

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	:	
BENJAMIN LEE GILSTRAP	:	NOTICE OF AGENCY ACTION
TO PRACTICE AS A DENTIST AND TO	:	
ADMINISTER AND PRESCRIBE	:	
CONTROLLED SUBSTANCES	:	
IN THE STATE OF UTAH	:	Case No. DOPL-2013-95

THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING TO
Benjamin Lee Gilstrap ("Respondent"),

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:
Mitchell Jones
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 and an administrative fine.

Counsel for the Division in this proceeding is L. Mitchell Jones, Assistant Attorney General, State of Utah. Mr. Jones 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:

April 25, 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 licenses to practice as a dentist and to administer and prescribe controlled substances 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 Dentist and Dental Hygienist Licensing Board will serve as fact finder in the hearing. The hearing will be conducted as follows:

Friday, June 7, 2013, at 9:00 am Conference Room 210
2nd 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 11 day of March, 2013.

W. Ray Walker

W. Ray Walker
Regulatory & Compliance
Officer



L. MITCHELL JONES (USB 5979)
Assistant Attorney General
JOHN E SWALLOW (USB 5802)
Utah Attorney General
Commercial Enforcement Division
Heber M. Wells Building
160 East 300 South – P O. Box 146741
Salt Lake City, Utah 84114-6741
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BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
STATE OF UTAH

IN THE MATTER OF THE LICENSES
OF **BENJAMIN LEE GILSTRAP**
TO PRACTICE AS A DENTIST AND
TO ADMINISTER AND PRESCRIBE
CONTROLLED SUBSTANCES
IN THE STATE OF UTAH

VERIFIED PETITION

Case No DOPL- 2013 -95

PRELIMINARY STATEMENT

These allegations were investigated by the Utah Division of Occupational and Professional Licensing (“Division”) upon complaints that **BENJAMIN LEE GILSTRAP** (“Respondent”), a licensee of the Division, has engaged in acts and practices that constitute violations of the Division of Occupational and Professional Licensing Act, Utah Code Ann §§ 58-1-101 through 58-1-504, the Dentist and Dental Hygienist Practice

Act, Utah Code Ann §§ 58-69-101 through 58-31b-805, and the Utah Controlled Substance Act, Utah Code Ann §§ 58-37-1 through 58-37-21 These allegations are based upon information provided by witnesses and by a Division investigator and are based upon information and belief the investigator obtained during her investigation. Each paragraph in this Verified Petition incorporates every other paragraph contained herein

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.
2. Respondent was first licensed to practice as a dentist and to administer and prescribe controlled substances in the State of Utah on or about December 5, 1990

STATEMENT OF ALLEGATIONS

CRIMINAL CONVICTIONS

- 3 Respondent failed to file a Utah tax return in 2003, 2004, 2005, 2006, 2007, and 2008 with intent to evade a lawful requirement of the Utah Tax Commission. Respondent undertook specific acts to evade his income tax obligations by co-mingling funds and/or creating false documentation, as well as other steps to evade payment of his income tax obligations Respondent obtained funds from his dental practice which Respondent used to generate income upon which Respondent did not pay Utah taxes
- 3 On or about May 26, 2011 Respondent pleaded guilty to one count of tax

evasion, a 3rd degree felony, one count of attempted tax evasion, a 3rd degree felony, and one count of use of proceeds from an unlawful activity, a 2nd degree felony, in Third District Court, Salt Lake County, Utah. The guilty plea on the one count of use of proceeds from an unlawful activity was held in abeyance. Respondent was sentenced, among other sanctions, to two terms in prison of zero to five years, probation for 72 months, and Respondent was ordered to pay \$165,300 11 in restitution to the State of Utah for unpaid taxes. The two prison terms were suspended.

4. On or about February 28, 2012 an Order to Show Cause was filed against Respondent in Third District Court alleging that Respondent violated his criminal probation by failing to make required restitution payments. On or about July 13, 2012 Respondent admitted to Allegations B and C in the Affidavit. On September 17, 2012 Respondent's probation was revoked, and the suspended prison sentence was imposed. Respondent began serving two prison terms of zero to five years in the Utah State Prison.

5. On or about August 26, 2011 a trailer was stolen from a construction company work site in Salt Lake County. The trailer contained a number of aluminum cement forms valued at approximately \$5,000. Respondent admitted to West Jordan Police that Respondent stole the aluminum cement forms from the trailer when the trailer was parked on the side of a road in West Jordan City and sold them for scrap, receiving approximately \$220 in exchange for 960 pounds of aluminum.

