

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
Heber M. Wells Building
160 East 300 South
P O Box 146741
Salt Lake City UT 84114-6741
Telephone: (801) 530-6628

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

IN THE MATTER OF THE LICENSES OF :
EXPRESS SCRIPTS PA : **NOTICE OF AGENCY ACTION**
TO OPERATE AS A CLASS D PHARMACY :
AND TO DISPENSE CONTROLLED SUBSTANCES :
IN THE STATE OF UTAH : Case No DOPL-2010-79

THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING TO
Express Scripts PA ("Respondent"), Bensalem
PA 19020:

The Division of Occupational and Professional Licensing ("the Division") hereby files this Notice of Agency Action. Said action is based upon the Verified Petition of Jared Memmott, Investigator, State of Utah, a copy of which is attached hereto and incorporated herein by reference.

The adjudicative proceeding designated herein is to be conducted on a formal basis. **Within thirty (30) days of the mailing date of this Notice, you are required to file a written response with this Division.** The response you file may be helpful in clarifying, refining or narrowing the facts and violations alleged in the Verified Petition. Your written response should be mailed to the following address: Division of Occupational and Professional Licensing, Attn Disciplinary Files, 160 East 300 South, PO Box 146741, Salt Lake City UT 84114-6741

You may represent yourself or be represented by legal counsel, at your own expense, at all times while this action is pending. Your legal counsel shall file with the Division an Entry of Appearance and until that Entry of Appearance is filed, the presiding officer will deal directly with you.

You are entitled by law to an evidentiary hearing to determine whether your licenses to operate as a Class D Pharmacy and to dispense controlled substances in the State of Utah should be subject to a disciplinary action. Unless otherwise specified

by the Director of the Division, the State Board of Pharmacy will serve as fact finder in the evidentiary hearing. You will be 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 G. 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. Also, an administrative fine may be imposed.

Please conduct yourself accordingly.

Dated this 18TH day of March, 2010.

W. Ray Walker
W. Ray Walker
Regulatory & Compliance
Officer

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

IN THE MATTER OF THE LICENSES OF)	
EXPRESS SCRIPTS - PA)	P E T I T I O N
TO OPERATE AS A CLASS D PHARMACY)	
AND TO DISPENSE CONTROLLED)	CASE NO DOPL-2010-79
SUBSTANCES IN THE STATE OF UTAH)	

The Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah ("Division"), by and through its counsel, Karl G Perry, Assistant Attorney General, submits the following petition against Express Scripts - PA, ("Respondent")

PRELIMINARY STATEMENT

These causes of action were investigated by the UTAH DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING upon information that EXPRESS SCRIPTS - PA, a licensee of the Division, has engaged in acts and practices which constitute violations of the Utah Controlled Substance

Act, Utah Code Ann §§ 58-37-1 to 58-37-21 (West 2004) and the Division of Occupational and Professional Licensing Act, Utah Code Ann §§ 58-1-101 to 58-1-504 (West 2004), and the Pharmacy Practice Act, Utah Code Ann §§ 58-17a-101 to 801 (West 204)

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 as established by Utah Code Ann § 13-1-2 (West 2004).

2 At all times material to the allegations contained herein, Respondent was licensed by the Division to practice as a Pharmacist under the Pharmacy Practice Act, Utah Code Ann § 58-17a-101, et seq and to dispense controlled substances under the Controlled Substance Act, Utah Code Ann § 58-37-1, et seq

STATEMENT OF ALLEGATIONS

3 On or about October 13, 2000 Respondent was licensed by the State of Utah, Division of Occupational and Professional Licensing to operate as a Class D pharmacy and to dispense controlled substances

4 Prior to receiving its license with the State of Utah, respondent, by and through its pharmacist-in-charge, completed a "Controlled Substance

Database Questionnaire” as part of its application for licensure. This questionnaire was submitted to the Division Respondent, by completing and submitting the questionnaire, acknowledged that it had read and was aware of Utah Code Ann. § 58-37-7.5, the statute governing pharmacy reporting requirements and the penalties associated with failure to report required information to the Utah Controlled Substance Database (“database”). Respondent specifically acknowledged in its questionnaire and application that it would submit all required data regarding every prescription it dispensed for a controlled substance to Utah residents.

5 In September 2008, a Division investigator learned that Respondent had not submitted the required information regarding Utah patients to the database. After reviewing the information with the database manager, it was determined that Respondent had failed to submit any data to the database since Respondent was first licensed with the State of Utah.

