
BEFORE THE
DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE REQUEST
FOR AGENCY REVIEW OF

ROBERT ALLAN WEITZEL
PETITIONER

: **FINDINGS OF FACT,**
: **CONCLUSIONS OF LAW and**
: **RECOMMENDED ORDER**

:

: Case No. DOPL Misc.

INTRODUCTION

This matter came on for hearing upon a request for agency review filed by or on behalf of Robert Allan Weitzel (hereafter "Petitioner") seeking to appeal an adverse action taken by the Division of Occupational and Professional Licensing (hereafter "Division") with which Petitioner is aggrieved.

STATUTES OR RULES PERMITTING OR REQUIRING REVIEW

Agency review of the Division's decision is conducted pursuant to Section 63-46b-12, Utah Code Annotated, and Rule R151-46b-12 of the Utah Administrative Code.

ISSUES REVIEWED

1. Whether the Division committed error addressable by this tribunal in ordering Petitioner to submit to an evaluation and suspending his license for failure to do so.

FINDINGS OF FACT

1. On August 13, 1999 the Division, through its director, issued to Petitioner an order to schedule an appointment within one week for examination at the Menninger Clinic to be conducted no later than 60 days from receipt of the director's letter. The letter states that the evaluation is being ordered by the director upon the recommendation of the Physician Licensing Board ("Board") which found that there was reasonable cause to believe that Petitioner was "unable to practice as a psychiatrist with reasonable skill and safety and that immediate action is necessary to prevent harm to (Petitioner's) patients or to the general public." The letter did not state what facts were considered in determining "reasonable cause".

2. On August 19, 1999 the Petitioner, through counsel, responded to the Division's action in which he argued that the evaluation order issued by the Division was invalid and not in compliance with the applicable laws governing emergency adjudicative proceedings against a licensee.

3. The Division, through counsel, replied to Petitioner's response by letter dated August 23, 1999 in which it argued that the evaluation order was not an adjudication of any legal rights, duties or interests vested in Petitioner and further argued the inapplicability of the emergency order procedures dictated by the Utah Administrative Procedures Act.

4. On August 24, 1999 the Petitioner requested agency review under the Utah Administrative Procedures Act ("UAPA") and the Department of Commerce Administrative Procedure Act Rules. Petitioner argued that the Division erred on the law and that it was the findings of the Board that triggered the evaluation order and a resulting legal duty to afford Petitioner a right to be heard, and that absent a properly issued evaluation order under the protection of the UAPA procedures Petitioner was under no duty of compliance with the suspect order.

CONCLUSIONS OF LAW

1. On first blush the issue presented on appeal and the procedures followed to bring it before this tribunal appear to be inherently repugnant to the very concept of due process.

However, as is often the case, things are often more complex and three dimensional than they might appear on first impression.

2. The *Department of Commerce Administrative Procedures Act Rules* provide in UTAH ADMIN. R151-46b-12 provides, *inter alia*:

(7) Standard of Review.

The standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings, as set forth in Subsection 63-46b-16(4).

(8) Type of Relief.

The type of relief available on agency review shall be the same as the type of relief available on judicial review, as set forth in Subsection 63-46b-17(1)(b).

3. UTAH CODE ANN. §63-46b-16(4) states, in part:

The appellate court shall grant relief only if, on the basis of the agency's record, it determines that a person seeking judicial review has been substantially prejudiced by any of the following:

(a) the agency action, or the statute or rule on which the agency action is based, is unconstitutional on its face or as applied;

4. UTAH CODE ANN. §63-46b-17(1)(b) states that:

In granting relief, the court may:

- (i) order agency action required by law;
- (ii) order the agency to exercise its discretion as required by law;
- (iii) set aside or modify agency action;
- (iv) enjoin or stay the effective date of agency action; or
- (v) remand the matter to the agency for further proceedings.

5. The department's administrative procedure rules state that appeals to the Executive Director correspond to appeals to the Court of Appeals, which include the power to grant relief if the person seeking review has been substantially prejudiced by an agency action founded upon an unconstitutional statute. Although it would appear that the department has attempted to grant itself the power to determine constitutionality of the laws under its administrative purview, this is obviously not a power delegated to it by the legislature.

6. In undertaking consideration of this appeal, the Executive Director is required to accept as unassailable the validity of the statute in question in all of its aspects. The Department

of Commerce is a creature of the legislature, empowered and authorized solely by statutes enacted by the legislature and possessing only such power and authority as is designated to it by the legislature. Administrative agencies such as the Department of Commerce and its subsidiary divisions may only enforce, interpret and clarify legislative enactments if so authorized by their creator. "[T]he defendant Department of Business Regulation (now Commerce), as an administrative agency, does not determine the constitutionality of statutes." *Clayton v. Bennett*, 298 P.2d 531 (Utah 1956). The constitutionality of a statute must be determined in a court of law and cannot be addressed by the Executive Director.

7. The Executive Director, in considering this appeal, is only able to look at whether the Division strictly complied with and followed the procedures established by the legislature and cannot question whether in following such procedures the Division may have deprived Petitioner of any constitutionally protected right.

8. The statute under which the Division's questioned action was taken, UTAH CODE ANN. §58-67-601, provides:

(1) As used in this section:

(a) "Incapacitated person" has the same definition as in Section 75-5-303

(b) "Mentally ill" has the same definition as in Section 62A-12-202

(2) If a court of competent jurisdiction determines a physician is an incapacitated person or that he is mentally ill and unable to safely engage in the practice of medicine, the director shall immediately suspend the license of the physician upon the entry of the judgment of the court, without further proceedings under Title 63, Chapter 46b, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the physician, in writing, of the suspension.

(3) (a) If the division and a majority of the board find reasonable cause to believe a physician, who is not determined judicially to be an incapacitated person or to be mentally ill, is incapable of practicing medicine with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the physician

with a notice of hearing on the sole issue of the capacity of the physician to competently and safely engage in the practice of medicine.

(b) The hearing shall be conducted under Section 58-1-109, and Title 63, Chapter 46b, Administrative Procedures Act, except as provided in Subsection (4).

(4) (a) Every physician who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting at his own expense to an immediate mental or physical examination when directed in writing by the division and a majority of the board to do so; and

(ii) the admissibility of the reports of the examining physician's testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.

(b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:

(i) the physician is mentally ill or incapacitated or otherwise unable to practice medicine with reasonable skill and safety; and

(ii) immediate action by the division and the board is necessary to prevent harm to the physician's patients or the general public.

(c) (i) Failure of a physician to submit to the examination ordered under this section is a ground for the division's immediate suspension of the physician's license by written order of the director.

(ii) The division may enter the order of suspension without further compliance with Title 63, Chapter 46b, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the physician and was not related directly to the illness or incapacity of the physician.

(5) (a) A physician whose license is suspended under Subsection (2) or (3) has the right to a hearing to appeal the suspension within ten days after the license is suspended.

(b) The hearing held under this subsection shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the physician's patients or the general public.

(6) A physician whose license is revoked, suspended, or in

any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the physician, under procedures established by division rule, regarding any change in the physician's condition, to determine whether:

(a) he is or is not able to safely and competently engage in the practice of medicine; and

(b) he is qualified to have his license to practice under this chapter restored completely or in part. (Emphasis added).

9. In the case at bar Petitioner was directed by the Board in writing to schedule and submit to a mental examination to determine his capability to safely practice his profession pursuant to §58-67-601(4)(a) and upon his failure to schedule the ordered examination his license was summarily suspended as provided for in §58-67-601(4)(c). Petitioner was given no opportunity for a hearing either before the entry of the evaluation order or subsequent thereto.

10. In between the subsections authorizing entry of an evaluation order and allowing suspension for noncompliance is found §58-67-601(4)(b) which stipulates that the suspension of a license can be entered "only upon a finding of reasonable cause" to believe that immediate action is required to protect both patients of the allegedly impaired individual and the general public.

11. A review of the Division's August 13, 1999 letter ordering Petitioner to schedule and submit to an evaluation by Menninger Clinic states as the Division's finding of facts that:

The Board found that there is reasonable cause to believe that you may be unable to practice as a psychiatrist with reasonable skill and safety and that immediate action is necessary to prevent harm to your patients or to the general public. Therefore, the Board recommended to the Division that you undergo an immediate examination. I concur in that recommendation and therefore order you to undergo an examination, at your own expense under the following terms and conditions:

12. Assuming, *arguendo*, that the Petitioner is correct in arguing that the proceeding below was governed by UAPA [UTAH CODE ANN. §63-46b-5(i) and (j)] and the Department of Commerce *Administrative Procedures Act Rules* [UTAH ADMIN R151-46b-11(1)] the August 13,

1999, this tribunal would have to reach the conclusion that the Division's letter was entirely insufficient to serve as a valid order.

13. The minutes of the Board's hearing were not presented or made available by either party on appeal in order to allow a review and ascertainment as to whether there in fact exists a record of the "reasonable cause" found by the Board to have been compelling enough to require entry of the order of a mental evaluation of Petitioner. However such a record, if existent, would not be determinative in this appeal and obtaining the same would only delay a decision in this matter for a longer period of time.

14. It is upon the very issue of the applicability of UAPA to this procedure that this case must turn. If the proceedings undertaken by the Division were in fact governed by UAPA as championed by Petitioner, then two considerations arise: Was Petitioner entitled to a hearing and, even if not, was the evaluation order entered by the Division upon the recommendation of the Board valid and legally sufficient to comply with UAPA?

15. The Division argues that Petitioner accepted the requirement that he would undergo a mental evaluation upon determination that "reasonable cause" existed to put his ability to practice safely in question as a condition upon which his license was issued. When Petitioner refused to undergo the evaluation his license was suspended as provided under the statute the Division argues he was not authorized any hearing or other UAPA remedies following such suspension.

16. The statute under which Petitioner's license ultimately became suspended is in fact, if not in name, in the nature and effect of an implied consent law. The Utah Code contains identical statutes dealing with dentists and dental hygienists [§58-69-601], naturopathic physicians [§58-71-601], and osteopathic physicians [§58-68-601]. Similar laws exist for drug and alcohol testing of persons suspected of flying under the influence [§72-10-502] and for driving under the influence [§41-6-44.10].

17. The basic precepts and procedure for an evaluation order, with one exception, is no different in effect than the implied consent law requiring that one obtaining a driver's license consents to be tested for impairment. If one refuses to "blow up the balloon" when requested the effect is that one's license to operate a motor vehicle is confiscated pending revocation.

18. The difference between implied consent laws for allegedly impaired motor vehicle operators and allegedly impaired physicians is a major one. Under the impaired operator implied consent law the party refusing to be evaluated is entitled to a temporary license for a period sufficient for the accused to request a hearing on the intent to revoke his license. Under the impaired physician statute, as represented by the Division, the allegedly impaired physician has no rights or recourse other than to lose his license or submit to an evaluation order without any right to rebut the allegations made against him tending to support the issuance of the order. And, judging from the order in the case at bar, apparently even without any right to be notified of what the allegations were that led to the entry of the order.

19. In considering this appeal it was unnecessary to research in depth the statutes and case law from sister states put forward by the Division as persuasive authority for the validity of the procedures under the Utah impaired physician statute. However, it is noted that most if not all of the similar statutes from other jurisdictions appear to provide for a hearing at some point in the proceeding.

20. If the evaluation order was required to be issued under the auspices of UAPA and was invalid either on its face or due to the procedures followed to produce it, Petitioner would be under no obligation of compliance and a deficient order would be unable to sustain the subsequent suspension arising as a direct result of Petitioner's failure to follow the requirements of the evaluation order.

21. Although an initial impression of the Board's star-chamber proceedings in this matter would appear contrary to the very soul of due process and a callous attempt to avoid providing a hearing as would be required for suspension of Petitioner's license under an emergency order proceeding, a closer review dispels this reaction.

