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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 : **EMERGENCY ORDER**
RICHARD MESSINEO, RPH, TO PRACTICE
AS A PHARMACIST AND TO DISPENSE :
CONTROLLED SUBSTANCES IN THE
STATE OF UTAH : Case No. DOPL 2010-133

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. § 63G-4-502, 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 Richard Messineo (the "Respondent") as a pharmacist 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 Pharmacist 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 7:30 a.m. on April 26, 2010, at the Heber M. Wells Building located at 160 East 300 South, Salt Lake City, Utah. Notice of the Emergency Hearing was placed in the lobby of the Heber Wells Building and on the DOPL/public information website on or about April 22, 2010. The committee convened at the appointed date and time. The meeting of the committee was closed pursuant to Utah Code Ann. § 52-4-205(1) (a) 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 and exhibits. The Division, having considered the committee's recommendations, makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. That since July 28, 1992, the Respondent has been licensed to practice as a pharmacist, license number 153694-1701, and to dispense controlled substances in the State of Utah, license number 1536934-8911. That prior to March 11, 2010, the Respondent had been publicly reprimanded by the Division on January 26, 2010 for not including information about a domestic battery conviction in Florida on a renewal application. The Respondent had also been publicly reprimanded by the Division on January 14, 1999 for procuring drugs with prescriptions that he had forged and for dispensing controlled substances which had not been authorized by a practitioner licensed to prescribe them.

2. That on or about March 11, 2010, Officer M.M. (the "Officer") of the Unified Police Department stopped the Respondent's vehicle, a Hummer with vanity plates that read "EZ MONEY", for speeding and reckless driving on Wasatch Boulevard in Salt Lake City. The Respondent admitted to the Officer that he was speeding, and that he was just getting off work from K-Mart on 4100 South Redwood Road, where he worked as the head pharmacist.

That during the traffic stop, the Officer noticed two unmarked prescription pill bottles that the officer later learned contained 20 10-mg tablets of Lortab and 23 2-mg tablets of Xanax.

That after another police officer and a K9 officer responded to the traffic stop, the police dog indicated that there were illegal drugs in the car.

That the Officer has extensive training in drug interdiction, drug recognition and drug informant handling; and that it has been his experience with drug dealers that they normally possess both large quantities of drugs and loaded guns.

That the Officer searched the center console of the vehicle and found a .380 caliber pistol with five rounds in the magazine. This pistol was on top of a bag of white powder that field tested positive for cocaine. The Respondent was placed into handcuffs and booked on one count of the following offenses: possession of a dangerous weapon, possession of cocaine, possession of a synthetic narcotic, possession of an opiate derivative and reckless driving. The police officers seized the Lortab and Xanax tablets, the cocaine, the five rounds from the gun and the .380 caliber automatic pistol.

That the Officer characterized the Respondent's behavior as reckless and shocking. Further, the Officer noted that the placement of the pistol in the vehicle's console could have led to tragic circumstances in this case because if the Officer had seen the gun when the Respondent

initially reached into the console, the Officer may have shot and killed the Respondent. The Officer characterized the Respondent as a “wolf in sheep’s clothing” and a predator.

That the Respondent is currently on leave from his position at K-Mart.

3. That on or about April 10, 2010, the Respondent was detained at the Salt Lake City Airport after he tested positive in the airport’s peroxide explosive tester (“PET”). The T.S.A., or airport security personnel, called in the Salt Lake City Police Department (“SLC PD”), and the SLC PD called agents from the Federal Drug Enforcement Agency (“DEA”). After detaining the Respondent, the T.S.A. personnel found a red pill box that had individual containers for pills that were to be taken from Sunday through Saturday. Each of the individual pill containers was jammed with approximately 20 pills. Among the pills in this pill box were 9 ecstasy or MDMA pills, a schedule I controlled substance; 13 Ambien, 38 Lorazepam and 88 Prilosec, a multiple-dose vial of Demoral, 17 Endocet, 14 Blue Fiorocet, 1 Diflucan, 1 HCTZ, 19 Valium, 7 other Fiorocet, 2 Promethazine, 2 Imitrix, 21 Tenomin, 4 Phenergren, 31 Singular, 6.5 Lortab, 10 Hydrodiurnil, 8 Keflex, 7 Tadalafil, 119 Atenolol, and 2 syringes. Law enforcement personnel also found that the Respondent was in possession of liquid Demerol. The Respondent did not have a valid prescription for most of the legend drugs or controlled substances.

That after the DEA agents transported the Respondent to a DEA facility and advised him of his Miranda Rights, the Respondent initially denied possessing ecstasy, saying it was herbal Viagra. The Respondent later changed his story, admitting that he was in possession of ecstasy, and that he took the ecstasy pills for his “cluster headaches.”