6 On or about September 9, 2008, the division investigator contacted representatives of Respondent to inform them of their failure to report required data to the database. The Division investigator was informed that Respondent would take measures to submit the delinquent information to the database manager as required by statute.

7 On or about October 7, 2008, Respondent submitted delinquent information to the database for controlled substances dispensed to Utah residents by Respondent for the period of September 2, 2008 through September 28, 2008. The database manager reviewed the information submitted by

Respondent and informed Respondent that it still needed to submit required information for prescriptions dispensed prior to September 2, 2008

8 Between January 2, 2004 and September 19, 2008, Respondent failed to timely submit required information for 4,156 controlled substance prescriptions to the Utah Controlled Substance Database Respondent later submitted this delinquent information to the database administrator

9 Respondent did not submit any required information to the controlled substance database for the time period between October 13, 2000 when Respondent was first licensed, through January 2, 2004

APPLICABLE LAW

10 Utah Code Ann § 58-37-7 5 (4) (West 2004) sets out the requirements for pharmacist and pharmacies to report to the Controlled Substance Database as follows

(4) The pharmacist in charge shall, regarding each controlled substance dispensed by a pharmacist under his supervision, other than those dispensed for an inpatient at a health care facility, submit to the manager of the database the following information, by a procedure and in a format established by the division

- (a) name of the prescribing practitioner,
- (b) date of the prescription,
- (c) date the prescription was filled,
- (d) name of the person for whom the prescription was written,
- (e) positive identification of the person receiving the prescription, including the type of identification and any identifying numbers on the identification,
- (f) name of the controlled substance,
- (g) quantity of controlled substance prescribed,
- (h) strength of controlled substance,
- (i) quantity of controlled substance dispensed,
- (j) dosage quantity and frequency as prescribed,

- (k) name of drug outlet dispensing the controlled substance,
- (l) name of pharmacist dispensing the controlled substance, and
- (m) other relevant information as required by division rule

11 Utah Code Ann § 58-37-7 5 (12)(a) (West 2004) details the sanctions to be imposed against pharmacies and pharmacists who fail to report to the controlled substance database as follows

- (a) The failure of a pharmacist in charge to submitting information to the database as required under this section after the division has submitted a specific written request for the information or when the division determines the individual has a demonstrable pattern of failing to submit the information as required is grounds for the division to take the following actions in accordance with Section 58-1-401
 - (i) refuse to issue a license to the individual,
 - (ii) refuse to renew the individual's license,
 - (iii) revoke, suspend, restrict, or place on probation the license,
 - (iv) issue a public or private reprimand to the individual,
 - (v) issue a cease and desist order, and impose a civil penalty of not more than \$1,000 for each dispensed prescription regarding which the required information is not submitted

FIRST CAUSE OF ACTION

FAILURE TO REPORT TO THE CONTROLLED SUBSTANCE DATABASE

12 Respondent failed to report prescriptions filled for controlled substances, or failed to verify that prescriptions filled for controlled substances by Express Scripts - PA, were reported to the Division's Controlled Substance Database as described above. Therefore, Respondent has violated Utah Code Ann § 58-37-7 5-(4) (West 2004), constituting grounds for sanctioning Respondent's license and for imposing a fine under of up to \$1,000 for each

prescription not reported to the CSDB under Utah Code Ann § 58- 37-7 5-(12)(a)
(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 act, Respondent be adjudged and decreed to have violated the heretofore enumerated provisions of the Utah Controlled Substance Act,

3 That an Order be issued imposing appropriate sanctions against the license of Respondent to dispense controlled substances in accordance with the provisions of Utah Code Ann § 58-37-7 5 (12)(a) (West 2004),

4 That an appropriate fine of up to \$1,000 be imposed against Respondent for each dispensed prescription not reported to the Controlled Substance Database as provided under Utah Code Ann § 58-37-7 5 (12)(a) (West 2004) and for such other and further relief as may deem just and reasonable

DATED this 9th day of March, 2010


KARL G PERRY
Assistant Attorney General

STATE OF UTAH)
 ss
COUNTY OF SALT LAKE)

On the 17 day of March, 2010, personally appeared before me Jared Memmott an investigator with the Division of Occupational and Professional Licensing after being duly sworn, deposes and says, that he has read the foregoing Petition and knows the contents thereof, and the same is true to the best of his knowledge except as to matters stated on information and belief, and that as to those matters he believes it to be true



Jared Memmott

SWORN AND SUBSCRIBED to before me this 17 day of March, 2010



NOTARY PUBLIC

My Commission Expires 4/1/2011