22. The Division argues that the procedure set out under §58-67-601(4) is investigatory only and does not give rise to UAPA protections or the right to a hearing. In the present case the Board allegedly had "reasonable cause" to believe that Petitioner was impaired and to demand his cooperation with an investigation of his alleged impairment under the applicable statute governing potentially impaired physicians. When Petitioner refused to "blow up the balloon" his license was suspended, without a hearing and without any provision for a

hearing.

23. Petitioner did not lose the use of his license due to the Division, but rather by operation of law as a result of his own actions. Petitioner chose to deprive himself of his license through his failure to obtain an appointment for a mental examination as he had agreed to do as a condition precedent to obtaining his license to act as a physician in the State of Utah. At all times the proverbial key to the jail has been and is in the hands of Petitioner. All he needs to do to regain the use of his license is submit to the evaluation.

24. The Department of Commerce enabling act states in UTAH CODE ANN. §13-1-1 that:

The Legislature finds that many businesses and occupations in the state have a pronounced physical and economic impact on the health, safety, and welfare of the citizens of the state. The Legislature further finds that while the overall impact is generally beneficial to the public, the potential for harm and injury frequently warrants intervention by state government.

The Legislature declares that it is appropriate and necessary for state government to protect its citizens from harmful and injurious acts by persons offering or providing essential or necessary goods and services to the general public. The Legislature further declares that business regulation should not be unfairly discriminatory. However, the general public interest must be recognized and regarded as the primary purpose of all regulation by state government.

25. The purpose of licensure is to attempt to protect the health, safety and welfare of the public and assure the public that practitioners possess the ability to practice the profession safely. The Division determined in this case that Petitioner, if impaired, constituted an unacceptable risk to the safety of the public. To allow Petitioner to continue to practice would have been a dereliction of the duty placed upon the Board and Division by the legislature. The Board would further have been remiss upon its finding reasonable cause to suspect Petitioner's ability had it not required that Petitioner meet the condition which he freely agreed to upon obtaining licensure in order to dispel the doubts of the Board and satisfy his peers of his ability to safely practice the profession.

26. Assuming, again *arguendo*, that UAPA was applicable to the proceeding below, Petitioner's reliance upon the general provisions of UAPA pertaining to emergency adjudicative proceedings [§63-46b-20] is entirely unfounded if the specific and controlling statutory provisions of §58-67-601 are at variance with the provisions of UAPA.

27. The impaired physicians statute, §58-67-601, sets out three bases for suspension:

a. Immediate suspension without any hearing upon order of a court of competent jurisdiction determining a physician's impairment [§58-67-601(2)];

b. Upon a show cause hearing on the capacity of the physician to competently and safely practice to be conducted under the provisions of UAPA [§58-67-601(3); and

c. Upon failure of a physician to undergo an evaluation ordered by the Division upon recommendation of the Board [§58-67-601(4)].

28. The statute is clear and unambiguous in stating that there is no administrative relief available in the case of a determination of incompetency made by a court of law. It is likewise clear and unambiguous that a physician is entitled to a hearing upon his competency under the provisions of UAPA when a petition is caused to be filed questioning his ability to safely practice. Finally, it is clear and unambiguous that the statute does not contemplate the availability of any administrative recourse when a license is suspended solely through the act of the practitioner by failure or refusal to comply with the evaluation requirements of the statute.

29. The language of §58-67-601(4)(c)(ii) leaves no doubt that there is no requirement of compliance with UAPA after failure or refusal to submit to evaluation and the only recourse stated is to argue that failure to comply was due to circumstances beyond the physician's control and unrelated to the possible illness or incapacity for which the evaluation was ordered. This exemption from UAPA is further amplified by §58-67-601(5)(a) providing for post-suspension hearings for those with licenses summarily suspended by a finding of a court of law or following a Division instigated show cause hearing. No similar provision is made anywhere in the statute for suspensions occasioned by failure to comply with evaluation orders.

30. The issue remains - vigorously argued by Petitioner - that Petitioner possessed a right to an administrative hearing either before or after entry of the evaluation order. This issue


must be resolved in favor of the Division. The statute is very precise and unambiguous about the rights and remedies under the impaired physicians statute. Had the legislature intended that there be a hearing it would have been placed in the statute. Without provisions being made by the legislature in enacting the statute, the only interpretation that the Executive Director is empowered to make - and which is cognizant of both the mandate of the department and its divisions as well as the limitations upon the authority vested in the Executive Director - is that the legislature intended that the evaluation be for investigatory purposes.

31. UAPA does not apply to the case before the Executive Director on appeal and therefore the Executive Director is without jurisdiction to consider such appeal. Although grave concerns have been expressed herein regarding the lack of any meaningful participation by the alleged impaired physician in the entry of the evaluation order or to question the same thereafter, these are matters not within the province of the Executive Director to resolve. Without jurisdiction to hear this request for agency review the Executive Director has no alternative but to dismiss the appeal.

RECOMMENDED ORDER

ORDERED that the appeal heretofore filed by Robert Allan Weitzel should be and is hereby dismissed.

Dated this the 16th day of November, 1999.



MICHAEL R. MEDLEY, Department Counsel
Utah Department of Commerce

**BEFORE THE
DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**



IN THE MATTER OF THE REQUEST
FOR AGENCY REVIEW OF

**DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING**
PETITIONER

: **FINDINGS OF FACT,**
: **CONCLUSIONS OF LAW and**
: **RECOMMENDED ORDER**
:
: DOPL case No. 99-71

INTRODUCTION

This matter came on for hearing upon a request for agency review filed by or on behalf of the Division of Occupational and Professional Licensing (hereafter "Division") seeking to appeal the dismissal with prejudice of its adjudicative action against Robert A. Weitzel, M.D. (hereafter "Weitzel") with which the Division is aggrieved.

STATUTES OR RULES PERMITTING OR REQUIRING REVIEW

Agency review of the Division's decision is conducted pursuant to Section 63-46b-12, Utah Code Annotated, and Rule R151-46b-12 of the Utah Administrative Code.

ISSUES REVIEWED

1. Whether the definition of "unprofessional conduct" contained in the Division's rule UTAH ADMIN. R156-1-502(1) exceeds the scope of rulemaking authority and is inconsistent with the statutory framework of UTAH CODE ANN. §58-1-501(2); and

2. Whether the Division's Petition states a cause of action under the definition of "unprofessional conduct" contained in UTAH CODE ANN. §58-1-501(2) regardless of the validity of UTAH ADMIN. R156-1-502(1).

FINDINGS OF FACT

1. On or about April 29, 1999, the Division filed a Petition against Weitzel for unprofessional conduct. The basis for the filing was that Weitzel had surrendered his license to practice medicine in the State of California upon a stipulated agreement entered into on February 14, 1997 ("stipulation"), accepted and adopted by the Medical Board of California ("Board") as its decision on March 27, 1997.

2. The stipulation incorporated by reference the allegations contained in an Accusation filed against Weitzel by the Board on or about November 4, 1996. The Accusation alleged that Weitzel was subject to disciplinary action as a result of having committed sexual misconduct and sexually exploited a patient and sought to have Weitzel's license revoked or suspended.

3. The terms of the stipulation under which Weitzel was allowed to settle the California case provided that Weitzel gave up his right to deny that cause for discipline existed, and he agreed to surrender his license with the understanding that he would no longer be permitted to practice medicine in California. The stipulation further provided that if Weitzel ever sought relicensure in California he would have to "comply with all the laws, regulations and procedures for reinstatement of a revoked license . . . and all of the charges and allegations contained in [the] Accusation . . . will be deemed to be true, correct and admitted by [Weitzel]."

4. On or about June 7, 1999, Weitzel caused a response to be filed to the Division's Petition generally denying the allegations contained in the Division's Petition, with the exception of admitting he surrendered his California license. Weitzel further filed a number of Affirmative Defenses, including a challenge that the Division's rule defining unprofessional conduct was

beyond the authority of the Division to enact and enforce.

5. On or about August 23, 1999, Weitzel filed a Motion for Judgment on the Pleadings in which he argued, *inter alia*, that the Division's rule defining "unprofessional conduct" was beyond the authority of the Division. The motion came before the Administrative Law Judge ("ALJ") for hearing on November 8, 1999, and an order was entered on November 23, 1999 dismissing the Division's adjudicative proceeding with prejudice. Specifically, the ALJ found that the definition of unprofessional conduct set forth in the Division's rule exceeded the scope of the Division's rulemaking authority and is inconsistent with the statutory framework reflected by the statute defining unprofessional conduct.

CONCLUSIONS OF LAW

1. The Division and Weitzel agree in their briefs that this appeal presents only a legal question and therefore falls under the "correctness" standard of review. The issue of whether the Division's rule exceeded its rulemaking authority, and the boundaries of the statute it was attempting to define, presents only a legal issue upon which the ALJ is entitled to no deference [*State v. Pena*, 869 P. 2d 932 (Utah 1994)] since this case was decided below in a summary disposition which did not resolve factual disputes [*Schurtz v. BMW of N. Am., Inc.* 814 P.2d 1108 (Utah 1991)].

2. In the case at bar, the Division's Petition alleged that Weitzel's California licensing matter fell within the definition of "unprofessional conduct" established both by the general licensing statute as well as by rule adopted by the Division. The Division's Petition was supported by the documentation of the California proceeding, including the stipulation entered into by Weitzel to resolve the charges calling for suspension or revocation through surrender of his medical license.

3. Following a hearing on Weitzel's motion to dismiss the Division's action, the learned ALJ below entered an order dismissing the Division's proceeding with prejudice. The

ALJ found as a matter of law that neither the rule nor the statute could apply in the case. On appeal, "we consider the evidence in the light most favorable to the nonmoving party and affirm only where it appears that there is no genuine dispute as to any material issues of fact and the moving party is entitled to judgment as a matter of law." *Swenson v. Erickson*, 387 Utah Adv. Rep. 12 (Utah 2000).

4. The ALJ's consideration of Weitzel's motion had required that all of the facts and reasonable inferences most favorable to the loser - the Division - be accepted as proven in considering the motion to dismiss. It is that standard which must also be applied on appeal in this forum. *Doit, Inc. v. Touche, Ross & Co.*, 926 P.2d 835 (Utah 1996).

5. The dismissal of the Division's action below would necessarily have required the ALJ to find that the California action, including the admissions of Weitzel contained therein, did not bring the Division's allegations within the statutory framework of the definition of "unprofessional conduct" to reach such a conclusion. Although to reach his conclusions of law required acceptance by the ALJ of the facts most favorable to the Division's position, such fact finding by the ALJ is entitled no deference whatsoever since all facts were indisputable for the purpose of Weitzel's motion.

6. The Division's Petition against Weitzel's Utah license relied upon incorporation of the action of a sister state against his medical license. The allegations by the State of California against Weitzel were contained in the charging document filed by the Medical Board of California on July 28, 1997. The Accusation asserted that Weitzel had committed acts of sexual misconduct and sexual exploitation of a patient, as well as acts of gross negligence, acts of incompetence, and acts of corruption.

7. The California proceeding against Weitzel was resolved through an agreement whereby Weitzel relinquished his license to practice medicine in that state. Although styled a surrender of license, Weitzel's agreement also gave up any right to challenge the charges against him and specified that all of the charges made against him would "be deemed to be true, correct

and admitted" in any future consideration of his fitness to hold a medical license. Weitzel agreed that his license would be treated as would be a revoked license if reinstatement was ever sought by him.

8. In his response to the allegations in the Division's Petition, Weitzel admitted the surrender of his California license while denying that the surrender was based upon any alleged misconduct, including unprofessional conduct. Weitzel also contested the Division's claim that surrendering a license in California would constitute unprofessional conduct in Utah.