That D.K., one of the DEA agents who questioned the Respondent on April 10, 2010, noted that veteran drug users and/or sellers often have both ecstasy and Hydrocodone in their

possession because the Hydrocodone counteracts the amphetamine-like effects of the ecstasy.

That DEA agents, after properly executing a valid warrant, also searched the Respondent's home on April 10, 2010. This search uncovered ten weapons in the Respondent's home, including two semi-automatic rifles, one of which had a "Government" stamp on it; and one semi-automatic pistol. Additionally, the DEA agents found two Fentanyl sticks (Actiq) with the weapons, for which the Respondent did not have a valid prescription.

That it has been D.K.'s experience as a DEA agent that drug dealers usually possess large quantities of both drugs and firearms. D.K. characterized the Respondent as "out of control" and "more than knee deep in the drug world."

CONCLUSIONS FROM THE FACTS

1. That the Respondent's unlawful and unprofessional conduct as described above poses an immediate and significant danger to the public health, safety, and welfare; and requires immediate action by the Division. In particular, the Respondent has illegally been in possession of one schedule I controlled substances, ecstasy, and one illicit street drug, cocaine; and the fact that he was arrested twice for similar conduct involving illegal drugs within a one month period of time supports a conclusion that the Respondent did not learn from his earlier mistake in March 2010, and that he may be actively involved with either the consumption of illegal drugs and/or the sale of illegal drugs. The fact that the Respondent was also in possession of a large quantity of firearms also supports a conclusion that he may be actively involved with either consuming or selling illegal drugs.

Further, the fact that the Respondent was in possession of Lortab and Xanax tablets in unmarked prescriptions bottles, of two Fentanyl sticks/suckers, of two needles/syringes and of

injectable Demerol supports a conclusion that the Respondent has engaged in unlawful and unprofessional behavior as a pharmacist.

The fact that the Respondent was in possession of an extremely large number of prescription drugs on April 10, 2010 without proof that he had valid prescriptions for all of these drugs supports a conclusion that the Respondent was engaging in the unprofessional and unlawful dispensing of prescription drugs to individuals who were not authorized to receive these prescription medications.

All of the previously mentioned behavior constitutes an immediate threat to the public health, safety, and welfare since the Respondent clearly appears to have a problem with controlled and/or illegal substances and, as a pharmacist, he has ready access to controlled and/or illegal substances.

2. The Division finds that, pursuant to Utah Code Ann. § 58-1-401(2)(a), there is a factual basis to conclude that the Respondent has engaged in unprofessional and unlawful conduct, that he poses an immediate and significant danger/threat to the public health, safety, and welfare; and that the Division should take immediate action to suspend and/or revoke his professional 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. § 63G-4-502 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 the Respondent 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 the Respondent, by possessing cocaine, unmarked bottles of Lortab and Xanax and a loaded gun in his car on March 11, 2010, has engaged in unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a), (b), and (e).

5. That the Respondent, by possessing ecstasy, a schedule I controlled substance, Fentanyl sticks without a prescription, syringes, liquid Demerol, Ambien pills and a large number of firearms on April 10, 2010, has engaged in unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a), (b), and (e).

6. That the Respondent, by possessing an extremely large number of prescription

drugs on April 10, 2010 without proof that he had valid prescriptions for all of these drugs has engaged in unprofessional conduct as defined in Utah Code Ann. 58-1-501(2)(a), (b), and (e).

7. That 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. The Respondent 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 63G-4-502 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 63G-4-502. The hearing will be conducted in conformity with Section 63G-4-206.

(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 63G-4-502 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 63G-4-502. 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

The licenses of Richard Messineo to practice as a pharmacist, license number 153694-1701, and to dispense controlled substances in the State of Utah, license number 1536934-8911, will be immediately suspended until a hearing can be convened pursuant to Utah Code Ann. § 63G-4-502 and Utah Admin. Code R151-46b-16, and a contravening order is issued. The Division will proceed with a formal adjudicative proceeding to uphold this suspension and/or revoke the Respondent's professional licenses.

The Respondent shall immediately cease and desist from the practice of pharmacy, and from dispensing controlled substances in the State of Utah until a hearing can be convened pursuant to Utah Code Ann. § 63G-4-502 and Utah Admin. Code R151-46b-16, and a contravening order is issued.

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 the Respondent. 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. § 63G-4-502. The hearing will be conducted in conformity with Utah Code Ann. § 63G-4-206.

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 26TH day of April, 2010.

W. Ray Walker

Presiding Officer

Division of Occupational and Professional
Licensing.