients in conduct connected with Respondent's practice or facilitated by Respondent's licenses, in violation of Utah Code Ann § 58-1-501 (2)(k) (West 2004) Therefore, Respondent's conduct constitutes grounds for imposing sanctions against Respondent's licenses under Utah Code Ann § 58-1-401 (2)(a) (West 2004)

THIRD CAUSE OF ACTION  
MENTAL ILLNESS OR CONDITION

13 Respondent has a mental illness or condition that could endanger public health and safety if Respondent continues to practice as a chiropractic physician without monitoring and treatment, as described in Paragraphs 3 through 7 Based on the foregoing, cause exists to sanction Respondent's license pursuant to Utah Code Ann §§ 58-1-401 (2)(d) (West 2004) and 58-73-401 (West 2004)

WHEREFORE, the Division requests the following relief

1 That Respondent be adjudged and decreed to have engaged in the acts alleged herein,

2 That by engaging in the above acts, Respondent be adjudged and decreed to have violated the above described provisions of the Division of Occupational and Professional Licensing Act and the Chiropractic Physicians Licensing Act

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3 That an Order be issued revoking Respondent's licenses to practice as a Chiropractic Physician and for appropriate sanctions against Respondent's as are just and reasonable

DATED this 7<sup>th</sup> day of February, 2007

MARK L SHURTLEFF  
UTAH ATTORNEY GENERAL



Karl G Perry  
Assistant Attorney General