9. The stipulation entered by Weitzel in California, although styled a surrender is, under the facts and reasonable inferences most favorable to the Division, a surrender in name only. For all practical purposes the stipulation served the office of a confession of judgment, with the surrender to be treated - at least in California - as nothing less than a *de facto* revocation of licensure.

10. Regardless of whether the challenged rule in this case is *ultra vires*, in conducting a review of the order from below granting Weitzel's motion and dismissing the Division's proceeding with prejudice, it is necessary to accept the California proceedings and allegations therein which were incorporated into the Division's action as factually true. While Weitzel might have a valid defense at a hearing on the merits, on this appeal only the facts and inferences most favorable to the Division are allowed in considering the appropriateness of a dismissal with prejudice.

11. All actions by the Department of Commerce and its divisions, including the Division, are ultimately guided by the legislative findings and mandate contained in UTAH CODE ANN. §13-1-1:

The Legislature finds that many businesses and occupations in the state have a pronounced physical and economic impact on the health, safety, and welfare of the citizens of the state. The Legislature further finds that while the overall impact is generally beneficial to the public, the potential for harm and injury frequently warrants intervention by state government.

The Legislature declares that it is appropriate and necessary for state government to protect its citizens from harmful and injurious acts by persons offering or providing essential or necessary goods and services to the general public. The Legislature further declares that business regulation should not be unfairly discriminatory. However, **the general public interest must be recognized and regarded as the primary purpose of all regulation by state government.** (Emphasis added).

12. It is clear that the Division has a legislative mandate to protect the public welfare in addition to the statutory authority to take disciplinary action against licensees for unprofessional conduct, such as was instituted against Weitzel in the case below. UTAH CODE ANN. §58-1-401(2) specifies that:

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;

13. The first issue to be considered on this appeal is whether the rule invoked by the Division in the adjudicative proceeding exceeds the scope of the Division's rulemaking authority and whether it is inconsistent with the statute defining "unprofessional conduct". By means of UTAH CODE ANN. §58-1-203, the legislature specifically authorized the Division to exercise certain powers, including:

The following duties, functions, and responsibilities of the division shall be performed by the division with the collaboration and assistance of the appropriate board: . . .

(5) defining unprofessional conduct, by rule, to supplement the definitions under this chapter or other licensing chapters;

14. The rule which Weitzel was charged with violating is UTAH ADMIN. R156-1-502 providing, among other things:

"Unprofessional conduct" includes:

(1) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct;

15. The general licensing statute defining "unprofessional conduct", UTAH CODE ANN. §58-1-501(2), also invoked by the Division in its proceeding brought against Weitzel, states in part:

"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:

(d) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401;

(k) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license;

16. It is necessary for the purposes of this appeal to consider both the statute and the rule defining "unprofessional conduct" together, since the statute establishes the parameters by which to determine the legitimacy of the rule. This review must commence with a recognition that the rule is clothed with the presumption that it is both valid and reasonable. *Eaton Kenway, Inc. v. Auditing Division*, 906 P. 2d 882 (Utah 1995).

17. The ALJ below determined that ". . . both §58-1-501(2) and R156-1-502(1) are unambiguous. Thus, it is not necessary to resort to principles of statutory construction to ascertain the meaning of these provisions." (Order, p. 14). This tribunal and the ALJ entered

this roundabout side-by-side, but emerged in exactly opposite directions as to meaning and import of the statute and rule.

In construing these subsections, we apply long-standing rules of statutory construction. "This court's primary objective in construing enactments is to give effect to the legislature's intent. The plain language of a statute is generally the best indication of that intent. Therefore, "where the statutory language is plain and unambiguous, we do not look beyond the language's plain meaning to divine legislative intent." The plain language of a statute is to be read as a whole, and its provisions interpreted in harmony with other provisions in the same statute and "with other statutes under the same and related chapters." Furthermore, where possible "we . . . construe statutory provisions so as to give full effect to all their terms. Most pertinent here is the rule that a statute dealing specifically with a particular issue prevails over a more general statute that arguably also deals with the same issue. (citations omitted). *Lyon v. Burton*, 387 Utah Adv. Rep. 27 (Utah 2000).

18. A consideration of the mandate given to the Department of Commerce and the Division clearly shows the legislative intent that the primary function of the department and its divisions be the protection to the citizens of the State of Utah. However, it is not necessary for this tribunal to mine the intentions of the legislature regarding the statute and rule in question since the plain language of the statute would include the action brought by the Division, and the rule clearly fits within the framework of the statute which spawned it.

19. A fair reading of plain language of UTAH CODE ANN. §58-1-501(2) reflects that it is not intended to be all inclusive, and does not purport to exclude unprofessional conduct which might fall within its broad guidelines although not specifically pointed out by illustration or example. The inclusory intent of the statutory definition to cover more than the enumerations of subsection (2)(a-k) is shown by the preamble to subsection (2): "'Unprofessional conduct' means conduct . . . that is defined as unprofessional conduct under this title or under any rule adopted under this title **and includes:**"

20. The general licensing act referenced in the immediately preceding paragraph then

proceeds to list certain areas of conduct which the legislature considers to generally and generically constitute unprofessional conduct, sufficiently broad to be applicable across the over 130,000 licensees in 185 diverse classifications of occupations and professions currently being regulated by the Division under the authority granted by the legislature under the general licensing act and the profession specific licensing acts.

21. Subsection (d) under the definition of "unprofessional conduct" in the general licensing act addresses the issue presented in the case at bar. A fair reading, exclusive of the items set off between commas, reads: "engaging in conduct that results in disciplinary action . . . by any other licensing or regulatory authority having jurisdiction . . . if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings . . ."

22. In between the commas in subsection (d) the legislature inserted examples of various forms of disciplinary action ". . . **including** reprimand, censure, diversion, probation, suspension, or revocation . . ." The use of the word "including" - for the second time in pertinent sections of subsection (2) defining "unprofessional conduct" - indicates that the examples of disciplinary action are not exclusive but merely illustrate the range of discipline available. The listing by the legislature appears to be an ascending scale of punitive results, starting with a reprimand and ending with revocation.

23. The surrender of a license for sexual misconduct and sexual exploitation of a patient, under the terms and conditions of the California stipulation which contains the undisputed facts in this matter for the purpose of entertaining a motion to dismiss, would appear to fit nicely within the list of deadly sins, perhaps between probation and suspension on the high end of the Utah disciplinary scale.

24. Whether or not the allegations admitted to by Weitzel in his California stipulation would constitute actionable conduct subjecting him to discipline in Utah is addressed by the legislature in §58-1-501(2)(k), which determines that "unprofessional conduct" includes: ". . . sexually abusing or exploiting any person through conduct connected with the licensee's practice

under this title" The licensing statute directly addresses the exact conduct which resulted in Weitzel losing his California license and which was undisputed for the purpose of the motion to dismiss.

25. An apparent determination by the ALJ that the conduct engaged in by Weitzel in California did not rise to the level of activity which would be punishable in Utah was an unwarranted finding under a motion proceeding requiring that the facts be construed most favorably for the Division. The issue of the nature and degree of Weitzel's California conduct is one to be addressed at a hearing, and one which must be based upon evidence and testimony adduced at a hearing.

26. The required elements of proof established by §58-1-501(2)(d) and the allegations of the Division's Petition are:

a. Statute: engaging in conduct resulting in disciplinary action - Petition: Weitzel was charged with serious unprofessional conduct by the California authorities.

b. Statute: by a licensing authority having jurisdiction - Petition: Weitzel was licensed by California at the time that state sought to suspend or revoke his license to practice.

c. Statute: if the conduct would warrant disciplinary action in Utah - Petition: surrender of his license under the conditions set out in the California action and stipulation would clearly fall within the statute. The activity charged by California would also constitute unprofessional conduct in Utah under subsection (k) of §58-1-501(2).

27. Weitzel's surrender of his license for acts of unprofessional conduct in a sister state would place him four-square within the statutory definition of "unprofessional conduct" in the State of Utah. The next issue to be determined on this appeal is whether the definition contained in the rule, under which the Division charges that Weitzel's conduct also falls, constitutes impermissible and therefore unenforceable rulemaking by the Division.

28. The challenged rule, UTAH ADMIN. R156-1-502(1), provides that the definition of "unprofessional conduct" incorporates "surrendering licensure . . . after a charging document has

been filed against the . . . licensee alleging unprofessional . . . conduct" The undisputed facts in this case clearly place Weitzel in the grasp of this rule, if it is enforceable.

29. The Division is authorized by UTAH CODE ANN. §58-1-203(5) to adopt rules to supplement the definitions of unprofessional conduct, regardless of whether the definitions are contained in the general licensing statutes or the profession specific licensing statutes. In his opinion the learned ALJ defined "supplement", as used in the licensing act at §58-1-203(5), as a noun (Order, p. 16). However, in the statute authorizing rules, the phrase of "to supplement the definitions" it is used as a verb, with the meaning of "to add to; to make more complete by an additional part." *Webster's New Concise Dictionary* (1984 ed.).

30. It is not suggested that the legislature has given the Division free rein to rewrite the laws given it to enforce. However, within the framework of the regulatory statutes, the Division has been authorized to utilize its expertise and that of its boards, made up of professionals in the various regulated fields, to define "unprofessional conduct". In reviewing the definition at issue in this case, it is not possible to uphold a finding that such an addition was not contemplated by the legislature.

31. The case at bar presents more than a simple surrender of a license. Weitzel did not merely walk away from his California license without pressure and of his own accord and volition. Instead, with representation of counsel, Weitzel cut a deal stripping him of his right to practice medicine in that state to close the disciplinary action pending. As part of the bargain Weitzel agreed that should he attempt to obtain another medical license in California, such an action would be considered the same as seeking a reinstatement after license revocation with all of the charges made against him in the California action taken as admitted by Weitzel.

32. Under the facts required to be accepted as true in this matter, Weitzel engaged in conduct in California which, if committed in Utah, could have opened him up to severe disciplinary action. The licensing act reasonably seeks to put Utah in the position of sister states when considering the import of conduct committed in the foreign jurisdiction upon a Utah

license. The proscribed nature of the admitted conduct is the same in either state, and the range of punishment appears to be the same in either state.


33. The State of Utah has at least as much right to protect its citizens as does the State of California, and Utah is reasonably entitled to place itself in the same position as California when dealing with exported problem practitioners from that state. The California surrender of licensure was not a passive act by Weitzel, but possessed all of the trappings and accouterments of a plea bargain whereby he achieved the best results under the circumstances. The Division should not and, under its legislative delegation, cannot allow itself to become a safe harbor for miscreants from other jurisdictions choosing flight over fight.

34. These conclusions of law are based upon the required conclusory acceptance of only the facts most favorable to the Division, and should not be construed as indicating that Weitzel is denied any right to present mitigating evidence and affirmative matters to offset the presumption created by the California surrender under charges. These conclusions should also not be taken as indicating any opinion as to whether the State of Utah must or should follow the example of the State of California in determining that Weitzel's conduct warranted the loss of his license to practice medicine.

RECOMMENDED ORDER

ORDERED that the Order on Motion to Dismiss heretofore entered dismissing this action with prejudice should be, and is hereby, reversed and this matter is remanded to the Division of Occupational and Professional Licensing for further proceedings on the merits.

Dated this the 16th day of May, 2000.


