

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

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

IN THE MATTER OF THE LICENSES OF :
ROBERT ALLAN WEITZEL, MD : **NOTICE OF AGENCY ACTION**
TO PRACTICE AS A PHYSICIAN/SURGEON :
AND TO ADMINISTER AND PRESCRIBE :
CONTROLLED SUBSTANCES :
IN THE STATE OF UTAH : Case No. DOPL-2017-170

THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING TO
Robert Allan Weitzel ("Respondent"):

The Division of Occupational and Professional Licensing ("the Division") hereby files this notice of agency action. Said action is based on the Division's verified petition, a copy of which is attached hereto and incorporated herein by reference.

The adjudicative proceeding designated herein is to be conducted on a formal basis. It is maintained under the jurisdiction and authority of the Division as set forth in §58-1-401(2). **Within thirty (30) days of the mailing date of this notice, you are required to file a written response with this Division.** The response you file may be helpful to clarify, refine or narrow the facts and violations alleged in the verified petition.

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

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

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

Salt Lake City, Utah

Salt Lake City, Utah

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

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

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

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

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

If you fail to file a response within the 30 days allowed or fail to attend or participate in any scheduled hearing, Judge

Dibb may enter a default against you without any further notice to you.

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

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

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

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

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

April 18, 2017 at 9:00 a.m. by teleconference

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

Subject to the Department of Commerce Administrative Procedures Act Rules which govern this proceeding, this formal adjudicative proceeding must be completed within 180 calendar days from the date of issuance of this notice of agency action.

You are entitled by law to an evidentiary hearing to determine whether your licenses to practice as a physician/surgeon and to administer and prescribe controlled substances in the State of Utah should be revoked, suspended or subjected to other disciplinary action. Unless otherwise

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Assistant 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 OF)	PETITION
ROBERT ALLAN WEITZEL, M.D., TO)	
PRACTICE AS A PHYSICIAN AND SURGEON)	
AND TO PRESCRIBE AND ADMINISTER)	
CONTROLLED SUBSTANCES IN THE)	CASE NO. DOPL 2017-- 170
STATE OF UTAH)	

PRELIMINARY STATEMENT

These claims were investigated by the Utah Division of Occupational and Professional Licensing (the Division) upon complaints that Robert Allan Weitzel (Respondent), a licensee of the Division, has engaged in acts and practices which constitute violations of the Division of Occupational and Professional Licensing Act, Utah Code Ann. §§ 58-1-101 to 58-1-507 (2011), and the Utah Medical Practice Act, Utah Code Ann. §§ 58-67-101 to 58-67-806 (2011).

The allegations against the Respondent in this Petition are based upon information and belief arising out of the Division's investigation. Each count in this Petition shall be deemed to incorporate by reference the allegations set forth in the other paragraphs of the Petition.

PARTIES

1. The Division is a division of the Department of Commerce of the State of Utah as established by Utah Code Ann. § 13-1-2 (2010).

2. At all times material to the allegations contained herein, the Respondent was licensed by the Division to practice as a physician and surgeon in the State of Utah under the Utah Medical Practice Act, Utah Code Ann. §§ 58-67-101 to 58-67-806 (2011). From July 22, 2014 forward, the Respondent was allowed to administer and prescribe controlled substances, Schedules 2-5, pursuant to certain probationary conditions.

STATEMENT OF ALLEGATIONS

3. The Respondent was originally licensed to practice as a physician and surgeon in the State of Utah on or about June 19, 1992, license number 187798-1205. He was also first licensed to prescribe and administer controlled substances in the State of Utah on or about June 19, 1992, license number 187798-8905.

4. On or about February 14, 1997, the Respondent voluntarily surrendered his license to practice as a physician and surgeon to the State of California Medical Board (CMB) after the CMB filed an action alleging the Respondent had violated the physician-patient relationship/boundary by engaging in a sexual relationship with a psychiatric patient.

5. On or about August 19, 1998, the Respondent entered into an Agreed Order with the Texas State Board of Medical Examiners (the Texas A.O.). In the Texas A.O., the Respondent admitted that he had engaged in a sexual relationship with his California patient, that he had maintained this relationship for two years and then terminated it when his patient would not relocate to Utah. Further, the Respondent settled a malpractice lawsuit with this patient.

6. In the Texas A.O., the Respondent also admitted that on his 1997 Texas application for license renewal he had failed to disclose the California licensing investigation, the surrender of his California license, and the settlement of his California malpractice lawsuit in the case involving an inappropriate sexual relationship with a patient.

