

**BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA**

* * * * *

In the Matter of Charges and)
)
Complaint Against)
)
JOSEPH C. EMPEY, M.D.,)
)
Respondent.)

Case No. 13-38678-1

FILED

JAN 10 2013

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: _____

COMPLAINT

The Investigative Committee of the Nevada State Board of Medical Examiners (Board), composed of Theodore B. Berndt, M.D., Ms. Valerie J. Clark, BSN, RHU, LUTCF, and Michael J. Fischer, M.D., at the time of the authorization of filing this formal Complaint, by and through Edward O. Cousineau, Esq., Deputy Executive Director for the Board and counsel for the Investigative Committee, having a reasonable basis to believe that Joseph C. Empey, M.D., hereinafter referred to as "Respondent," has violated the provisions of Nevada Revised Statutes (NRS) Chapter 630, hereby issues its formal Complaint, stating the Investigative Committee's charges and allegations, as follows:

1. Respondent was licensed to practice medicine in the state of Nevada on October 24, 2011, Respondent's license to practice medicine is currently in active status, and at all times alleged herein, Respondent was licensed in active status by the Board pursuant to the provisions of Chapter 630 of the NRS.

2. In August of 2012, Respondent entered into a Stipulation and Order with the Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah (see Exhibit 1), which acknowledged that he had previously engaged in conduct which justified disciplinary action against him. The Stipulation and Order called for Respondent to be publicly reprimanded, as well as accomplishing other additional terms as conditions of the

1 Stipulation. Of import, Respondent never noticed the Board of the Stipulation and Order entered
2 into between himself and the state of Utah.

3 3. Section 630.301(3) of the NRS provides that any disciplinary action, including
4 without limitation, the revocation, suspension, modification or limitation of the license to practice
5 any type of medicine by any other jurisdiction, is grounds for disciplinary action.

6 4. The disciplinary action related to Respondent's license to practice medicine in the
7 state of Utah constitutes a violation of the provisions of NRS 630.301(3).

8 5. Section 630.306(11) of the NRS provides that the failure by a licensee to report in
9 writing, within 30 days, any disciplinary action taken against the licensee by another state, is
10 grounds for disciplinary action.

11 6. The failure of Respondent to report to the Board the disciplinary action in the state
12 of Utah constitutes a violation of NRS 630.306(11).

13 7. Based upon the forgoing, Respondent has violated NRS 630.301(3) and
14 NRS 630.306(11), and is subject to discipline by the Board as provided NRS 630.352.

15 WHEREFORE, the Investigative Committee prays:

16 1. That the Board fix a time and place for a formal hearing;

17 2. That the Board give Respondent notice of the charges herein against him, the time
18 and place set for the hearing, and the possible sanctions against him;

19 3. That the Board determine what sanctions it determines to impose for the violation or
20 violations committed by Respondent; and

21 4. That the Board make, issue and serve on Respondent its findings of fact, conclusions
22 of law and order, in writing, that includes the sanctions imposed.

23 DATED this 10th day of January, 2013.

24
25 INVESTIGATIVE COMMITTEE OF
26 THE NEVADA STATE BOARD OF MEDICAL EXAMINERS

27 By:



28 Edward O. Cousineau, Esq.
Attorney for the Investigative Committee of the
Nevada State Board of Medical Examiners

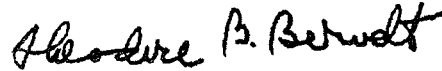
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

STATE OF NEVADA)
 : ss.
COUNTY OF WASHOE)

Theodore B. Berndt, M.D., having been duly sworn, hereby deposes and states under penalty of perjury that he is the Chairman of the Investigative Committee of the Nevada State Board of Medical Examiners that authorized the Complaint against the Respondent herein; that he has read the foregoing Complaint; and that based upon information discovered in the course of the investigation into a complaint against Respondent, he believes that the allegations and charges in the foregoing Complaint against Respondent are true, accurate, and correct.

Dated this 10th day of January, 2013.



Theodore B. Berndt, M.D.

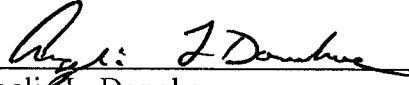
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

I hereby certify that I am employed by Nevada State Board of Medical Examiners and that on 10th day of January 2013; I served a filed copy of the Complaint w/exhibit and Fingerprint information via USPS e- certified return receipt mail to the following:

Joseph C. Empey, M.D.
368 E. riverside Dr., Ste. 3B
Saint George, UT 84790-7068

Dated this 10th day of January, 2013.