MICHAEL R. MEDLEY, Department Counsel
Utah Department of Commerce

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Assistant Attorney General
MARK L. SHURTLEFF - #4666
Attorney General
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BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSES : **STIPULATION AND ORDER**
OF **ROBERT A. WEITZEL, M.D.** TO :
PRACTICE AS A PHYSICIAN AND :
SURGEON AND TO ADMINISTER :
AND PRESCRIBE CONTROLLED :
SUBSTANCES IN THE STATE : Case Nos. DOPL 1999-70; 1999-71; and
OF UTAH : 2002-318

STIPULATION

Robert A. Weitzel, M.D., through Peter Stirba, and the State of Utah, Department of Commerce, Division of Occupational and Professional Licensing, through Bridget K. Romano, Assistant Attorney General, stipulate and agree as follows:

1. The Division of Occupational and Professional Licensing (Division) is a Division of the State of Utah, Department of Commerce, and is established by virtue of Utah Code Annotated § 13-1-1 to § 13-1-11 (2001) and Utah Code Annotated § 58-1-101 to § 58-1-504 (2000).

2. On or about June 19, 1992, Robert A. Weitzel, M.D. became licensed by the Division to practice as a physician and surgeon under the Utah Medical Practice Act, Utah Code Annotated §§ 58-67-101 to 58-67-603 (2000), and to administer and prescribe controlled substances under the Utah Controlled Substances Act, Utah Code Annotated §§ 58-37-101 to 58-37-21 (2000).

3. On or about August 24, 1999, the Division immediately suspended Respondent's licenses to practice medicine and to administer and prescribe controlled pursuant to Utah Code Ann. § 58-67-601(4) (1998). See Order of Suspension, DOPL No. 1999-145, August 24, 1999, attached as Exhibit A to this Stipulation and Order and incorporated herein by this reference. Said licenses have remained suspended since that time.

4. Respondent agrees the Division has jurisdiction over Respondent and the subject matter of this action.

5. Respondent acknowledges he enters into this Stipulation and Order knowingly and voluntarily and that no threat has been made by any representative of the Division or the Office of the Attorney General to induce him to enter into this Stipulation.

6. Respondent acknowledges his right to retain counsel to assist him in this matter and is represented by Peter Stirba, attorney at law.

7. Respondent acknowledges he has a right to and that he has received a Notice of Agency Action and Verified Petition in case nos. DOPL 1999-70, DOPL 1999-71, and DOPL 2002-318.

8. Respondent understands he is entitled to a hearing before the State of Utah Physicians Licensing Board to contest the allegations raised by the Division, at which hearing Respondent may (1) present evidence to the Board on his own behalf, (2) present witnesses of his own calling, and (3) confront adverse witnesses called by the Division.

9. Respondent acknowledges that by executing this Stipulation and Order he knowingly and voluntarily waives (1) the right to a hearing before the Physicians Licensing Board to contest, dispute, or challenge the allegations against him; (2) the right to present evidence on his own behalf; (3) the right to present witnesses on his own behalf; (4) the right to confront

adverse witnesses; and (5) such other rights to which Respondent may be entitled in association with such a hearing.

10. Respondent acknowledges this Stipulation and Order, if adopted by the Director of the Division of Occupational and Professional Licensing, will be classified as a public document and may be released to other persons, entities, and agencies.

11. Respondent hereby stipulates and agrees an Order regarding his licenses to practice as a physician and surgeon and to administer and prescribe controlled substances in the State of Utah may be entered as follows:

(1) Respondent's licenses to practice medicine and to administer and prescribe controlled substances in the State of Utah shall be deemed to have expired while under suspension for Respondent's failure to renew such licenses on or before April 30, 2000 or at any time thereafter. Respondent's licenses shall have no force or effect in the State of Utah;

(2) Should Respondent reapply for licensure in the State of Utah, Respondent shall:

(a) Satisfy all of the terms of the Order of Suspension, see Exhibit A, and as required by Utah Code Ann. § 58-67-601; and,

(b) Satisfy all of the then-existing requirements for licensure in the State of Utah.

(3) Respondent shall dismiss, with prejudice, Weitzel v. State of Utah, Department of Commerce, et al., Case No. 990912027, Third Judicial District Court.

(4) Respondent shall waive the statute of limitations under Utah Code Ann. § 58-1-401(5) (2000), regarding case nos. DOPL 1999-70, DOPL 1999-71 and DOPL 2002-

318.

(5) Subject to subparagraph (4) above, the Division shall dismiss, without prejudice and with leave to refile, the allegations set forth in the Verified Petitions filed in case nos. DOPL 1999-70, 1999-71 and 2002-318. *Stony in the event that Respondent again becomes fully licensed in the State of Ohio*

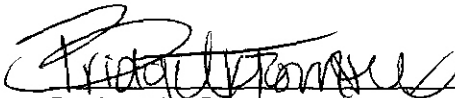
12. This Stipulation and Order, upon approval by the Director of the Division of Occupational and Professional Licensing shall constitute the final compromise and settlement of this matter. Respondent acknowledges the Director is not required to accept the terms of this Stipulation and Order, and, if the Director does not so accept, the Stipulation and Order shall be null and void.


12. The Division and Respondent waive any claim of bias or prejudgment they might have with regard to the Director by virtue of his having reviewed this Stipulation.

13. Respondent acknowledges this Stipulation constitutes the entire agreement between the parties and supersedes any and all prior negotiations, representations, understandings, or agreements between the parties regarding the subject matter of the Stipulation. There are no verbal agreements which modify, interpret, construe, or affect this Stipulation.


DATED this 12th day of December, 2003

DATED this 12th day of December, 2003


Bridget K. Romano
Assistant Attorney General


Robert A. Weitzel, M.D.
Respondent

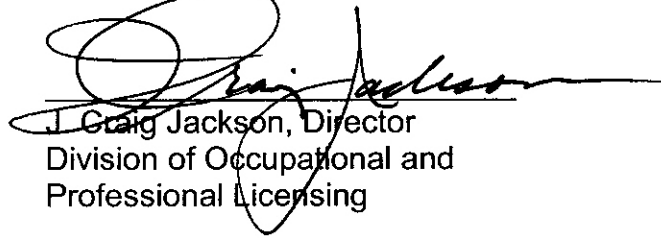
DATED this 12th day of December, 2003


Peter Stirba
Counsel for Robert A. Weitzel, M.D.

ORDER

The Stipulation in the Matter of the Licenses of Robert A. Weitzel, M.D., to practice as a physician and surgeon in the State of the Utah, is hereby approved and shall constitute the Director's Findings of Fact and Conclusions of Law in this matter. The terms and conditions of this Stipulation are incorporated herein and constitute the Director's final Order with regard to Respondent's licenses to practice as a physician and surgeon and to administer and prescribe controlled substances in the State of Utah.

DATED this 19th day of December, 2003.


J. Craig Jackson, Director
Division of Occupational and
Professional Licensing

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

IN THE MATTER OF THE)
APPLICATION FOR LICENSURE OF) **STIPULATION AND ORDER**
ROBERT ALLAN WEITZEL)
TO PRACTICE AS A)
PHYSICIAN/SURGEON) **CASE NO. DOPL 2011- 334**
IN THE STATE OF UTAH)

ROBERT ALLAN WEITZEL (“Respondent”) and the **DIVISION OF
OCCUPATIONAL AND PROFESSIONAL LICENSING** of the Department of Commerce of
the State of Utah (“Division”) stipulate and agree as follows:

1. Respondent admits the jurisdiction of the Division over Respondent and over the subject matter of this action.
2. Respondent acknowledges that Respondent enters into this Stipulation knowingly and voluntarily.

3. Respondent understands that Respondent has the right to be represented by counsel in this matter and Respondent's signature below signifies that Respondent has either consulted with an attorney or Respondent waives Respondent's right to counsel in this matter.

4. Respondent understands that the issuance of a license pursuant to this Stipulation and Order is a partial denial of licensure, and Respondent hereby waives the right to any administrative review of that partial denial of licensure. Respondent understands that by signing this document Respondent waives all rights to any administrative and judicial review as set forth in Utah Code Ann. §§ 63G-4-301 through 63G-4-405 and Utah Administrative Code R156-46b-12 through R156-46b-15.

5. Respondent and the Division hereby express their intent that this matter be resolved expeditiously through stipulation as contemplated in Utah Code Ann. § 63G4-102(4).

6. Respondent understands that this Stipulation and Order, if adopted by the Director of the Division, will be classified as a public document. The Division may release this Stipulation and Order, and will release other information about this disciplinary action against Respondent's license, to other persons and entities.

7. Respondent admits the following facts are true:

- a. Respondent was first licensed as a physician/surgeon and to administer and prescribe controlled substances in the State of Utah on or about June 19, 1992.
- b. On or about November 4, 1996 the Medical Board of California filed an action regarding Respondent seeking to take action against Respondent's license to practice as a physician and surgeon in the State of California. The Accusation alleged that Respondent engaged in a sexual relationship with a female patient (hereinafter "Jane Doe") to whom Respondent provided psychiatric treatment. Respondent provided psychiatric

treatment to Jane Doe both before and after Jane Doe divorced her husband.

- c. Because of the filing of the Accusation, on or about February 14, 1997 Respondent voluntarily entered into a "Stipulation for Surrender of Licensure" with the Medical Board of California surrendering Respondent's license to practice as a physician and surgeon in the State of California. Respondent states that he entered into the Stipulation in lieu of further proceedings, in order to minimize further expense, and because he no longer wished to practice in California.
- d. On or about August 19, 1998 Respondent voluntarily entered into an "Agreed Order" with the Texas State Board of Medical Examiners. In the Agreed Order Respondent admitted that Respondent had ". . . engaged in an intimate personal relationship" with Jane Doe described in paragraph 7(b) above. Respondent admitted that he maintained the relationship with Jane Doe for two years and then terminated the relationship when Jane Doe would not relocate to Utah. Jane Doe subsequently filed a lawsuit against Respondent alleging physician-patient boundary violations by Respondent. Respondent resolved Jane Doe's lawsuit with a monetary settlement.
- e. In the Texas Agreed Order Respondent admitted that Respondent failed to disclose the California licensing investigation, the surrender of his California license, and the settlement of Jane Doe's malpractice lawsuit against Respondent, to Texas licensing authorities on the application for license renewal that Respondent submitted in 1997.
- f. In the Texas Agreed Order Respondent admitted to unprofessional or dishonorable conduct likely to deceive or defraud the public. Respondent's was publicly reprimanded and Respondent was ordered to pay an administrative penalty of \$3,500.00.
- g. On or about August 24, 1999 the Division issued an Order of Suspension immediately suspending Respondent's licenses to practice as a physician/surgeon and to administer and prescribe controlled substances in the State of Utah because Respondent failed to submit to a psychiatric examination as required by the Division. Respondent states that at that time Respondent stood accused of murder of five of his patients. Respondent states that although he was personally willing to undergo a psychiatric examination as requested by the Division, his criminal defense counsel advised him not to do so.

- h. On or about September 8, 1999, the United State District Court, District of Utah, issued a 22 count indictment against Respondent alleging that Respondent obtained controlled substances by deception in violation of 21 USC 843(a)(3).
- i. In 2001 Respondent pleaded guilty to two counts of obtaining controlled substances by deception, each a felony. Respondent admitted that on or about June 1, 1995 Respondent had obtained 200 mg of Demerol for a patient, injected only 100 mg of the Demerol and therefore obtained 100 mg of Demerol by fraud. Respondent admitted that on or about June 21, 1996 Respondent had obtained 30 mg of morphine for a patient, injected only 12 mg of the morphine and therefore obtained 18 mg of morphine by fraud. On or about September 11, 2002 Respondent was sentenced to a term of one year and one day of incarceration in a federal penitentiary and 12 months supervised release. Respondent was prohibited from practicing medicine during the period of supervised release.
- j. On or about December 12, 2003 Respondent voluntarily entered into a Stipulation and Order with the Division in DOPL Case Nos. 1999-70, 1999-71, and 2002-318, wherein Respondent's licenses to practice as a physician/surgeon and to administer and prescribe controlled substances were deemed to have expired while under suspension when Respondent failed to renew them on or before April 30, 2000 or at any time thereafter. Respondent agreed that he would comply with the terms of the August 24, 1999 Order of Suspension before Respondent reapplied for licensure as a physician in the State of Utah.
- k. Respondent states that after completing his federal criminal sentence, Respondent married in April 2004, and has been in a stable marriage ever since.
- l. In January 2011 Respondent completed a comprehensive evaluation at the Pine Grove facility in Hattiesburg, Mississippi. This comprehensive evaluation satisfied the mental examination requirements set forth in the 1999 Order of Suspension described in subparagraph 7(g) above, and the requirement that Respondent comply with the Order of Suspension set forth in the Stipulation and Order in DOPL Case No. 1999-70, 1999-71, and 2002-318 described in subparagraph 7(j) above. Respondent also completed a three day intensive professional boundaries course in May 2011 and a three day physician prescribing course in June 2011. Respondent also passed the SPEX re-entry examination. Respondent completed an essay describing what he learned in the prescribing and boundary classes he completed and described what changes he will make

in the future regarding his practice of medicine and presented the information to the Utah Physician Licensing Board.

m. Respondent has not worked as a physician since 1999.

8. Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a) and (c). Respondent agrees by engaging in such conduct the Division is justified in taking disciplinary action against the license Respondent will be receiving pursuant to Utah Code Ann. § 58-1-401(2)(a). Respondent agrees that an Order, which constitutes disciplinary action by the Division against the license Respondent will be issued pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann. § 58-1-401(2), may be issued in this matter providing for the following action against Respondent's license:

- (1) The Division shall issue Respondent a license to practice as a physician/surgeon in the State of Utah. Respondent's license to practice as a physician/surgeon in the State of Utah shall be revoked, however, the revocation shall be immediately stayed. Respondent's license shall be subject to a term of probation for a period of five years. The period of probation shall commence when the Division Director signs the Order in this matter. During the period of probation Respondent's license shall be subject to all of the following terms and conditions. If the Board or Division later deems any of the conditions unnecessary such deletions may be made by an amended order issued unilaterally by the Division and Board. At this time Respondent shall not be issued a license to administer and prescribe controlled substances in the State of Utah, however Respondent may apply for a license to administer and prescribe controlled substances only when Respondent has: (i) been employed and practiced as a physician in the State of Utah for a period of one year; (ii) has received no negative comments from his supervisor in the reports submitted by the supervisor; (iii) Respondent's supervisor submits a letter to the Division and Board stating that Respondent may safely administer and prescribe controlled substances; (iv) Respondent's therapist submits a letter to the Division and Board stating that Respondent is prepared and able to safely administer and prescribe controlled substances; (v) Respondent complies with the drug and alcohol testing set forth in subparagraph 8(1)(u) and

does not have any sample test positive for any substance for which Respondent does not have a valid prescription, or for alcohol, or tests abnormally dilute, and (vi) the Division receives confirmation from the Drug Enforcement Administration indicating that the DEA is considering issuing a Respondent a DEA registration certificate. The Division does not guarantee that any future application submitted by Respondent for a controlled substance license will be granted. If a controlled substance license is granted by the Division in the future, the license may be issued subject to terms and conditions as negotiated by Respondent and the Division.

- a. Respondent shall meet with the Division and Board at the next scheduled Board meeting following the effective date of this Stipulation and Order. Respondent shall meet with a Division staff person prior to Respondent's first meeting with the Board to review this agreement. For the remainder of the duration of probation, Respondent shall meet with the Board or with the Division, as directed by the Division or Board, annually or at such other greater or lesser frequency as the Division or Board may direct.
- b. Failure of Respondent to pay the costs associated with this Stipulation and Order constitutes a violation of the Stipulation and Order.
- c. All reports and documentation required in this Stipulation and Order shall be submitted to the Board on a monthly basis for the first six months of probation. If Respondent is in compliance with all terms and conditions of the Order at the end of that time, all reports and documentation shall be submitted on a quarterly basis for the remainder of probation. If Respondent is not in compliance with all terms and conditions of the Order, as determined by the Division and Board, by the end of the first six (6) months of probation, all reports and documentation shall be submitted on a monthly basis until Respondent is in compliance with the Order, after which all reports shall be submitted on a quarterly basis.
- d. Respondent shall notify any employer of Respondent's restricted status and the terms of this agreement. Respondent shall cause Respondent's employer to provide periodic reports summarizing Respondent's compliance with the terms and conditions of this Stipulation and Order at a frequency described in subparagraph (c) above.

- e. Respondent may not work in solo practice or be self-employed unless the Board and Division determine otherwise. Respondent shall only work for a hospital, clinic, or other group practice setting.
- f. Upon initially being employed, Respondent shall only perform duties including non-controlled medication management, chart review, and hospital/clinic administration, processing intake histories, and disability evaluations. The Division and Board may later expand the scope of Respondent's duties and tasks. Respondent shall not practice psychotherapy until the Division and Board determine that Respondent may safely do so.
- g. Respondent shall work under the supervision of a supervisor pre-approved by the Division and Board. The supervisor shall be a physician licensed and in good standing with the Division. Supervision goals shall include concurrent management, clinical treatment methods and competency, professional boundaries, sobriety, professionalism, medical ethics, and compliance with all federal and state laws and rules. The supervisor shall address issues pertaining to safe prescribing and drug administering practices and any other issues the supervisor determines are pertinent to professional and ethical practice. The supervisor shall review 20% of Respondent's patient records. The supervisor, not Respondent, shall select which patient records shall be reviewed.
- h. As Respondent has not practiced as a physician since 1999 Respondent shall successfully complete one of the following courses of retraining described in subparagraphs (i) and (ii) below. Respondent may only choose one of the following and may not start one and then switch to the other.

(i) **Re-education.** Respondent shall undergo a psychiatry re-education period wherein Respondent shall not have sole clinical responsibility for any patient. During the period of re-education, Respondent's supervisor shall be primarily responsible for all patient care and provide direct supervision, as defined in Utah Administrative Code R156-1-102a(4)(a), to Respondent at all times. Respondent's supervisor shall meet in person with the Division and Board prior to the beginning of the re-education period in order to ensure that the supervisor understands all of the duties and responsibilities of the supervisor. The Board and

Division shall determine, with the input of the supervisor, when Respondent's reeducation period may be terminated and Respondent may be solely responsible for a patient's care. Respondent's supervisor must submit a letter to the Division and Board stating that Respondent is competent in his psychiatric specialty and can safely practice as a psychiatrist, before the Division and Board will permit Respondent to be solely responsible for any patient's care. Once the reeducation period is completed, Respondent shall meet with the supervisor on a weekly basis, or at whatever frequency is directed by the Division and Board, and be under the general supervision, as defined in Utah Administrative Code R156-1-102a(4)(c), for the remainder of the probationary period. The re-education period must be completed within 18 months of the effective date of this Stipulation and Order.

(ii) **Mini-residency.** Respondent shall successfully complete a mini-residency program. The director of the mini-residency program shall submit a letter to the Division indicating that Respondent has been accepted into the mini-residency program and describing the curriculum and activities of the mini-residency program. The mini-residency program shall be pre-approved by the Division and Board. The mini-residency shall focus on the specialty of psychiatry. Respondent shall be supervised during the mini-residency program. Respondent shall follow all procedures and directives of the mini-residency program. Respondent's mini-residency supervisor must submit a letter to the Division and Board stating that Respondent is competent in his psychiatric specialty and can safely practice as a psychiatrist, before the Division and Board will permit Respondent to be solely responsible for any patient's care. Once the mini-residency is completed, Respondent shall obtain a new supervisor, as described in subparagraph (g) above, and shall meet with that new supervisor on a weekly basis, or at whatever frequency is directed by the Division and Board. The mini-residency program must be completed within 18 months of the effective date of this Stipulation and Order.

- i. Respondent shall not be in the presence of any female patient unless a chaperone is in the immediate visible proximity of Respondent and the female patient. Each chaperone shall be pre-approved by the Division and Board. Each chaperone shall keep a Division pre-approved chaperone log of all female patients treated

by Respondent. Respondent shall cause each chaperone's log to be provided to the Division and Board on a monthly basis.

- j. Respondent shall cause Respondent's supervisor to submit reports to the Board and Division assessing Respondent's compliance with the terms of Respondent's probation and ethics. The reports shall be submitted monthly for the first six months and quarterly thereafter, or at such frequency as directed by the Board and Division. The receipt of an unfavorable report may be considered to be a violation of probation.
- k. Respondent shall successfully complete continuing medical education courses focused on personal boundaries, psychiatry, and prescribing, in order to satisfy the continuing medical education requirements for the period from January 31, 2012 through January 31, 2014. All courses shall be pre-approved by the Division and Board.
- l. Respondent shall issue prescriptions for non-controlled medications only on sequentially numbered triplicate scripts. One copy of each prescription shall remain in the patient chart and one copy of each prescription shall be sent by Respondent to the Division and Board within one month of issuance. The Division shall provide directions in the future regarding Respondent providing electronic medical record prescriptions to the Division and Board. The Division and Board may inspect these records at any time and may require Respondent to bring copies of the records to any meeting with the Board.
- m. Respondent shall keep a log of all non-controlled medications administered by Respondent at any time. The log shall be submitted to the Division monthly.
- n. Respondent shall submit a practice plan to the Division and Board within 90 days of the effective date of this Stipulation and Order. The practice plan shall be submitted in a format prescribed by the Division and Board. Respondent shall not practice medicine before the Division and Board approve the practice plan. The practice plan shall describe how Respondent will monitor and control his prescribing and administering of non-controlled medications to comply with the law and recommended prescribing guidelines.

- o. Respondent shall successfully complete any treatment recommendations set forth in the Pine Grove comprehensive evaluation report. Respondent shall sign a release permitting Respondent's therapist(s) and counselor(s) to provide the Division and Board with reports, recommendations, evaluations, supporting documents, or any other materials, privileged or non-privileged, requested by the Division or Board. Respondent shall cause Respondent's therapist(s) and counselor(s) to immediately provide any materials requested by the Division and Board. In the interest of public safety, the Division or Board may impose additional requirements above and beyond those recommended by the evaluator in the Pine Grove comprehensive evaluation report. Respondent shall attend therapy with a Division pre-approved psychiatrist licensed in the State of Utah at the frequency determined by the Division and Board. Respondent agrees to comply with these additional requirements.
- p. Unless otherwise approved by the Division and Board, Respondent shall, except as provided otherwise herein, receive prescriptions from only one prescribing practitioner, and Respondent shall fill prescriptions at only one pharmacy. Respondent shall not obtain the same or equivalent prescription drug or controlled substance from more than one practitioner. All prescribing practitioners must be informed of any and all of Respondent's addiction/abuse problems. Respondent shall not undertake, under any circumstance, to obtain prescription drugs in quantities or types that are not legitimately required. Respondent shall submit the names of the prescribing practitioner and pharmacy to the Division and Board for approval. Respondent shall provide the Division and Board with a copy of all Respondent's prescriptions for prescription drugs, controlled substances, or any other mood altering substance, within two business days after the prescription has been written.
- q. Prescriptions from an emergency practitioner or referral practitioner must be submitted to the Division and Board within two business days of being issued. Respondent shall report to the Division and Board within two business days any and all medications and controlled substances administered or dispensed to Respondent by any other individual.
- r. Respondent shall report to the Division and Board within two business days any and all medications or controlled substances

ingested by Respondent from any source.

