

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 LICENSE OF :
RYAN BERG : **NOTICE OF AGENCY ACTION**
TO PRACTICE AS A :
RESPIRATORY CARE PRACTITIONER :
IN THE STATE OF UTAH : Case No. DOPL-2013-25

THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING TO
Ryan Berg ("Respondent"), 238 South 1700 West, Payson UT 84651:

The Division of Occupational and Professional Licensing
("the Division") hereby files this notice of agency action. Said
action is based on the Division's verified petition, 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. It is maintained under the
jurisdiction and authority of the Division as set forth in §58-1-
401(2). **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 to clarify,
refine or narrow the facts and violations alleged in the verified
petition.

Your written response, and any future pleadings or filings,
which are a part of the official file in this proceeding, should
be mailed or hand delivered to the following:

Signed originals to:
Division of Occupational
and Professional Licensing
Attn: Disciplinary Files
(by mail): PO Box 146741
Salt Lake City UT 84114-6741
(by hand delivery):
160 East 300 South, 4th floor
Salt Lake City, Utah

A copy to:
Laurie Noda
Assistant Attorney General
Heber M. Wells Building
(by mail): PO Box 140872
Salt Lake City UT 84114-0872
(by hand delivery):
160 East 300 South, 5th floor
Salt Lake City, Utah

You may represent yourself or, at your own expense, be represented by legal counsel at all times while this action is pending. **Your legal counsel shall file an entry of appearance with the Division after being retained to represent you in this proceeding.** Until that entry of appearance is filed, the Division, its counsel, and the presiding officer will communicate directly with you.

The presiding officer for the purpose of conducting this proceeding will be Jennie Jonsson, Administrative Law Judge, Department of Commerce, who will preside over any evidentiary issues and matters of law or procedure. If you or your attorney may have questions as to the procedures relative to the case, Judge Jonsson can be contacted in writing at P O Box 146701, Salt Lake City, UT 84114-6701; by telephone at (801) 530-6706; or by electronic mail at jjonsson@utah.gov.

Pursuant to a determination previously made by the Division which generally governs proceedings of this nature, the Division is providing the relevant and nonprivileged contents of its investigative file to you, concurrent with the issuance of this notice.

The Division is also providing its witness and exhibit list to you, concurrent with the issuance of this notice. The witness list identifies each individual the Division expects to present as a witness and includes a brief summary of their testimony at the hearing. The exhibit list identifies each anticipated document which the Division expects to present at the hearing. The Division is also providing a copy of any document to you that has not been otherwise made available to you through the investigative file.

Concurrent with your filing of a written response, you should provide to the Division a copy of any documents you have which relate to this case. Further, you should provide your witness and exhibit list to the Division. The witness list should identify each individual you expect to present as a witness and include a brief summary of their anticipated testimony. The exhibit list should identify each document you expect to present at the hearing.

If you fail to file a response within the 30 days allowed or fail to attend or participate in any scheduled hearing, Judge Jonsson may enter a default against you without any further notice to you.

After the issuance of a default order, Judge Jonsson may cancel any prehearing conference or hearing scheduled in the Division's verified petition, conduct any further proceedings necessary to complete the adjudicative proceeding without your participation and determine all issues in the proceeding.

If you are held in default, the maximum administrative sanction consistent with the verified petition may be imposed against you. That sanction in this case is revocation of license.

Counsel for the Division in this proceeding is Laurie Noda, Assistant Attorney General, State of Utah. Ms. Noda may be contacted in writing at P.O. Box 140872, Salt Lake City, UT 84114-0872 or by telephone at (801) 366-0310. You may, subject to the deadlines established herein, attempt to negotiate a settlement of this proceeding by contacting counsel for the Division.

Any stipulation in lieu of a response should be jointly signed by yourself and the Division and filed within the time that a response would otherwise be due. Alternatively, any stipulation to resolve this case in lieu of the hearing shall be jointly signed by the parties and filed no later than one (1) week prior to the scheduled hearing.

Unless this case is resolved by a stipulation between the parties in lieu of the filing of a response, a prehearing conference will be conducted as follows:

March 7, 2013 at 9:00 am by teleconference

During the conference, Judge Jonsson will address and resolve any further discovery issues. A schedule for the filing of any prehearing motions shall also be established.

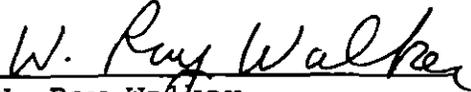
Subject to the Department of Commerce Administrative Procedures Act Rules which govern this proceeding, the evidentiary hearing shall be conducted within 180 calendar days from the date of issuance of the notice of agency action.

You are entitled by law to an evidentiary hearing to determine whether your license to practice as a respiratory care practitioner in the State of Utah should be revoked, suspended or subjected to other disciplinary action. Unless otherwise specified by the Director of the Division, the Respiratory Care Licensing Board will serve as fact finder in the hearing. The hearing will be conducted as follows:

March 19, 2013, at 9:00 am in Conference Room 402
4th floor
160 East 300 South
Salt Lake City, Utah

During the evidentiary hearing, you will have the opportunity to present an opening statement, submit evidence, conduct cross-examination, submit rebuttal evidence and offer a closing statement to the fact finder. After the close of the hearing, the Board will take the matter under advisement and then submit its Findings of Fact, Conclusions of Law and a Recommended Order to the Division for its review and action.

Dated this 31 day of January, 2013.