6. On or about August 9, 2012 Respondent pleaded guilty to one count of theft by receiving property, a Class A misdemeanor, in Third District Court. On November 1,

2012 Respondent was sentenced to serve zero to 365 days in jail or the Utah State Prison
Respondent was fined \$2,500, with the fine suspended

7 Both of Respondent's criminal convictions involved moral turpitude

FAILURE TO MAINTAIN PATIENT RECORDS

8. On or about October 13, 2011 Respondent was served a subpoena by a
Division investigator requiring that Respondent provide the Division with the dental
records of 11 of Respondent's patients Respondent later told the Division investigator
that he lost the subpoena

9 On or about November 22, 2011 Respondent was served with a duplicate
subpoena by a Division investigator requiring that Respondent provide the Division with
the dental records of 11 of Respondent's patients On or about December 27, 2011,
Respondent provided the records of seven of those 11 patients Respondent told the
Division investigator that these were all the records he possessed regarding the seven
patients Respondent did not provide the records of four of the patients listed in the
subpoena— hereinafter referred to as S G , P G , J C , and L C Respondent told the
Division investigator that he did not have any patient dental records for those four
patients

10 Respondent prescribed numerous controlled substance prescriptions to patient
S G between on or about March 27, 2010 and on or about May 3, 2012, including
oxycodone, hydrocodone, Xanax, and acetaminophen with codeine, yet Respondent could
not provide any patient dental records for patient S G to the Division

11 Respondent prescribed several controlled substance prescriptions for patient P.G. between on or about February 11, 2010 and on or about September 1, 2011, including Demerol, oxycodone, and acetaminophen with codeine, yet Respondent could not provide any patient dental records for patient P.G. to the Division.

12 Respondent prescribed numerous controlled substance prescriptions for patient J.C. between on or about April 27, 2010 and July 7, 2011, including oxycodone, hydrocodone, and Xanax, yet Respondent could not provide any patient dental records for patient J.C. to the Division. Petitioner provided the Division with pictures taken of screen shots from his cell phone purportedly showing dental records of J.C., but these records covered treatments in 2005 and 2006.

13 Respondent prescribed Xanax and Endocet to patient L.C. between on or about April 19, 2010 and on or about June 23, 2010, yet Respondent could not provide any patient dental records for patient L.C. to the Division. Petitioner provided the Division with pictures taken of screen shots from his cell phone purportedly showing dental records of P.C., but these records covered treatments in 2005 and 2006.

SUBMITTING FALSE INFORMATION TO THE DIVISION

14 On or about October 17, 2011 criminal charges were filed against Respondent in Third District Court, West Jordan Division. Respondent was charged with one count of theft by receiving stolen property, a Class A misdemeanor, and one count of theft by deception, a Class B misdemeanor. Respondent stole aluminum concrete forms from a trailer. Respondent made appearances at Third District Court regarding these charges on

December 13, 2011, January 11, 2012, January 26, 2012; February 9, 2012, March 8, 2012; March 22, 2012; April 5, 2012, April 19, 2012, and May 3, 2012

15 On or about May 22, 2012 Respondent submitted an application to the Division to renew his licenses to practice as dentist and to administer and prescribe controlled substances in the State of Utah

16 On the May 22nd application, Respondent answered “NO” to the following questions

“Since the last renewal or issuance of this license have you pled guilty to, pled no contest to, been convicted of, made a plea in abeyance to, or entered into a deferred sentence with respect to any felony or misdemeanor in any jurisdiction?”

and

“Since the last renewal or issuance of this license have you been charged with or arrested for any felony or misdemeanor in any jurisdiction?”

17 Respondent wrote the words “SOS, see previous explanations – nothing new” on the May 22, 2012 application. On or about April 28, 2010 Respondent submitted an application for renewal of licensure to the Division. Respondent submitted a statement with the application describing criminal charges that had been filed against him since his last renewal of licensure. In the statement Respondent stated that he was currently facing “tax charges ”

18 Respondent submitted false information to the Division by answering “NO” to the questions described in paragraph 16 above when Respondent had been convicted of tax evasion on May 26, 2011 and was charged with receiving stolen property on October

17, 2011. The tax evasion conviction and the filing of receiving stolen property charges occurred after Respondent last renewed his license in April 2010 and before he submitted his application for renewal of licensure on or about May 22, 2012.