- s. Respondent shall provide to the primary prescribing practitioner a copy of this Stipulation and Order and cause the practitioner to acknowledge to the Division and Board in writing that a copy of this Stipulation and Order has been provided to the primary prescribing practitioner.
- t. Although the use and possession of alcohol is generally legal for persons age 21 and older, Respondent agrees to abstain from the personal use or possession of alcohol in any form. Respondent agrees to abstain from the personal use or possession of controlled substances and prescription drugs, unless such controlled substance or prescription drug is lawfully prescribed to Respondent for a current bona fide illness or condition by a licensed practitioner and taken by Respondent in accordance with that practitioner's instructions. Respondent shall abstain from the use of any and all other mood altering substances or use of mood altering substances for any other purpose than the purpose for which the substance is intended.
- u. Respondent shall provide samples (urine, blood, saliva, hair, or any other type of sample requested) for drug and alcohol analysis upon the request of the Division or Board, to be conducted by any company with which the Division has contracted to conduct drug testing. The designated company may also request such samples and Respondent shall comply with such requests. The Division or Board shall determine when and where Respondent is to submit for testing. Respondent shall call in every day to determine whether Respondent is required to provide a sample for drug and alcohol analysis. Respondent shall pay for the cost of drug testing and shall accurately complete and sign any and all release forms requested by the Division or Board or the drug testing company with respect to drug testing, including but not limited to, forms authorizing the company to send the drug test results to the Division and Board. Any report from a drug and/or alcohol testing company that indicates that Respondent failed to provide a sample for drug and alcohol analysis as directed will be considered a positive drug test result for Respondent and will subject Respondent to additional sanctions. Any drug test result or pattern of results that indicates that the sample provided by Respondent for drug and alcohol analysis is diluted to an extent that it cannot be

analyzed, will be considered a positive drug test result for Respondent and will subject Respondent to additional sanctions.

- v. The Division may take appropriate action to impose sanctions if: (i) Respondent tests positive for a prescription drug, a controlled substance, or any mood altering substance which cannot be accounted for by an administration or prescription by a lawful practitioner for a current medical condition; or (ii) Respondent violates any federal, state or local law relating to Respondent's practice, the Controlled Substance Act; or a term or condition of this Stipulation and Order. Sanctions may include revocation or suspension of Respondent's license, or other appropriate sanction, in the manner provided by law.
- w. Respondent shall participate in all therapy and aftercare that the Pine Grove evaluation(s) recommend. Respondent shall authorize all approved treatment programs or therapists from whom Respondent has received or will receive treatment to discuss Respondent's diagnosis, treatment, and prognosis with the Division and Board. The program or therapist must also be directed to submit evaluations to the Division and Board that address Respondent's progress in treatment and Respondent's prognosis at the frequency described in subparagraph (c) above. Respondent may be required to complete a new evaluation when directed by the Division or Board if concerns arise with the Division and Board regarding Respondent's competency or performance.
- x. If recommended in the evaluations, Respondent shall participate in a professional support group to address Respondent's use of drugs and alcohol and shall submit documentation that reflects Respondent's continuing and regular attendance at such support group meetings. Respondent shall submit such documentation to the Division and Board at the frequency described in subparagraph (c) above. Regular attendance for the purpose of this paragraph shall be at least twice a month.
- y. If recommended in the evaluations, Respondent shall attend a 12-step program, have a sponsor, work the 12-step program and submit reports at the frequency described in subparagraph (c) above to the Division and Board documenting Respondent's participation. The frequency of participation shall be approved by the Division and Board. Unless otherwise directed, Respondent shall attend at least two times per month.

- z. In the event Respondent does not practice for a period of sixty (60) days or longer, Respondent shall notify the Board in writing of the date Respondent ceased practicing. The period of time in which Respondent does not practice shall not be counted toward the time period of this Stipulation and Order. It shall be within the discretion of the Board to modify this requirement if Respondent satisfactorily explains to the Board that compliance in Respondent's case was impractical or unduly burdensome. Respondent must work at least ten (10) hours per week and no more than forty-eight (48) hours per week to be considered "practicing" in Respondent's profession.
- aa. Respondent shall notify the Board in writing within one (1) week of any change of employer, employment status, or practice status. This notification is required regardless of whether Respondent is employed in Respondent's profession.
- bb. If Respondent leaves the State of Utah for a period longer than sixty (60) days, Respondent shall notify the Division and Board in writing of the dates of Respondent's departure and return. The licensing authorities of the jurisdiction to which Respondent moves shall be notified by Respondent in writing of the provisions of this Stipulation and Order. Periods of residency or practice outside the State of Utah apply to the reduction of the period this Stipulation and Order is in effect, if the new state of residency places equal or greater conditions upon the Respondent as those contained in this Stipulation and Order.
- cc. If Respondent is arrested or charged with a criminal offense by any law enforcement agency, in any jurisdiction, inside or outside the State of Utah, for any reason, or should Respondent be admitted as a patient to any institution in this state or elsewhere for treatment regarding the abuse of or dependence on any chemical substance, or for treatment for any emotional or psychological disorder, Respondent agrees to cause the Division and Board to be notified within two business days. If Respondent at any time during the period of this agreement is convicted of a criminal offense of any kind, including an offense based on the conduct described in this Stipulation and Order, or enters a plea in abeyance to a criminal offense of any kind, including a pending criminal charge, the Division may take appropriate action against Respondent, including imposing appropriate sanctions, after notice and

1

opportunity for hearing. Such sanctions may include revocation or suspension of Respondent's license, or other appropriate sanctions.

- dd. Respondent shall maintain a current license at all times during the period of this agreement.
- ee. Respondent shall immediately notify the Division in writing of any change in Respondent's residential or business address.
- ff. Respondent shall submit reports on the date they are due and shall appear at scheduled meetings with the Division and Board promptly. Failure to do so shall be considered a violation of this Stipulation and Order.

9. Upon approval by the Director of the Division, this Stipulation and Order shall be the final compromise and settlement of this non-criminal administrative matter. Respondent acknowledges that the Director is not required to accept the terms of this Stipulation and Order and that if the Director does not do so, this Stipulation and the representations contained therein shall be null and void, except that the Division and the Respondent waive any claim of bias or prejudice they might otherwise have with regard to the Director by virtue of his having reviewed this Stipulation, and this waiver shall survive such nullification.

10. Respondent shall abide by and comply with all applicable federal and state laws, regulations, rules and orders related to the Respondent's licensed practice. If the Division files a Petition alleging that Respondent has engaged in new misconduct or files an Order to Show Cause Petition alleging that Respondent has violated any of the terms and conditions contained in this Stipulation and Order, the period of Respondent's probation shall be tolled during the period that the Petition or Order to Show Cause Petition has been filed and is unresolved.

11. This document constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, understandings or agreements

between the parties regarding the subject of this Stipulation and Order. There are no verbal agreements that modify, interpret, construe or affect this Stipulation. Respondent agrees not to take any action or make any public statement, that creates, or tends to create, the impression that any of the matters set forth in this Stipulation and Order are without factual basis. A public statement includes statements to one or more Board members during a meeting of the Board. Any such action or statement shall be considered a violation of this Stipulation and Order.

12. The accompanying Order becomes effective immediately upon the approval of this Stipulation and signing of the Order by the Division Director. Respondent shall comply with all the terms and conditions of this Stipulation immediately following the Division Director's signing of the Order page of this Stipulation and Order. Respondent shall comply with and timely complete all the terms and conditions of probation. If a time period for completion of a term or condition is not specifically set forth in the Stipulation and Order, Respondent agrees that the time period for completion of that term or condition shall be set by the Board or Division. Failure to comply with and timely complete a term or condition shall constitute a violation of the Stipulation and Order and may subject Respondent to revocation or other sanctions. If Respondent violates any term or condition of this Stipulation and Order, the Division may take action against Respondent, including imposing appropriate sanction, in the manner provided by law. Such sanction may include revocation or suspension of Respondent's license, or other appropriate sanction.

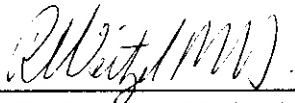
13. Respondent understands that the disciplinary action taken by the Division in this Stipulation and Order may adversely affect any license that Respondent may possess in another state or any application for licensure Respondent may submit in another state.

14. Respondent has read each and every paragraph contained in this Stipulation and Order. Respondent understands each and every paragraph contained in this Stipulation and Order. Respondent has no questions about any paragraph or provision contained in this Stipulation and Order.

DIVISION OF OCCUPATIONAL &
PROFESSIONAL LICENSING

RESPONDENT


BY: 
NOEL TAXIN
Bureau Manager

BY: 
ROBERT ALLAN WEITZEL
Respondent

DATE: 10/6/11

DATE: Oct. 4, 2011

MARK L. SHURTLEFF
ATTORNEY GENERAL

BY: 
L. MITCHELL JONES
Counsel for the Division

DATE: 5 Oct 2011

ORDER

THE ABOVE STIPULATION, in the matter of **ROBERT ALLAN WEITZEL**, is hereby approved by the Division of Occupational and Professional Licensing, and constitutes my Findings of Fact and Conclusions of Law in this matter. The issuance of this Order is disciplinary action pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann. § 58-1-401(2). The terms and conditions of the Stipulation are incorporated herein and constitute my final Order in this case.

DATED this 6 day of October, 2011.

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING



MARK B. STEINAGEL

Director

KARL G. PERRY (# 2570)
Assistant Attorney General
JOHN E. SWALLOW (U.S.B. 5802)
Utah Attorney General
Commercial Enforcement Division
Heber M. Wells Building
Box 140872
Salt Lake City, UT 84114-0872
TEL: (801) 366-0310

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

IN THE MATTER OF THE)	
APPLICATION FOR LICENSURE OF)	AMENDED
ROBERT ALLAN WEITZEL)	STIPULATION AND ORDER
TO PRACTICE AS A)	
PHYSICIAN/SURGEON)	CASE NO. DOPL 2011-
IN THE STATE OF UTAH)	334

ROBERT ALLAN WEITZEL (“Respondent”) and the **DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING** of the Department of Commerce of the State of Utah (“Division”) stipulate and agree to amend the October 6, 2011 Stipulation and Order to read as follows

- 1 Respondent admits the jurisdiction of the Division over Respondent and over the subject matter of this action
- 2 Respondent acknowledges that Respondent enters into this Stipulation knowingly and voluntarily.

3. Respondent understands that Respondent has the right to be represented by counsel in this matter and Respondent's signature below signifies that Respondent has either consulted with an attorney or Respondent waives Respondent's right to counsel in this matter

4 Respondent understands that the issuance of a license pursuant to this Stipulation and Order is a partial denial of licensure, and Respondent hereby waives the right to any administrative review of that partial denial of licensure. Respondent understands that by signing this document Respondent waives all rights to any administrative and judicial review as set forth in Utah Code Ann. §§ 63G-4-301 through 63G-4-405 and Utah Administrative Code R156-46b-12 through R156-46b-15.

5. Respondent and the Division hereby express their intent that this matter be resolved expeditiously through stipulation as contemplated in Utah Code Ann § 63G4-102(4)

6 Respondent understands that this Stipulation and Order, if adopted by the Director of the Division, will be classified as a public document The Division may release this Stipulation and Order, and will release other information about this disciplinary action against Respondent's license, to other persons and entities.