7. On or about August 24, 1999, the Division issued an Order of Suspension (the 1999 Order of Suspension) for the Respondent's licenses to practice as a physician and to administer and prescribe controlled substances, based on the Respondent's failure to submit to a psychiatric evaluation as required by the Division. As described below, this required examination was not completed until January 2011.

8. On or about September 8, 1999, the United States District Court, District of Utah, issued a 22-count indictment against the Respondent, alleging that he had obtained controlled substances by deception in violation of 21 U.S.C. § 843(a)(3). Thereafter, in 2001 the Respondent pleaded guilty through a negotiated plea agreement to two counts of obtaining controlled substances by deception, each a felony. On or about September 11, 2002, the

Respondent was sentenced to a term of incarceration in a federal penitentiary of one year and one day, and to 12 months supervised release.

9. On or about December 12, 2003, the Respondent voluntarily entered into a Stipulation and Order with the Division with regard to case numbers 1999-70, 1991-71, and 2002-318 (the 2003 Stipulation and Order). In this 2003 Stipulation and Order, the Respondent agreed that his licenses to practice as a physician and to administer and prescribe controlled substances expired while under suspension when he failed to renew them. Additionally, the Respondent agreed to comply with the terms of the 1999 Order of Suspension before he reapplied for licensure as a physician in the State of Utah.

10. In January 2011, the Respondent completed the mental examination requirements of the Utah 1999 Order of Suspension.

11. On or about October 6, 2011, the Respondent voluntarily entered into another Stipulated Agreement and Order with the Division, case number 2011-334, as set forth in Exhibit A attached hereto (the 2011 Stipulation and Order). In the 2011 Stipulation and Order, the Respondent admitted to unprofessional conduct. The Division issued the Respondent a license to practice as a physician/surgeon in the State of Utah, this license was then revoked with the revocation stayed, and the Respondent's license was placed on probation for five years subject to various terms and conditions.

12. On or about May 7, 2013, the Respondent and the Division agreed to amend the 2011 Stipulation and Order, and the Respondent voluntarily entered into an Amended Stipulation and

Order with the Division as set forth in Exhibit B attached hereto (the 2013 Amended Stipulation and Order). In the 2013 Amended Stipulation and Order, the Respondent admitted to unprofessional conduct, his license was revoked and the revocation stayed, and the Respondent's license was placed on probation for five years subject to various terms and conditions.

13. Under Subparagraph 8(1)(t) of the 2013 Amended Stipulation and Order, the Respondent agreed to abstain from the personal possession or use of alcohol in any form.

14. Under Subparagraph 8(1)(t) of the 2013 Amended Stipulation and Order, the Respondent also agreed to abstain from the personal use or possession of controlled substances and prescription drugs, unless such controlled substances or prescription drug were lawfully prescribed to the Respondent for a current bona fide illness or condition by a licensed practitioner and taken by the Respondent in accordance with that practitioner's instructions.

15. Under Subparagraph 8(1)(u) of the 2013 Amended Stipulation and Order, the Respondent agreed to drug and alcohol testing, and agreed to provide samples for drug and alcohol analysis upon the request of the Division or the Utah State Physician and Surgeon Board (the MD Board), to include urine, blood, saliva, hair, or any other type of sample requested for testing.

16. On or about October 15, 2013, pursuant to Subparagraph 8(1)(u) of the 2013 Amended Stipulation and Order, the Respondent reported to FirstMed Urgent Care Murray Clinic for a drug and alcohol test. The test result was positive for alcohol ingestion. The Respondent signed a chain of custody form which acknowledged that the specimen was sealed in

his presence. On or about October 23, 2013, Respondent appeared before the MD Board regarding this matter. When questioned regarding the positive drug test result, the Respondent stated he had been using Listerine mouthwash due to having laryngitis and coughing. Members of the MD Board stated the reported levels would not be a result of gargling with mouthwash, and the MD Board determined that the Respondent was non-compliant with the terms and conditions of his probationary license under the 2013 Amended Stipulation and Order.

17. On or about July 22, 2014, the 2013 Amended Stipulation and Order was amended to allow the Respondent to administer and prescribe controlled substances Schedules 2-5, subject to the same probationary conditions and restrictions that were previously in place, and with the additional restriction that the Respondent could not prescribe opioid medication until the Division and the MD Board granted approval.