**FAILURE TO FOLLOW THE MODEL POLICY FOR USE OF CONTROLLED
SUBSTANCE FOR TREATMENT OF PAIN, AND FAILURE TO MAINTAIN
PATIENT RECORDS**

19 Between April 2009 and July 2011 Respondent treated a female patient, hereinafter referred to as Jane Doe. On October 29, 2012 Respondent told a Division investigator that he performed two root canals, extractions, a crown, and a bridge for Jane Doe. Petitioner stated that Jane Doe was a borderline substance abuser to whom he had prescribed Lortab, Percocet, and Demerol. Petitioner stated that Jane Doe had chronic pain issues that were not all dental related.

20 Between November 2010 and June 2011 Respondent issued fifteen prescriptions to Jane Doe for hydrocodone 7.5 mg (Lortab), a Schedule III controlled substance.

21 Respondent prescribed 750 units of hydrocodone 7.5 mg (Lortab) to Jane Doe between November 9, 2011 and June 30, 2011.

22. On October 29, 2012 Respondent told a Division investigator that he had never heard of the Federation of State Medical Board's Model Policy for the Use of Controlled Substance for the Treatment of Pain. Respondent stated that he followed the "California Bill of Rights" instead. When asked what training he had beyond his dental school training, Respondent stated that he had oral surgery training. Respondent did not

say he had any training regarding the treatment of chronic pain.

23 After Respondent was issued a subpoena for the patient records of Jane Doe on October 13, 2011 and November 22, 2011, Respondent provided only minimal records regarding his treatment of Jane Doe, including only some insurance documents, six prescription records, and an intake medical history document. Respondent provided no records showing what treatment was provided to Jane Doe Respondent possessed no patient charts regarding Jane Doe. On October 29, 2012, when asked if he had any patient records for Jane Doe, Respondent told a Division investigator that he did not Respondent stated that he used to have a hard copy chart and computerized records, but he lost the computer and the chart disappeared Respondent failed to keep accurate and complete dental records for a patient he was treating for chronic pain.

APPLICABLE LAW

24. Pursuant to Utah Code Ann § 58-1-401(1), the Division is authorized to ". . . revoke, suspend, restrict, place on probation, or otherwise act upon the license of a licensee who does not meet the qualifications for licensure under this title "

25. Pursuant to Utah Code Ann § 58-1-401(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 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

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

26. Utah Code Ann § 58-1-501(2)(a), (c), (g), (h), (i), and (j) define

“unprofessional conduct” to include

- (a) violating, or aiding or abetting any other person to violate, any statute, rule, order regulating an occupation or profession under this title;

* * *

- (c) engaging in conduct that results in conviction 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,

* * *

- (h) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent,

27. Utah Administrative Code R156-69-502(10) and (11) states:

“Unprofessional conduct” includes the following

- (10) failing to establish and maintain appropriate dental records,
- (11) failing to maintain patient records for a period of seven years,

28 Utah Administrative Code R156-37-602(1) states:

- (1) Records of purchase, distribution, dispensing, prescribing, and Administration of controlled substances shall be kept according to state and federal law. Prescribing practitioners shall keep accurate records reflecting the examination, evaluation, and treatment of all patients. Patient medical records shall accurately reflect the prescription and administration of controlled substances in the treatment of the patient, the purpose for which the controlled substance is utilized and information upon which the diagnosis is based. Practitioners shall keep records apart from patient records of each controlled substance purchased, and with respect to each controlled substance, its disposition, whether by administration or any other means, date of disposition, to whom given and the quantity given.

29. Utah Administrative Code R156-1-501 states:

“Unprofessional conduct” includes

- (6) failing as a prescribing practitioner, to follow the “Model Policy for Use of Controlled Substances for the Treatment of Pain”, 2004, established by the Federation of State Medical Boards, which is hereby adopted and incorporated by reference

COUNT I

CRIMINAL CONVICTION INVOLVING MORAL TURPITUDE AND/OR RELATED TO ABILITY TO SAFELY OR COMPETENTLY PRACTICE

DENTISTRY

30 Paragraphs 1 through 29 are incorporated by reference as though fully stated herein

31 Respondent engaged in criminal conduct involving moral turpitude and/or criminal conduct reasonably related to Respondent’s ability to safely and/or competently practice as a dentist and/or administer or prescribe controlled substances, as described in

paragraphs 3 through 23 above

32. Respondent has therefore engaged in unprofessional conduct as defined in Utah Code Ann § 58-1-501(2)(a) and (c), thus establishing grounds for sanctioning Respondent's license pursuant to Utah Code Ann. § 58-1-401(1) and (2).