7. Respondent admits the following facts are true:

a. Respondent was first licensed as a physician/surgeon and to administer and prescribe controlled substances in the State of Utah on or about June 19, 1992

b On or about November 4, 1996, the Medical Board of California filed an action regarding Respondent seeking to take action against Respondent's license to practice as a physician and surgeon in the State of California The Accusation alleged that Respondent engaged in a sexual relationship with a female patient (hereinafter "Jane Doe") to whom Respondent provided psychiatric treatment. Respondent provided psychiatric treatment to Jane Doe both before and after Jane Doe divorced her husband

c Because of the filing of the Accusation, on or about February 14, 1997, Respondent voluntarily entered into a "Stipulation for Surrender of Licensure" with the Medical Board of California surrendering Respondent's license to practice as a physician and surgeon in the State of California Respondent states that he entered into the Stipulation in lieu of further proceedings, in order to minimize further expense, and because he no longer wished to practice in California.

d On or about August 19, 1998, Respondent voluntarily entered into an "Agreed Order" with the Texas State Board of Medical Examiners. In the Agreed Order Respondent admitted that Respondent had ". . . engaged in an intimate personal relationship" with Jane Doe described in paragraph 7(b) above. Respondent admitted that he maintained the relationship with Jane Doe for two years and then terminated the relationship when Jane Doe would not relocate to Utah. Jane Doe subsequently filed a lawsuit against Respondent alleging physician-patient boundary violations by Respondent Respondent resolved Jane Doe's lawsuit with a monetary settlement

e. In the Texas Agreed Order Respondent admitted that Respondent failed to disclose the California licensing investigation, the surrender of his California license, and the settlement of Jane Doe's malpractice lawsuit against Respondent, to Texas licensing authorities on the application for license renewal that Respondent submitted in 1997.

f. In the Texas Agreed Order, Respondent admitted to unprofessional or dishonorable conduct likely to deceive or defraud the public Respondent was publicly reprimanded and Respondent was ordered to pay an administrative penalty of \$3,500 00.

g. On or about August 24, 1999, the Division issued an Order of Suspension immediately suspending Respondent's licenses to practice as a physician/surgeon and to administer and prescribe controlled substances in the State of Utah because Respondent failed to submit to a psychiatric examination as required by the Division. Respondent states that at that time Respondent stood accused of murder of five of his patients Respondent states that although he was personally willing to undergo a psychiatric examination as requested by the Division, his criminal defense counsel advised him not to do so.

h On or about September 8, 1999, the United State District Court, District of Utah, issued a 22 count indictment against Respondent alleging that Respondent obtained controlled substances by deception in violation of 21 USC 843(a)(3).

i. In 2001, Respondent pleaded guilty to two counts of obtaining controlled substances by deception, each a felony. Respondent admitted that on or about June 1, 1995, Respondent had obtained 200 mg of Demerol for a patient, injected only 100 mg of the Demerol and therefore obtained 100 mg of Demerol by fraud. Respondent admitted that on or about June 21, 1996, Respondent had obtained 30 mg of morphine for a patient, injected only 12 mg of the morphine and therefore obtained 18 mg of morphine by fraud. On or about September 11, 2002, Respondent was sentenced to a term of one year and one day of incarceration in a federal penitentiary and 12 months supervised release. Respondent was prohibited from practicing medicine during the period of supervised release.

j. On or about December 12, 2003, Respondent voluntarily entered into a Stipulation and Order with the Division in DOPL Case Nos. 1999-70, 1999-71, and 2002-318, wherein Respondent's licenses to practice as a physician/surgeon and to administer and prescribe controlled substances were deemed to have expired while under suspension when Respondent failed to renew them on or before April 30, 2000, or at any time thereafter. Respondent agreed that he would comply with the terms of the August 24, 1999, Order of Suspension before Respondent reapplied for licensure as a physician in the State of Utah.

k. Respondent states that after completing his federal criminal sentence, Respondent married in April 2004, and has been in a stable marriage ever since.

l. In January 2011, Respondent completed a comprehensive evaluation at the Pine Grove facility in Hattiesburg, Mississippi. This comprehensive evaluation satisfied the mental examination requirements set forth in the 1999 Order of Suspension described in subparagraph 7(g) above, and the requirement that Respondent comply with the Order of Suspension set forth in the Stipulation and Order in DOPL Case No. 1999-70, 1999-71, and 2002-318 described in subparagraph 7(j) above. Respondent also completed a three-day intensive professional boundaries course in May 2011 and a three-day physician prescribing course in June 2011. Respondent also passed the SPEX re-entry examination. Respondent completed an essay describing what he learned in the prescribing and boundary classes he completed and described what changes he will make in the future regarding his practice of medicine and presented the information to the Utah Physician Licensing Board.

m. Respondent has not worked as a physician since 1999.

8. Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a) and (c). Respondent agrees by engaging in such conduct the Division is justified in taking disciplinary action against the license.

Respondent will be receiving, pursuant to Utah Code Ann. § 58-1-401(2)(a) Respondent agrees that an Order, which constitutes disciplinary action by the Division against the license Respondent will be issued pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann. § 58-1-401(2), may be issued in this matter providing for the following action against Respondent's license.

- (1) The Division shall issue Respondent a license to practice as a physician/surgeon in the State of Utah. Respondent's license to practice as a physician/surgeon in the State of Utah shall be revoked, however, the revocation shall be immediately stayed. Respondent's license shall be subject to a term of probation for a period of five years. The period of probation shall commence when the Division Director signs the Order in this matter. During the period of probation Respondent's license shall be subject to all of the following terms and conditions. If the Board or Division later deems any of the conditions unnecessary, such deletions may be made by an amended order issued unilaterally by the Division and Board. At this time Respondent shall not be issued a license to administer and prescribe controlled substances in the State of Utah, however Respondent may apply for a license to administer and prescribe controlled substances only when Respondent has (i) been employed and practiced as a physician in the State of Utah for a period of one year, (ii) has received no negative comments from his supervisor in the reports submitted by the supervisor; (iii) Respondent's supervisor submits a letter to the Division and Board stating that Respondent may safely administer and prescribe controlled substances; (iv) Respondent's therapist submits a letter to the Division and Board stating that Respondent is prepared and able to safely administer and prescribe controlled substances, (v) Respondent complies with the drug and alcohol testing set forth in subparagraph 8(1)(u) and does not have any sample test positive for any substance for which Respondent does not have a valid prescription, or for alcohol, or tests abnormally dilute, and (vi) the Division receives confirmation from the Drug Enforcement Administration indicating that the DEA is considering issuing a Respondent a DEA registration certificate. The Division does not guarantee that any future application submitted by Respondent for a controlled substance license will be granted. If a controlled substance license is granted by the Division in the future, the license may be issued subject to terms and conditions as negotiated by Respondent and the Division.

- a. Respondent shall meet with the Division and Board at the next scheduled Board meeting following the effective date of this Stipulation and Order. Respondent shall meet with a Division staff person prior to

Respondent's first meeting with the Board to review this agreement. For the remainder of the duration of probation, Respondent shall meet with the Board or with the Division, as directed by the Division or Board, annually or at such other greater or lesser frequency as the Division or Board may direct.

b Failure of Respondent to pay the costs associated with this Stipulation and Order constitutes a violation of the Stipulation and Order

c All reports and documentation required in this Stipulation and Order shall be submitted to the Board on a monthly basis for the first six months of probation. If Respondent is in compliance with all terms and conditions of the Order at the end of that time, all reports and documentation shall be submitted on a quarterly basis for the remainder of probation. If Respondent is not in compliance with all terms and conditions of the Order, as determined by the Division and Board, by the end of the first six (6) months of probation, all reports and documentation shall be submitted on a monthly basis until Respondent is in compliance with the Order, after which all reports shall be submitted on a quarterly basis.

d. Respondent shall notify any employer of Respondent's restricted status and the terms of this agreement. Respondent shall cause Respondent's employer to provide periodic reports summarizing Respondent's compliance with the terms and conditions of this Stipulation and Order at a frequency described in subparagraph (c) above.

e. Respondent may not work in solo practice or be self-employed unless the Board and Division determine otherwise. Respondent shall only work for a hospital, clinic, or other group practice setting

f. Upon initially being employed, Respondent shall only perform duties including non-controlled medication management, chart review, and hospital/clinic administration, processing intake histories, and disability evaluations. The Division and Board may later expand the scope of Respondent's duties and tasks. Respondent shall not practice psychotherapy until the Division and Board determine that Respondent may safely do so

g Respondent shall work under the supervision of a supervisor pre-approved by the Division and Board. The supervisor shall be a physician / surgeon licensed and in good standing with the Division. Supervision goals shall include concurrent management, clinical treatment methods

and competency, professional boundaries, sobriety, professionalism, medical ethics, and compliance with all federal and state laws and rules. The supervisor shall address issues pertaining to safe prescribing and drug administering practices and any other issues the supervisor determines are pertinent to professional and ethical practice. The supervisor shall review 20% of Respondent's patient records. The supervisor, not Respondent, shall select which patient records shall be reviewed.

h. As Respondent has not practiced as a physician since 1999 Respondent shall successfully complete one of the following courses of retraining described in subparagraphs (I) and (ii) below. Respondent may only choose one of the following and may not start one and then switch to the other.

(i) **Re-education** Respondent shall undergo a re-education period wherein Respondent shall not have sole clinical responsibility for any patient. During the period of re-education, Respondent's supervisor shall be primarily responsible for all patient care and provide direct supervision, as defined in Utah Administrative Code R156-1-102a(4)(a), to Respondent at all times. Respondent's supervisor shall meet in person with the Division and Board prior to the beginning of the re-education period in order to ensure that the supervisor understands all of the duties and responsibilities of the supervisor. The Board and Division shall determine, with the input of the supervisor, when Respondent's reeducation period may be terminated and Respondent may be solely responsible for a patient's care. Respondent's supervisor must submit a letter to the Division and Board stating that Respondent is competent in his medical field and can safely practice as a physician/surgeon, before the Division and Board will permit Respondent to be solely responsible for any patient's care. Once the reeducation period is completed, Respondent shall meet with the supervisor on a weekly basis, or at whatever frequency is directed by the Division and Board, and be under the general supervision, as defined in Utah Administrative Code R156-1-102a(4)(c), for the remainder of the probationary period. The re-education period must be completed within 18 months once initiated.

(ii) **Mini-residency** Respondent shall successfully complete a mini-residency program. The director of the mini-residency program shall submit a letter to the Division indicating that

Respondent has been accepted into the mini-residency program and describing the curriculum and activities of the mini-residency program. The mini-residency program shall be pre-approved by the Division and Board. The mini-residency shall focus on Respondent's chosen specialty in medicine. Respondent shall be supervised during the mini-residency program. Respondent shall follow all procedures and directives of the mini-residency program. Respondent's mini-residency supervisor must submit a letter to the Division and Board stating that Respondent is competent in his medical field and can safely practice as a physician/surgeon, before the Division and Board will permit Respondent to be solely responsible for any patient's care. Once the mini-residency is completed, Respondent shall obtain a new supervisor, as described in subparagraph (g) above, and shall meet with that new supervisor on a weekly basis, or at whatever frequency is directed by the Division and Board. The mini-residency program must be completed within 18 months once initiated.

i. Respondent shall not be in the presence of any female patient unless a chaperone is in the immediate visible proximity of Respondent and the female patient. Each chaperone shall be pre-approved by the Division and Board. Each chaperone shall keep a Division pre-approved chaperone log of all female patients treated by Respondent. Respondent shall cause each chaperone's log to be provided to the Division and Board on a monthly basis or such other time period as determined by the Division/Board.

j. Respondent shall cause Respondent's supervisor to submit reports to the Board and Division assessing Respondent's compliance with the terms of Respondent's probation and ethics. The reports shall be submitted monthly for the first six months and quarterly thereafter, or at such frequency as directed by the Board and Division. The receipt of an unfavorable report may be considered to be a violation of probation.

k. Respondent shall successfully complete continuing medical education courses focused on personal boundaries, psychiatry, and prescribing, in order to satisfy the continuing medical education requirements for the period from January 31, 2012 through January 31, 2014. All courses shall be pre-approved by the Division and Board.

l. Respondent shall issue prescriptions for non-controlled medications only on sequentially numbered triplicate scripts. One copy of each prescription shall

remain in the patient chart and one copy of each prescription shall be sent by Respondent to the Division and Board within one month of issuance. The Division shall provide directions in the future regarding Respondent providing electronic medical record prescriptions to the Division and Board. The Division and Board may inspect these records at any time and may require Respondent to bring copies of the records to any meeting with the Board.