Angelia L. Donohoe
Legal Assistant

EXHIBIT

1

EXHIBIT

1

DAN LAU (USB No. 8233)
Assistant Attorney General
MARK L. SHURTLEFF (USB No. 4666)
Utah Attorney General
Commercial Enforcement Division
Heber M. Wells Building, Fifth Floor
Box 146741
Salt Lake City, Utah 84114-6741
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 LICENSES OF)
JOSEPH COURTNEY EMPEY TO PRACTICE) STIPULATION AND ORDER
AS A PHYSICIAN/SURGEON AND TO)
ADMINISTER AND PRESCRIBE) CASE NO. : DOPL 2012- 382
CONTROLLED SUBSTANCES IN THE STATE)
OF UTAH)

JOSEPH COURTNEY EMPEY ("the Respondent") and the DIVISION OF
OCCUPATIONAL AND PROFESSIONAL LICENSING ("the Division") of the Department
of Commerce of the State of Utah stipulate and agree as follows:

1. The Respondent admits the jurisdiction of the Division over himself and over the subject matter of this action.
2. The Respondent acknowledges that he enters into this Stipulation and Order ("Stipulation") knowingly and voluntarily.
3. The Respondent understands that he has the right to be represented by counsel in this matter and his signature below signifies that he has either consulted with an attorney or that he

waives his right to counsel in this matter.

4. The Respondent understands that he is entitled to a hearing before the State of Utah's Physician Licensing Board ("Board"), or other Division Presiding Officer, at which time he may present evidence on his own behalf, call witnesses, and confront adverse witnesses. The Respondent also understands that by executing this document he hereby waives the right to a hearing and any other rights to which he may be entitled in connection with said hearing, including the right to present evidence on his own behalf, the right to call witnesses, and the right to confront adverse witnesses. The Respondent understands that by signing this document he hereby knowingly and intelligently waives the right to all administrative and judicial review as set forth in Utah Code Ann. §§ 63G-4-301 through 63G-4-405, and Utah Administrative Code R151-46b-12 through R151-46b-15. The Respondent and the Division hereby express their intent that this matter be resolved expeditiously through stipulation as contemplated in Utah Code Ann. § 63G-4-102(4). The Respondent further understands that this Stipulation acts as a de facto Petition and Notice of Agency Action, and that his decision to enter into a settlement agreement with the Division, in effect, waives the right to the issuance of a Petition and a Notice of Agency Action in this matter.

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

6. The Respondent admits the following facts are true:

a. On or about November 2, 2004, the Respondent was first licensed to practice as a

physician and surgeon and to administer and prescribe controlled substances in the State of Utah.

b. On or about October 2, 2008, following a referral from a retiring family physician, the Respondent first evaluated John Doe for pain stemming from a sports-related injury. The patient informed the Respondent of a medical history of taking various pain medications for many years, including large amounts of opioid medications. The Respondent prescribed Fentanyl 50 mg patches and Norco 10mg tablets to John Doe for the treatment of pain.

c. The Respondent had John Doe enter into a medication management agreement where the Respondent was to be the sole prescriber of controlled substances and that any new or uncommon medical condition would be reported. A controlled substance database report and urine toxicology screening were also conducted by the Respondent in his initial evaluation of John Doe.

d. In November of 2008, John Doe was seen by the Respondent and reported his pain was inadequately managed by the current medications. John Doe and the Respondent agreed to wait to change any medications until December of 2008 because John Doe was going out of town. On December 23, 2008, the Respondent met with John Doe. Based on the recommendations of at least two opioid conversion charts as well as prior package insert information, a prescription for Methadone 10 mg tablets, with directions to take two to three tablets by mouth every four hours as needed for pain, not to exceed 12 per day, was given. John Doe filled that prescription.

e. On or about December 26, 2008, John Doe was found deceased at his residence. In violation of the medication agreement, John Doe had failed to disclose to the Respondent on December 23, 2008 that he had received drug rehabilitation treatment in California in early December 2008. In addition and unbeknownst to the Respondent, upon completing the treatment John Doe received a prescription for Clonazepam 2mg tablets #90 from a California physician. The police investigation of John Doe's death revealed that John Doe's long-term girlfriend had recently left him, and that by the time of his death, John Doe had consumed 13 Methadone tablets and 30 of the Clonazepam tablets.

f. Despite John Doe's omissions, the Respondent prescribed excessive doses of Methadone to John Doe on December 23, 2008. The Respondent was also not informed of an FDA advisory in 2006 that dealt with contraindications related to prescribing Methadone. As a result, the Respondent's negligence was a cause in John Doe's death.