18. On or about December 9, 2014, the 2013 Amended Stipulation and Order was further amended to allow the Respondent to practice “psychotherapy” in his practice as a physician/surgeon.

19. On or about December 17, 2014, pursuant to Subparagraph 8(1)(u) of the 2013 Amended Stipulation and Order, the Respondent reported to FirstMed Urgent Care Murray Clinic for a drug and alcohol test. The test result was positive for alcohol ingestion. The Respondent signed a chain of custody form which acknowledged that the specimen was sealed in his presence. On or about January 21, 2015, the Respondent again appeared before the MD Board, and when questioned regarding the positive result the Respondent stated that the result

was from his daily application of Androgel testosterone supplement, which uses alcohol to facilitate the medication to penetrate the epidermal barrier. The MD Board did not accept the Respondent's explanation, and the Board determined that the Respondent was non-compliant with the terms and conditions of his probationary license under the 2013 Amended Stipulation and Order.

20. On or about March 17, 2015, pursuant to Subparagraph 8(1)(u) of the 2013 Amended Stipulation and Order, the Respondent reported to FirstMed Urgent Care Murray Clinic for a drug and alcohol test. The test result showed an abnormal Creatinine level of 17.4 mg/ml, which is indicative of a diluted specimen. The Respondent signed a chain of custody form which acknowledged that the specimen was sealed in his presence.

21. On or about April 28, 2015, pursuant to Subparagraph 8(1)(u) of the 2013 Amended Stipulation and Order, the Respondent reported to FirstMed Urgent Care Murray Clinic for a drug and alcohol test. The test result showed an abnormal Creatinine level of 19.8 mg/ml, which is indicative of a diluted specimen. The Respondent signed a chain of custody form which acknowledged that the specimen was sealed in his presence.

22. On or about May 19, 2016, pursuant to Subparagraph 8(1)(u) of the 2013 Amended Stipulation and Order, the Respondent reported to FirstMed Urgent Care Murray Clinic for a drug and alcohol test. The test result showed an abnormal Creatinine level of 15.1 mg/ml, which is indicative of a diluted specimen. The Respondent signed a chain of custody form which acknowledged that the specimen was sealed in his presence.

23. On or about August 22, 2016, pursuant to Subparagraph 8(1)(u) of the 2013 Amended Stipulation and Order, the Respondent reported to FirstMed Urgent Care Murray Clinic for a drug and alcohol test. The APRN who observed the test reported that he saw the Respondent using a prosthetic penis in addition to the Respondent's natural, anatomical penis. The APRN reported that the Respondent was squeezing what appeared to be urine from the prosthetic penis. Accordingly, the urine was not tested as it was deemed to be an invalid sample. Attached hereto as Exhibit E is the APRN's written statement attesting to these facts (the APRN WS).

24. Under Subparagraph 8(1)(u) of the 2013 Amended Stipulation and Order, "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 the Respondent and will subject the Respondent to additional sanctions." Accordingly, the Respondent's August 22, 2016 invalid urine test was considered a positive drug test, and a violation of the terms and conditions of the Respondent's probationary license under the 2013 Amended Stipulation and Order.

25. On or about September 19, 2016, pursuant to Subparagraph 8(1)(u) of the 2013 Amended Stipulation and Order, the Respondent reported to FirstMed Urgent Care Murray Clinic for a drug and alcohol test. The scheduled test was to be a hair analysis test, but the Respondent reported for the test with his body completely shaved of all hair such that the test could not be performed. Again, under Subparagraph 8(1)(u) of the 2013 Amended Stipulation

and Order, since the Respondent failed to provide a sample for drug and alcohol analysis as directed, this September 19, 2016 test was considered positive, and a violation of the terms and conditions of the Respondent's probationary license under the 2013 Amended Stipulation and Order.

26. On September 21, 2016, the MD Board met and reviewed the Respondent's file, in addition to interviewing the Respondent. During the interview, the MD Board asked the Respondent about the August 22, 2016 test which involved the prosthetic penis. The Respondent denied the APRN's allegations, stating that the APRN was wrong and that, "It's my word and his word." The MD Board also asked the Respondent about the September 19, 2016 failed hair analysis test. In response, the Respondent stated that, "I'm an athlete, I swim," and claimed that this was why his entire body was shaved. After questioning by the MD Board, the Respondent then put forward another excuse for arriving at the drug testing center with a completely shaven body. The MD Board disputed the veracity of these statements by the Respondent, and the Board determined that the Respondent was non-compliant with the terms and conditions of the Respondent's probationary license under the 2013 Amended Stipulation and Order.