m. Respondent shall keep a log of all non-controlled medications administered by Respondent at any time. The log shall be submitted to the Division monthly.

n. Respondent shall submit a practice plan to the Division and Board within 90 days of the effective date of this Stipulation and Order. The practice plan shall be submitted in a format prescribed by the Division and Board. Respondent shall not practice medicine before the Division and Board approve the practice plan. The practice plan shall include how Respondent will monitor and control his prescribing and administering of non-controlled medications to comply with the law and recommended prescribing guidelines

o. Respondent shall successfully complete any treatment recommendations set forth in the Pine Grove comprehensive evaluation report. Respondent shall sign a release permitting Respondent's therapist(s) and counselor(s) to provide the Division and Board with reports, recommendations, evaluations, supporting documents, or any other materials, privileged or non-privileged, requested by the Division or Board. Respondent shall cause Respondent's therapist(s) and counselor(s) to immediately provide any materials requested by the Division and Board. In the interest of public safety, the Division or Board may impose additional requirements above and beyond those recommended by the evaluator in the Pine Grove comprehensive evaluation report. Respondent shall attend therapy with a Division pre-approved psychiatrist licensed in the State of Utah at the frequency determined by the Division and Board. Respondent agrees to comply with these additional requirements.

p. Unless otherwise approved by the Division and Board, Respondent shall, except as provided otherwise herein, receive prescriptions from only one prescribing practitioner, and Respondent shall fill prescriptions at only one pharmacy. Respondent shall not obtain the same or equivalent prescription drug or controlled substance from more than one practitioner. All prescribing practitioners must be informed of any and all of Respondent's addiction/abuse problems. Respondent shall not undertake, under any circumstance, to obtain prescription drugs in quantities or types that are not legitimately required. Respondent shall submit the names of the prescribing practitioner and pharmacy to the Division and Board for approval. Respondent shall provide the Division

and Board with a copy of all Respondent's prescriptions for prescription drugs, controlled substances, or any other mood altering substance, within two business days after the prescription has been written.

q. Prescriptions from an emergency practitioner or referral practitioner must be submitted to the Division and Board within two business days of being issued. Respondent shall report to the Division and Board within two business days any and all medications and controlled substances administered or dispensed to Respondent by any other individual

r Respondent shall report to the Division and Board within two business days any and all medications or controlled substances ingested by Respondent from any source.

s Respondent shall provide to the primary prescribing practitioner a copy of this Stipulation and Order and cause the practitioner to acknowledge to the Division and Board in writing that a copy of this Stipulation and Order has been provided to the primary prescribing practitioner

t. Although the use and possession of alcohol is generally legal for persons age 21 and older, Respondent agrees to abstain from the personal use or possession of alcohol in any form. Respondent agrees to abstain from the personal use or possession of controlled substances and prescription drugs, unless such controlled substance or prescription drug is lawfully prescribed to Respondent for a current bona fide illness or condition by a licensed practitioner and taken by Respondent in accordance with that practitioner's instructions Respondent shall abstain from the use of any and all other mood altering substances or use of mood altering substances for any other purpose than the purpose for which the substance is intended.

u Respondent shall provide samples (urine, blood, saliva, hair, or any other type of sample requested) for drug and alcohol analysis upon the request of the Division or Board, to be conducted by any company with which the Division has contracted to conduct drug testing The designated company may also request such samples and Respondent shall comply with such requests The Division or Board shall determine when and where Respondent is to submit for testing Respondent shall call in every day to determine whether Respondent is required to provide a sample for drug and alcohol analysis. Respondent shall pay for the cost of drug testing and shall accurately complete and sign any and all release forms requested by the Division or Board or the drug testing company with respect to drug testing, including but not limited to, forms authorizing the company to send the drug test results to the Division and Board Any report from

a drug and/or alcohol testing company that indicates that Respondent failed to provide a sample for drug and alcohol analysis as directed will be considered a positive drug test result for Respondent and will subject Respondent to additional sanctions. Any drug test result or pattern of results that indicates that the sample provided by Respondent for drug and alcohol analysis is diluted to an extent that it cannot be analyzed, will be considered a positive drug test result for Respondent and will subject Respondent to additional sanctions.

v. The Division may take appropriate action to impose sanctions if (i) Respondent tests positive for a prescription drug, a controlled substance, or any mood altering substance which cannot be accounted for by an administration or prescription by a lawful practitioner for a current medical condition; or (ii) Respondent violates any federal, state or local law relating to Respondent's practice, the Controlled Substance Act, or a term or condition of this Stipulation and Order. Sanctions may include revocation or suspension of Respondent's license, or other appropriate sanction, in the manner provided by law.

w. Respondent shall participate in all therapy and aftercare that the Pine Grove evaluation(s) recommend. Respondent shall authorize all approved treatment programs or therapists from whom Respondent has received or will receive treatment to discuss Respondent's diagnosis, treatment, and prognosis with the Division and Board. The program or therapist must also be directed to submit evaluations to the Division and Board that address Respondent's progress in treatment and Respondent's prognosis at the frequency described in subparagraph (c) above. Respondent may be required to complete a new evaluation when directed by the Division or Board if concerns arise with the Division and Board regarding Respondent's competency or performance.

x. If recommended in the evaluations, Respondent shall participate in a professional support group to address Respondent's use of drugs and alcohol and shall submit documentation that reflects Respondent's continuing and regular attendance at such support group meetings. Respondent shall submit such documentation to the Division and Board at the frequency described in subparagraph (c) above. Regular attendance for the purpose of this paragraph shall be at least twice a month.

y. If recommended in the evaluations, Respondent shall attend a 12-step program, have a sponsor, work the 12-step program and submit reports at the frequency described in subparagraph (c) above to the Division and Board documenting Respondent's participation. The frequency of participation shall be approved by the Division and Board. Unless otherwise directed, Respondent shall attend at least two times per month.

z. In the event Respondent does not practice for a period of sixty (60) days or longer, Respondent shall notify the Board in writing of the date Respondent ceased practicing. The period of time in which Respondent does not practice shall not be counted toward the time period of this Stipulation and Order. It shall be within the discretion of the Board to modify this requirement if Respondent satisfactorily explains to the Board that compliance in Respondent's case was impractical or unduly burdensome. Respondent must work at least ten (10) hours per week and no more than forty-eight (48) hours per week to be considered "practicing" in Respondent's profession

aa Respondent shall notify the Board in writing within one (1) week of any change of employer, employment status, or practice status. This notification is required regardless of whether Respondent is employed in Respondent's profession

bb If Respondent leaves the State of Utah for a period longer than sixty (60) days, Respondent shall notify the Division and Board in writing of the dates of Respondent's departure and return. The licensing authorities of the jurisdiction to which Respondent moves shall be notified by Respondent in writing of the provisions of this Stipulation and Order. Periods of residency or practice outside the State of Utah apply to the reduction of the period this Stipulation and Order is in effect, if the new state of residency places equal or greater conditions upon the Respondent as those contained in this Stipulation and Order.

cc If Respondent is arrested or charged with a criminal offense by any law enforcement agency, in any jurisdiction, inside or outside the State of Utah, for any reason, or should Respondent be admitted as a patient to any institution in this state or elsewhere for treatment regarding the abuse of or dependence on any chemical substance, or for treatment for any emotional or psychological disorder, Respondent agrees to cause the Division and Board to be notified within two business days. If Respondent at any time during the period of this agreement is convicted of a criminal offense of any kind, including an offense based on the conduct described in this Stipulation and Order, or enters a plea in abeyance to a criminal offense of any kind, including a pending criminal charge, the Division may take appropriate action against Respondent, including imposing appropriate sanctions, after notice and opportunity for a hearing. Such sanctions may include revocation or suspension of Respondent's license, or other appropriate sanctions.

dd Respondent shall maintain a current license at all times during the period of this agreement

ee Respondent shall immediately notify the Division in writing of any change in Respondent's residential or business address.

ff. Respondent shall submit reports on the date they are due and shall appear at scheduled meetings with the Division and Board promptly. Failure to do so shall be considered a violation of this Stipulation and Order.

9. Upon approval by the Director of the Division, this Stipulation and Order shall be the final compromise and settlement of this non-criminal administrative matter. Respondent acknowledges that the Director is not required to accept the terms of this Stipulation and Order and that if the Director does not do so, this Stipulation and the representations contained therein shall be null and void, except that the Division and the Respondent waive any claim of bias or prejudice they might otherwise have with regard to the Director by virtue of his having reviewed this Stipulation, and this waiver shall survive such nullification.

10. Respondent shall abide by and comply with all applicable federal and state laws, regulations, rules and orders related to the Respondent's licensed practice. If the Division files a Petition alleging that Respondent has engaged in new misconduct or files an Order to Show Cause Petition alleging that Respondent has violated any of the terms and conditions contained in this Stipulation and Order, the period of Respondent's probation shall be tolled during the period that the Petition or Order to Show Cause Petition has been filed and is unresolved.

11. This document constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, understandings or agreements between the parties regarding the subject of this Stipulation and Order. There are no verbal agreements that modify, interpret, construe or affect this Stipulation. Respondent agrees not to take any action or make any public statement, that creates, or tends to create, the impression that

any of the matters set forth in this Stipulation and Order are without factual basis. A public statement includes statements to one or more Board members during a meeting of the Board. Any such action or statement shall be considered a violation of this Stipulation and Order.

12. The accompanying Order becomes effective immediately upon the approval of this Stipulation and signing of the Order by the Division Director. Respondent shall comply with all the terms and conditions of this Stipulation immediately following the Division Director's signing of the Order page of this Stipulation and Order. Respondent shall comply with and timely complete all the terms and conditions of probation. If a time period for completion of a term or condition is not specifically set forth in the Stipulation and Order, Respondent agrees that the time period for completion of that term or condition shall be set by the Board or Division. Failure to comply with and timely complete a term or condition shall constitute a violation of the Stipulation and Order and may subject Respondent to revocation or other sanctions. If Respondent violates any term or condition of this Stipulation and Order, the Division may take action against Respondent, including imposing appropriate sanction, in the manner provided by law. Such sanction may include revocation or suspension of Respondent's license, or other appropriate sanction.

13. Respondent understands that the disciplinary action taken by the Division in this Stipulation and Order may adversely affect any license that Respondent may possess in another state or any application for licensure Respondent may submit in another state.

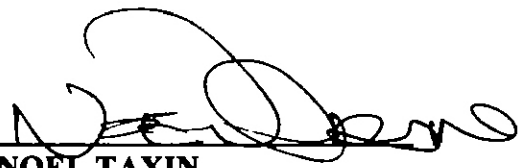
14. Respondent has read each and every paragraph contained in this Stipulation and Order. Respondent understands each and every paragraph contained in this Stipulation and

Order. Respondent has no questions about any paragraph or provision contained in this

Stipulation and Order

DIVISION OF OCCUPATIONAL &
PROFESSIONAL LICENSING

RESPONDENT


BY: 
NOEL TAXIN
Bureau Manager

BY 
ROBERT ALLAN WEITZEL
Respondent

DATE: 5/1/13

DATE: 5/1/2013

MARK L. SHURTLEFF
ATTORNEY GENERAL

BY: 
KARL G. PERRY
Counsel for the Division

DATE 5/1/2013

ORDER

THE ABOVE AMENDED STIPULATION, in the matter of **ROBERT ALLAN WEITZEL**, is hereby approved by the Division of Occupational and Professional Licensing, and constitutes my Findings of Fact and Conclusions of Law in this matter. The issuance of this Order is disciplinary action pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann § 58-1-401(2). The terms and conditions of the Stipulation are incorporated herein and constitute my final Order in this case

DATED this 7 day of May, 2013.

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING

W. Ray Walker, Acting Director
for **MARK B. STEINAGEL**
Director