7. The Respondent admits that his conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a) and (g) and Utah Admin. Code R156-1-501(6). The

Respondent also admits/agrees that his conduct described above justifies disciplinary action against his licenses pursuant to Utah Code Ann. § 58-1-401(2)(a). The Respondent agrees that an Order, which constitutes disciplinary action against the Respondent's license by the Division pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann. § 58-1-401(2)(a), shall be issued in this matter providing for the following action against the Respondent's licenses:

- (a) The Respondent's licenses to practice as a physician/surgeon and to administer and prescribe controlled substances shall be publicly reprimanded for the conduct described above.
- (b) The Respondent shall successfully complete the PACE (Physician Assessment and Clinical Education Program) prescribing course offered through the University of San Diego School of Medicine within six months of the effective date of this Stipulation. The parties note that the Respondent has already successfully completed this prescribing course.
- (c) The Respondent will seek peer review when prescribing and using Methadone for the treatment of pain with his patients in new or complicated cases.

8. This Stipulation, upon approval by the Director of the Division, shall be the final compromise and settlement of this non-criminal administrative matter. The Respondent acknowledges that the Director is not required to accept the terms of this Stipulation, 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 have with regard to the Director by virtue of his having reviewed this Stipulation, and this waiver shall survive such nullification.

9. The Respondent agrees to abide by and comply with all applicable federal and state laws, regulations, rules and orders related to his practice as a physician and the administering and

prescribing of controlled substances.

10. The Division and the Respondent agree that the language in the Division's on-line newsletter regarding this matter shall read:

Cause of Action: The Respondent engaged in unprofessional conduct related to a methadone prescription given to a patient in December of 2008. Due to a number of complicating factors, including the patient's failure to disclose detoxification treatment in early December 2008, the patient's failure to disclose the obtainment of a benzodiazepine prescription during the same time period, and the Respondent's problematic methadone prescription, the patient was found deceased at his home on December 26, 2008.

Order: The Respondent was given a public reprimand for the above conduct, was ordered to attend the PACE (Physician Assessment and Clinical Education Program) prescribing course offered through the University of California, San Diego's School of Medicine, which he has completed, and was ordered to seek peer review when prescribing and using methadone for the treatment of pain with his patients in new or complicated cases.

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. There are no verbal agreements that modify, interpret, construe or affect this Stipulation.

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

13. If the Respondent violates any term or condition of this Stipulation, the Division may take action against the Respondent, including imposing appropriate sanctions, in the manner provided by law.

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

15. The sanctions and penalties in this Stipulation are appropriate for and strictly limited to the EXACT FACTS OF THIS CASE because of the unique nature of this case.

DIVISION OF OCCUPATIONAL &
PROFESSIONAL LICENSING

BY: [Signature]
NOEL TAXIN
Bureau Manager

DATE: 8/23/12

RESPONDENT

BY: [Signature]
JOSEPH COURTNEY EMPEX
Respondent

DATE: August 16 2012

ACKNOWLEDGED AND APPROVED:
MARK L. SHURTLEFF
ATTORNEY GENERAL

BY: [Signature]
Dan Lau**
Counsel for the Division

DATE: 8/23/12

[Signature]
Peter Stirba, Julia Kote
Counsel for the Respondent

DATE: 8/17/2012

**Division Counsel's signature above is also specific verification that the Respondent has completed the PACE prescribing course described in provision 7b of this Stipulation and does not have to take the class again.

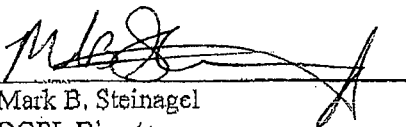
ORDER

THE ABOVE STIPULATION AND ORDER, in the matter of JOSEPH COURTNEY EMPEY, 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)(a). The terms and conditions of the Stipulation are incorporated herein and constitute my final Order in this case.

DATED this 28th day of August, 2012.



DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING


Mark B. Steinagel
DOPL Director