27. On or about September 30, 2016, pursuant to Subparagraph 8(1)(u) of the 2013 Amended Stipulation and Order, a test was scheduled to collect Respondent's nail clippings for drug testing. The Affinity-contracted collection site reported that the Respondent did not arrive for testing until 15 minutes prior to closing, and that the employee assigned to collect the nail clippings from the Respondent was unable to do so because the Respondent's fingernails and

toenails were cut so short that a sample could not be taken. Again, under Subparagraph 8(1)(u) of the 2013 Amended Stipulation and Order, since the Respondent failed to provide a sample for analysis as directed, this September 30, 2016 test was considered positive, and a violation of the terms and conditions of the Respondent's probationary license.

28. On or about October 7, 2016, pursuant to Subparagraph 8(1)(u) of the 2013 Amended Stipulation and Order, the Respondent reported to FirstMed Urgent Care Murray Clinic to have his blood tested for drugs and alcohol. The conducted Phosphatidyl Ethanol (PEth) test indicated a positive result for alcohol. The result indicated 28 ng/mL, which was interpreted by Dr. Barry Lubin, Medical Review Officer for Affinity eHealth, as an indication of consumption of a minimum of seven ounces of alcohol in the 14 to 17 days prior to the October 7, 2016, blood test. The Respondent signed a chain of custody form which acknowledged that the specimen was sealed in his presence.

29. On November 16, 2016, the MD Board met and again reviewed the Respondent's file, in addition to interviewing the Respondent. During this interview, the Respondent denied that he knew that the September 30, 2016 test was going to be for nail clippings and denied that he had clipped his nails too closely for samples to be taken. The Respondent also alleged that the October 7, 2016 PEth test was insufficient, and he claimed that his positive alcohol result was from his daily application of an Androgel testosterone supplement, which uses alcohol to facilitate the medication to penetrate the epidermal barrier. After discussion, the MD Board determined that the Respondent was again non-compliant with the 2013 Amended Stipulation

and Order. By a motion and a unanimous vote, the MD Board recommended to the Division that the Respondent's active-on-probation licenses to practice as a physician and to prescribe controlled substances be revoked, and that legal proceedings should be started to determine whether or not the Respondent had been compliant with the 2013 Amended Stipulation and Order.

30. On or about January 4, 2017, pursuant to Subparagraph 8(1)(u) of the 2013 Amended Stipulation and Order, the Respondent was scheduled for another test to collect nail clippings for testing. Again, the nail test could not be conducted because the Respondent's fingernails and toenails were cut so short that a sample could not be taken. Under Subparagraph 8(1)(u) of the 2013 Amended Stipulation and Order, since the Respondent failed to provide a sample for analysis as directed, this January 4, 2017 test was considered positive, and a violation of the terms and conditions of the Respondent's probationary license under the 2013 Amended Stipulation and Order.

31. On or about January 4, 2017, pursuant to Subparagraph 8(1)(u) of the 2013 Amended Stipulation and Order, the Respondent reported to Mobile Drug Testing, North Salt Lake County, for a drug and alcohol test. The conducted PEth test indicated a positive result for alcohol. The result indicated 24 ng/mL, which was interpreted by Dr. Barry Lubin, Medical Review Officer for Affinity eHealth, as an indication of consumption of a minimum of seven ounces of alcohol in the 14 to 17 days prior to the January 4, 2017 blood test. The Respondent signed a chain of custody form which acknowledged that the specimen was sealed in his presence.

APPLICABLE LAW/RULES

32. Subsections (a) and (b) of Utah Code Ann. § 58-1-401(2) (1996) give the Division the legal authority to “revoke, suspend, restrict, place on probation, issue a public or private reprimand to, or otherwise act upon the license of any licensee” when “the licensee has engaged in unprofessional or unlawful conduct, as defined by statute or rule under this title[.]”

33. Subsection (b) of Utah Code Ann. § 58-1-501(2) (2011) defines “unprofessional conduct” to include:

(b) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title.

34. Subsection (a) of Utah Code Ann. § 58-1-501(2) (2011) defines “unprofessional conduct” to include:

(a) violating, or aiding or abetting any other person to violate, any statute, rule, *or order* regulating an occupation or profession under this title. (Emphasis added).

