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BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING

OF THE DEPARTMENT OF COMMERCE

STATE OF UTAH

IN THE MATTER OF THE LICENSES OF **MAX KENT CANNON, M.D.,** TO PRACTICE AS A PHYSICIAN AND SURGEON AND TO ADMINISTER AND PRESCRIBE CONTROLLED SUBSTANCES IN THE STATE OF UTAH	:	**EMERGENCY ORDER**
	:	
	:	Case No. DOPL 2008- 123

The Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah (the "Division") initiated an Emergency Adjudicative Proceeding pursuant to Utah Code Ann. § 63-46b-20, the Utah Administrative Procedures Act; Utah Code Ann. § 58-1-108(2), the Division of Occupational and Professional Licensing Act; and Utah Administrative Code R151-46b-16, the Department of Commerce Administrative Procedures Act Rules. The Division initiated the Emergency Administrative Proceeding upon evidence that the continued practice of Max Kent Cannon ("Dr. Cannon") represented an immediate and significant danger to the public health, safety, and welfare, and that the threat required immediate action by the agency.

Before taking this action, the Chair of the Physicians Licensing Board appointed a

three-member committee to review with the Division the proposed action in this matter, pursuant to Utah Code Ann. § 58-1-108(2).

Pursuant to the Open and Public Meetings Act, Utah Code Ann. § 52-4-1, the Division provided notice of the meeting of the committee for 9:30 a.m. on February 6, 2008, at the Heber M. Wells Building located at 160 East 300 South, Salt Lake City, Utah. Notice of the meeting was provided to the Salt Lake Tribune and Deseret News on February 5, 2008. Notice was also placed in the lobby of the Heber Wells Building. The committee convened at the appointed date and time. The meeting of the committee was closed pursuant to Utah Code Ann. § 52-4-5(1)(a)(i) in order to discuss the professional competence and character of an individual. The presiding committee member affirmed under oath that the meeting was closed for that purpose. The committee reviewed the Division's proposed action and considered information in the form of testimony, exhibits, and reports, as well as the information from the Utah County Attorney Investigator. The Division, having considered the committee's recommendations makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. That prior to January 31, 2008, Dr. Cannon was licensed to practice as a Physician and Surgeon and to administer and prescribe controlled substances in the State of Utah. He had an office in Payson, Utah, where he worked as a general surgeon. Dr. Cannon had privileges in Mountain View Hospital and Utah Valley Medical Center. That on or about February 1, 2008, Dr. Cannon's license to practice medicine and to prescribe controlled substances expired. Subsequent to February 1, 2008 and prior to the February 6, 2008 meeting referred to above, Dr. Cannon submitted an application to renew those licenses.

2. That on or about January 26, 2008, Dr. Cannon was arrested at a Utah County motel (the Hampton Inn) after the Utah County Attorney's Office had investigated a complaint of Dr. Cannon trading sexual favors for prescriptions of controlled substances. An investigative sting was set up in the Utah County motel with a confidential informant, C.H., who had agreed to meet Dr. Cannon in the motel to perform sexual favors for him in exchange for OxyContin prescriptions. The interchange between Dr. Cannon and C.H. was videotaped by the Utah County Attorney's Office investigators, and two blank prescriptions with Dr. Cannon's medical information were recovered by the investigators in the motel room.

3. That on or about January 25, 2008, C.H. had a telephone conversation with Dr. Cannon. C.H. recorded this conversation, and Dr. Cannon admitted to having sex with S, a former patient of Dr. Cannon's, in addition to agreeing to give C.H. a prescription for OxyContin for oral sex or "something like that." Dr. Cannon also told C.H. that if she needed "the premo stuff," he could document that C.H. had an office visit, and that she had "horrible groin pain."

4. That Dr. Cannon had treated C.H. for a hernia surgery in July 2007, and that Dr. Cannon continued to supply C.H. with Percocet even months after her surgery. C.H. believed that Dr. Cannon was trying to get her hooked on drugs/pills because Dr. Cannon was continuing to prescribe pain medication to C.H. when she had no symptoms of pain.

5. That in 2003 Dr. Cannon began seeing M.J., for hernia surgery. In approximately March of 2006, Dr. Cannon told M.J. that she could pay him for an exam with a "blow job" (oral sex). Dr. Cannon began asking M.J. for sexual favors in exchange for prescription drugs, and from March 2006 through December 2007, Dr. Cannon was prescribing, on average, 50 Lortab 7.5 mg tablets to M.J. every two weeks. From December 2007 through January 2008, Dr. Cannon would

prescribe this average dosage of pills for M.J. on a weekly basis. From March 2006 through January 2008, M.J. had sexual contact with Dr. Cannon at least 100 times. The sex acts included oral sex on Dr. Cannon, oral sex by Dr. Cannon on M.J., and the slapping of M.J.'s buttocks. Almost every time M.J. received a prescription from Dr. Cannon, she was required to perform a sex act with Dr. Cannon.

6. That on or about November 18, 1999, Dr. Cannon removed J.L.' s gallbladder. Dr. Cannon subsequently asked J.L. out for a date and seduced her in 2000. Dr. Cannon and J.L. had sex on eight different occasions in 2000. Dr. Cannon informed J.L. during their sexual relationship that he could get her drugs/pain killers if she needed them. Dr. Cannon paid J.L. for the sex acts with money.

7. That Dr. Cannon in the course of his medical practice and in particular with these patients as described above, has prescribed controlled substances without taking into account the drug's potential for abuse, the possibility the drug may lead to dependence, the possibility the patient will obtain the drug for a nontherapeutic use or to distribute to others, and the possibility of an illicit market for the drug.