COUNT II

FAILURE TO ESTABLISH AND/OR MAINTAIN PATIENT RECORDS

33. Paragraphs 1 through 33 are incorporated by reference as though fully stated herein

34. Respondent failed to establish and/or maintain patient records as required by Utah law, as described in paragraphs 3 through 29 above

35. Respondent has therefore engaged in unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a) and Utah Administrative Code R156-37-602(1) and Utah Administrative Code R156-69-502(10) and (11), thus establishing grounds for sanctioning Respondent's license pursuant to Utah Code Ann § 58-1-401(1) and (2)

COUNT III

OBTAINING LICENSURE OR DEALING WITH THE DIVISION THROUGH

FRAUD, INTENTIONAL DECEPTION, MISREPRESENTATION,

MISSTATEMENT OR OMISSION

36 Paragraphs 1 through 35 are incorporated by reference as though fully stated herein.

37 Respondent knowingly obtained licensure and otherwise dealt with the

Division through fraud, intentional deception, misrepresentation, misstatement, or omission, as described in paragraphs 3 through 23 above

38 Respondent has therefore engaged in unprofessional conduct as defined in Utah Code Ann § 58-1-501(2)(a) and unlawful conduct as defined in Utah Code Ann. § 58-1-501(1)(e), thus establishing grounds for sanctioning Respondent's license pursuant to Utah Code Ann § 58-1-401(1) and (2)

COUNT IV

**PRACTICING OR ATTEMPTING TO PRACTICE DENTISTRY BY ACTION
OR COMMUNICATION WHICH IS FALSE, MISLEADING, DECEPTIVE OR
FRAUDULENT**

39 Paragraphs 1 through 38 are incorporated by reference as though fully stated herein

40. Respondent practiced or attempted to practice dentistry by action or communication that was false, misleading, deceptive, and/or fraudulent, as described in paragraphs 3 through 23 above

41 Respondent has therefore engaged in unprofessional conduct as defined in Utah Code Ann § 58-1-501(2)(a) and § 58-1-501(2)(h), thus establishing grounds for sanctioning Respondent's license pursuant to Utah Code Ann § 58-1-401(1) and (2)

COUNT V

**FAILURE AS A PRESCRIBING PRACTITIONER TO FOLLOW THE
FEDERATION OF STATE MEDICAL BOARDS' MODEL POLICY ON USE OF**

CONTROLLED SUBSTANCES FOR THE TREATMENT OF PAIN

42 Paragraphs 1 through 41 are incorporated by reference as though fully stated herein

43 Respondent failed as a prescribing practitioner to follow the Federal of State Medical Boards' Model Policy on Use of Controlled Substances for the Treatment of Pain, as described in paragraphs 3 through 23 above.

44. Respondent has therefore engaged in unprofessional conduct as defined in Utah Code Ann § 58-1-501(2)(a) and Utah Administrative Code R156-1-501(6), thus establishing grounds for sanctioning Respondent's license pursuant to Utah Code Ann § 58-1-401(1) and (2).

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 provisions of the Division of Occupational and Professional Licensing Act, the Dentist and Dental Hygienist Practice Act, and the Utah Controlled Substance Act; and

3 That Respondent's licenses to practice as a dentist and to administer and prescribe controlled substances in the State of Utah be immediately revoked, along

with all residual rights pertaining to said licenses, that Respondent not be permitted to apply for licensure as a dentist or to administer and prescribe controlled substances in the State of Utah for a period of five years from the date of the Order revoking his Utah licenses, and that any other lawful sanction that the Board may recommend, including a fine, be imposed against Respondent's licenses

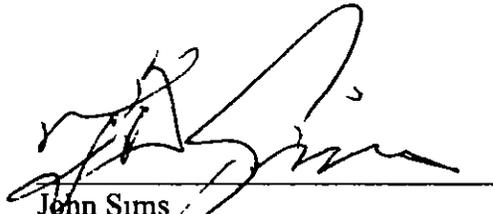
DATED this 4th day of March, 2013



L. MITCHELL JONES
Assistant Attorney General

STATE OF UTAH)
)
) SS
COUNTY OF SALT LAKE)

I, JOHN SIMS, after being duly sworn, depose and state that I have read the foregoing
Petition and know the contents thereof, that the same is true to the best of my knowledge
except as to matters stated on information and belief and that, as to those matters, I
believe them to be true


John Sims
Investigator
Division of Occupational &
Professional Licensing

SWORN AND SUBSCRIBED to before me this 4 day of March, 2013.


NOTARY PUBLIC

My Commission Expires:
December 15, 2015