35. Subsection (h) of Utah Code Ann. § 58-1-501(2) (2011) defines “unprofessional conduct” to include:

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

36. Utah Admin. Code R156-1-102(2) defines aggravating circumstances as any consideration or factors that may justify an increase in the severity of an action to be imposed upon an applicant or licensee. Subsections a, b, c, d, e, f, g and i specifically identify the

following aggravating circumstances:

- (a) prior record of disciplinary action, unlawful conduct or unprofessional conduct;
- (b) dishonest or selfish motive;
- (c) pattern of misconduct;
- (d) multiple offenses;
- (e) obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the Division;
- (f) submission of false statements or other deceptive practices during the disciplinary process including creating, destroying or altering records after an investigation has begun;
- (i) lack of good faith to make restitution or to rectify the consequences of the misconduct involved.

37. Utah Admin. Code R156-67-502(15) defines “unprofessional conduct” to include violation of any provision of the AMA Code of Medical Ethics, 2012-2013 edition.

38. Principle II of the AMA Code of Ethics states that a “physician shall uphold the standards of professionalism, be honest in all professional interactions, and strive to report physicians deficient in character or competence, or engaging in fraud or deception, to appropriate entities.”

COUNTS I-VIII:
UNPROFESSIONAL CONDUCT:
VIOLATING THE CONDITIONS OF HIS 2013 PROBATIONARY
AGREEMENT

39. Paragraphs 1 through 38 are incorporated herein and by this reference made a part hereof.

40. As described in Paragraphs 1 through 38, the Respondent violated Subparagraphs 8(1)(t) and (u) of the 2013 Amended Stipulation and Order on eight different occasions (when he

tested positive for alcohol on October 15, 2013, December 17, 2014, October 7, 2016, and January 4, 2017; when he failed to provide samples or reported to a drug testing site in a physical condition that resulted in a failure to provide samples on September 19, 2016, September 30, 2016, and January 4, 2017; and when suspicious circumstances resulted in a positive drug/alcohol test result on August 22, 2016). Therefore, the Respondent has engaged in unprofessional conduct pursuant to Utah Code Ann. § 58-1-501(2)(b). The Respondent's noncompliant and unprofessional conduct gives the Division the legal authority to impose sanctions against the Respondent's license pursuant to Utah Code Ann. § 58-1-401(2)(a). There are also a number of aggravating circumstances associated with these eight instances of noncompliance that justify an increase in the severity of disciplinary action that should be imposed against the Respondent. The Respondent's prior record of disciplinary action, his pattern of misconduct, his multiple offenses, his dishonest or selfish motive, his obstruction of the disciplinary process by intentionally failing to comply with Division orders, his submission of false statements during the disciplinary process and his lack of good faith to rectify the consequences of his misconduct all support a conclusion that the disciplinary sanctions in this case should be severe.

COUNTS IX-XII:
UNPROFESSIONAL CONDUCT:
ATTEMPTING TO PRACTICE AN OCCUPATION BY ANY FORM OF
ACTION/COMMUNICATION WHICH IS FALSE, MISLEADING, DECEPTIVE
OR FRAUDULENT AND/OR VIOLATING THE AMA CODE OF ETHICS
REQUIRING A PHYSICIAN TO BE HONEST IN ALL PROFESSIONAL INTERACTIONS

41. Paragraphs 1 through 38 are incorporated herein and by this reference made a part hereof.

42. As described in Paragraphs 1 through 38, on August 22, 2016, an APRN at the drug testing site reported that he witnessed the Respondent squeezing what appeared to be urine from a prosthetic penis during the drug testing. Further, the Respondent cut his finger and toe nails too short to allow scheduled nail clipping testing on September 30, 2016 and January 4, 2017; and he shaved off all of his body hair, which prevented a scheduled body hair test on or about September 19, 2016. Therefore, on at least four occasions, the Respondent has engaged in unprofessional conduct pursuant to Utah Code Ann. § 58-1-501(2)(h), § 58-1-501(2)(b), Utah Admin. Code R156-67-502(15) and AMA Code of Ethics Principle II. The Respondent's repeated deceptive, misleading and unethical conduct gives the Division the legal authority to impose sanctions against the Respondent's license pursuant to Utah Code Ann. § 58-1-401(2)(a). Again, there are also a number of aggravating circumstances associated with these four instances of deceptive/unethical conduct that justify an increase in the severity of disciplinary action that should be imposed against the Respondent. The Respondent's pattern of misconduct, his multiple offenses, his dishonest or selfish motive, his obstruction of the disciplinary process by intentionally failing to comply with Division orders, his submission of false statements during the disciplinary process and his lack of good faith to rectify the consequences of his misconduct all support a conclusion that the disciplinary sanctions in this case should be severe. Lastly, there are at least three additional testing results, on March 17, April 28, and May 19, 2015, that

warrant closer attention in this case. On each of these dates, the Respondent's test results showed abnormal creatinine levels, which is indicative of a diluted and possibly altered urine sample.