W. Ray Walker
Regulatory & Compliance
Officer



Laurie L. Noda (USB No. 4723)
Assistant Attorney General
JOHN SWALLOW (USB No. 5802)
Utah Attorney General
Commercial Enforcement Division
160 East 300 South, 5th Floor
Box 140872
Salt Lake City, UT 84114-0872
Telephone: (801) 366-0310

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

IN THE MATTER OF THE LICENSE
OF **RYAN J. MICHAEL BERG**, TO
PRACTICE AS A RESPIRATORY
THERAPIST IN THE STATE OF UTAH

PETITION
CASE NO. 2013-25

The Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah (“the Division”), by and through its counsel, Laurie L. Noda, Assistant Attorney General, submits the following petition against Ryan J. Michael Berg, (“Respondent”).

PRELIMINARY STATEMENT

These causes of action were investigated by the Division of Occupational and Professional Licensing upon information that Respondent has engaged in acts and practices which constitute violations of the Division of Occupational and Professional Licensing Act, Utah Code Ann. §§ 58-1-101 through 58-1-504 and the Respiratory Care Practice Act, Utah Code Ann. §§ 58-57-1 to 58-57-14.

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 by virtue of Utah Code Ann. §13-1-2 (2)(a) and § 58-1-103 (West 2004).

2. Respondent was issued a licence to practice as a respiratory therapist on March 1, 1991.

STATEMENT OF ALLEGATIONS

3. On or about May 14, 2012, Respondent, while working as a respiratory therapist, on the NICU at Utah Valley Regional Medical Center, was witnessed taking two vials of medications from a patient area. Respondent was later observed in the blood gas lab, injecting an unknown substance into his arm Respondent later admitted to his superiors taking medications and injecting them into himself

4. On or about May 19, 2012, Respondent was suspended pending an investigation by Intermountain Health Care (IHC). Respondent was then given a step 2 referral to the IHC Employee Assistant Program.

5 On or about June 18, 2012, Respondent was arrested for Driving Under the Influence and failed a sobriety test performed by the Salem City police. Respondent admitted to the arresting officer that he was on prescription drugs. While conducting a search of Respondent's car, the police found controlled substances, including, several vials of Midazolam, Hydrocodone pills, one Carisoprodol pill, two Oxycodone pills, vials of Morphine sulfate and several vials of Lorazepam, numerous syringes and a pill crusher. Respondent was charged with DUI and one felony count of possession or use of a controlled substance, two misdemeanor counts of possession or use of a controlled substance and one count of use or possession of drug paraphernalia.

6 On July 5, 2012, Respondent was fired from his position with IHC.

7. On August 30, 2012, the Respondent allowed his respiratory therapist license lapse

8. On October 31, 2012, Respondent, in Fourth District Court, case number 121401961, entered a plea in abeyance for possession or use of a controlled substance, a second degree felony, two counts of possession or use of a controlled substance, class A misdemeanors and one count of possession of drug paraphernalia, a class A misdemeanor. The DUI charge was dismissed.

APPLICABLE LAW

10. Utah Code Ann. 58-1-401 provides grounds for the Division to take action on an occupational or professional license:

- (1) The division shall refuse to issue a license to an applicant and shall refuse to renew or shall revoke, suspend, restrict, place on probation, or otherwise act upon the license of a licensee who does not meet the

the qualifications for licensure under this title

- (2) 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 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;
 - (b) the applicant or licensee has engaged in unlawful conduct as defined by statute under this title.

11. Utah Code Ann. 58-1-501(2) defines unprofessional conduct to include.

- (2) "Unprofessional conduct" means conduct, by a licensee or applicant that is defined as unprofessional conduct under this title or under any rule adopted under this title and includes:
 - (b) 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 profession 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;
 - (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 or applicant to safely engage in the occupation or profession, pursuant to Utah Code Ann § 58-1-401

FIRST CAUSE OF ACTION
UNPROFESSIONAL CONDUCT

12. By his conduct involving the alleged use of drugs while working for IHC as well as his conduct that resulted in a plea in abeyance being entered against him for possession of a

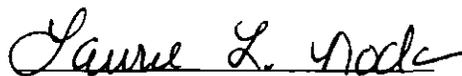
controlled substance and drug paraphernalia in Fourth District Court on October 31, 2012, Respondent has engaged in unprofessional under Utah Code Annotated § 58-1-501(2)(b) and (e) constituting grounds for sanctions to be taken against Respondent's license pursuant to Utah Code Ann. § 58-1-401(1)

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-enumerated provisions of the Division of Occupational and Professional Licensing Act, and the Respiratory Care Practices Act,
3. That Respondent's Utah license to practice as a respiratory therapist expired on August 30, 2012 and that the residual rights of his license should be revoked and for such other appropriate sanctions be taken against Respondent as is just and equitable

DATED this 15th day of January 2013

MARK L. SHURTLEFF
UTAH ATTORNEY GENERAL


Laurie L. Noda
Assistant Attorney General

STATE OF UTAH)

ss

COUNTY OF SALT LAKE)

Daniel Briggs, being first duly sworn, states as follows:

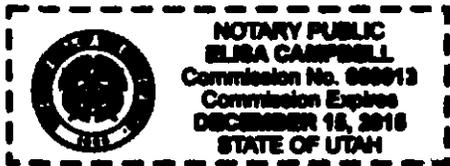
1. I am an Investigator for the Utah Division of Occupational and Professional Licensing and have been assigned to work on this case

2. I have read the foregoing motion, including the section entitled "Statement of Allegations." All of the factual allegations contained in that "Statement of Allegations" section are true to the best of my knowledge, information and belief

DATED this 10th day of January, 2013

Daniel Briggs
Daniel Briggs

Subscribed and sworn to before me this 10 day of January, 2013



Elisa Campbell