8. That Dr. Cannon's current behavior and course of practice as described above pose an immediate and significant danger to the public health, safety, and welfare; and require immediate action by the Division. In particular, Dr. Cannon has demonstrated a severe departure from the standard of care, competency, and skill that a Physician and Surgeon is required to maintain by entering into sex for drugs and/or money agreements with patients and ex-patients, and by doing so with extremely dangerous controlled substances. This behavior is unprofessional conduct and constitutes an immediate threat to the public health, safety, and welfare in light of the fact that he

has submitted an application to reinstate his license.

9. The Division finds that, pursuant to Utah Code Ann. § 58-1-301(2)(c), there is a factual basis to conclude that Dr. Cannon, the Applicant, does not meet the qualifications for licensure as a physician and general surgeon, that his renewal application should be denied, and that the Division should take action to seek revocation of any residual rights Dr. Cannon may possess to reinstate his licenses.

CONCLUSIONS OF LAW

1. The Division has jurisdiction and authority to act in this matter and has followed appropriate statutory procedures regarding the initiation of emergency adjudicative actions.

2. Utah Code Ann. § 63-46b-20 provides:

(1) An agency may issue an order on an emergency basis without complying with the requirements of this chapter if:

(a) the facts known by the agency or presented to the agency show that an immediate and significant danger to the public health, safety, or welfare exists; and

(b) the threat requires immediate action by the agency.

(2) In issuing its emergency order, the agency shall:

(a) limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

(b) issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the agency's utilization of emergency adjudicative proceedings; and

(c) give immediate notice to the persons who are required to comply with the order.

(3) If the emergency order issued under this section will result in the

continued infringement or impairment of any legal right or interest of any party, the agency shall commence a formal adjudicative proceeding in accordance with the other provisions of this chapter.

3. The actions of Dr. Cannon constitute an immediate and significant danger to the public health, safety, and welfare; and require immediate action to protect the public health, safety, and welfare.

4. That Dr. Cannon, by entering into and/or attempting to enter into sex for drugs or sex for money agreements with patients and former patients has engaged in unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a), (g), (k), and (m).

5. That Dr. Cannon in the course of his medical practice, has prescribed controlled substances without taking into account the drug's potential for abuse, the possibility the drug may lead to dependence, the possibility the patient will obtain the drug for a nontherapeutic use or to distribute to others, and the possibility of an illicit market for the drug in violation of the Utah Controlled Substances Act Rules, Utah Administrative Code R156-37-603(2).

6. That Dr. Cannon in the course of his practice has engaged in actions and communications which are false, misleading, deceptive, and/or fraudulent including, but not limited to, writing prescriptions for sex acts and/or money. Based upon the foregoing, Dr. Cannon has engaged in unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(h).

7. This Order is necessary to prevent harm to the public pending a formal adjudication of the matters addressed in this proceeding. Immediate action is necessary and this Order is the least restrictive action needed to prevent or avoid the danger to the public health, safety, or welfare.

8. Dr. Cannon may challenge the Order pursuant to Utah Admin, Code R151-

46b-16 as follows:

R151-46b-16. Emergency Adjudicative Proceedings. Unless otherwise provided by statute or rule:

(1) When a division commences an emergency adjudicative proceeding and issues an order in accordance with Section 63-46b-20 which results in a continued impairment of the affected party's rights or legal interests, the division that issued the emergency order shall schedule a hearing upon written request of the affected party to determine whether the emergency order should be affirmed, set aside, or modified based on the standards set forth in Section 63-46b-20. The hearing will be conducted in conformity with Section 63-46b-8.

(2) Upon request for a hearing pursuant to this rule, the Division will conduct a hearing as soon as reasonably practical but not later than 20 days from the receipt of a written request unless the Division and the party requesting the hearing agree to conduct the hearing at a later date. The Division shall have the burden of proof to establish, by a preponderance of the evidence, that the requirements of Section 63-46b-20 have been met.

(3) Except as otherwise provided by statute, the division director or his designee shall select an individual or body of individuals to act as the presiding officer at the hearing. The presiding officer shall not include any individual who directly participated in issuing the emergency order.

(4) Within a reasonable time after the hearing, the presiding officer shall issue an order in accordance with the requirements of Section 63-46b-10. The order of the presiding officer shall be considered final agency action with respect to the emergency adjudicative proceeding and shall be subject to agency review in accordance with Section R151-46b-12.

ORDER

1. The application submitted by Dr. Cannon to reinstate his licenses to practice as a physician and general surgeon and to administer and prescribe controlled substances is hereby denied. The Division will proceed with a formal adjudicative proceeding to deny Dr. Cannon's application and to revoke any residual rights Dr. Cannon may possess to reinstate these licenses

RIGHT TO REVIEW

1. In accordance with Utah Admin. Code R151-46b-16, the Division will schedule a hearing upon receipt of a written request from Dr. Cannon. At the hearing it will be determined whether this Emergency Order should be affirmed, set aside, or modified, based on the standards set forth in Utah Code Ann. § 63-46b-20. The hearing will be conducted in conformity with Utah Code Ann. § 63-46b-8.

2. Upon receipt of a request for hearing pursuant to Utah Admin Code R151-46b-16, the Division will conduct a hearing as soon as reasonably practical, but not later than twenty (20) days from receipt of a written request, unless the Division and the party requesting the hearing agree to conduct the hearing at a later date.

DATED this 6 day of February, 2008.

Clyde Ormond
Presiding Officer
Bureau Manager, Division of Occupational and Professional Licensing.