COUNTS XIII-XX:
UNPROFESSIONAL CONDUCT:
ATTEMPTING TO PRACTICE AN OCCUPATION BY ANY FORM OF
ACTION/COMMUNICATION WHICH IS FALSE, MISLEADING, DECEPTIVE
OR FRAUDULENT AND/OR VIOLATING THE AMA CODE OF ETHICS
REQUIRING A PHYSICIAN TO BE HONEST IN ALL PROFESSIONAL INTERACTIONS
DURING HIS EXPLANATIONS FOR PROBATION VIOLATIONS IN MD BOARD
MEETINGS

43. Paragraphs 1 through 38 are incorporated herein and by this reference made a part hereof.

44. As described in Paragraphs 1 through 38, the Respondent gave the following excuses/explanations to the MD Board during MD Board Meetings:

- a. On October 23, 2013, the Respondent stated that his positive alcohol test result was due to Listerine mouthwash he was using for laryngitis and coughing;
- b. On January 21, 2015, the Respondent stated that his positive alcohol test was due to his daily application of an Androgel testosterone supplement;
- c. On September 21, 2016, the Respondent stated that the prosthetic penis incident on August 22, 2016 was "my word and his word." The Respondent did not admit to using a prosthetic penis. On the same day, the Respondent informed the MD Board that the September 19, 2016 failed hair analysis test was the result of him being an athlete. He told the MD Board that he swam, and that was why his entire body was shaved. After questioning by the MD Board, the Respondent then gave the MD Board Members another excuse for shaving all of his bodily hair.
- d. On November 16, 2016, the Respondent denied that he knew about the nail clipping test on September 30, 2016 and also denied that he had clipped his nails too closely for samples to be taken. On the same day, the Respondent informed the MD Board that the October 7, 2016 PEth test was

insufficient, and that the positive alcohol test result was due to his daily application of an Androgel testosterone supplement.

By making these misleading, deceptive and false statements to the MD Board during Board Meetings, the Respondent has engaged in unprofessional conduct pursuant to Utah Code Ann. § 58-1-501(2)(h), § 58-1-501(2)(b), Utah Admin. Code R156-67-502(15) and AMA Code of Ethics Principle II. The Respondent's repeated deceptive, misleading and unethical conduct gives the Division the legal authority to impose sanctions against the Respondent's license pursuant to Utah Code Ann. § 58-1-401(2)(a). Again, there are also a number of aggravating circumstances associated with these eight instances of deceptive/unethical conduct that justify an increase in the severity of disciplinary action that should be imposed against the Respondent. The Respondent's pattern of misconduct, his multiple offenses, his dishonest or selfish motive, his obstruction of the disciplinary process by intentionally failing to comply with Division orders, his submission of false statements during the disciplinary process and his lack of good faith to rectify the consequences of his misconduct all support a conclusion that the disciplinary sanctions in this case should be severe. Significantly, on September 19, 2016, the Respondent's deceptive/misleading conduct was especially egregious when he gave the MD Board Members two different excuses for shaving all of the hair on his body.

WHEREFORE, the Division requests the following relief:


1. That the Respondent be adjudged and decreed to have engaged in the acts alleged herein;

2. That by engaging in the above acts, the Respondent be adjudged and decreed to have violated provisions of the Division of Occupational and Professional Licensing Act, and the Utah Medical Practice Act;

3. That the Respondent's license to practice as a physician and surgeon in the State of Utah be revoked;

4. That appropriate sanctions, such as a suspension, a mandated physical, mental and/or psychological/psychiatric evaluation, educational classes, a probationary license, fines, a DOPL-approved supervisor and other relevant disciplinary actions, be imposed against the Respondent's licenses to practice as a physician and surgeon and to prescribe and administer controlled substances in the State of Utah.

Respectfully submitted this 8th day of March, 2017.



Dan Lau, AAG