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

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IN THE MATTER OF THE LICENSES OF	:	<b>EMERGENCY ORDER</b>
DRAKE GLEN VINCENT, M.D., TO PRACTICE	:	
AS A PHYSICIAN AND SURGEON AND TO	:	
PRESCRIBE AND ADMINISTER	:	Case No. DOPL 2015-355
CONTROLLED SUBSTANCES IN THE STATE	:	
OF UTAH	:	

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The Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah (the "Division") initiated an Emergency Adjudicative Proceeding pursuant to Utah Code Ann. § 63G-4-502, the Utah Administrative Procedures Act; Utah Code Ann. § 58-1-108(2), the Division of Occupational and Professional Licensing Act; and Utah Administrative Code R151-4-111, the Department of Commerce Administrative Procedures Act Rules. The Division initiated the Emergency Administrative Proceeding upon evidence that the continued practice of Drake Glen Vincent (the "Respondent") as a physician and surgeon represented an immediate and significant danger to the public health, safety, and welfare; and that the threat required immediate action by the agency.

Before taking this action, the Chair of the Physician Licensing Board appointed a four-member committee to review with the Division the proposed action in this matter, pursuant to Utah Code Ann. § 58-1-108(2).

Pursuant to the Open and Public Meetings Act, Utah Code Ann. § 52-4-1, the Division provided notice of the meeting of the committee for 3:15 p.m. on June 25, 2015, at the Heber M. Wells Building located at 160 East 300 South, Salt Lake City, Utah. Notice of the Emergency Hearing was placed in the lobby of the Heber Wells Building and on the DOPL/public information website on or about June 24, 2015. The committee convened at the appointed date and time. The meeting of the committee was closed pursuant to Utah Code Ann. § 52-4-205(1) (a) in order to discuss the professional competence and character of an individual. The presiding committee member affirmed under oath that the meeting was closed for that purpose. The committee reviewed the Division's proposed action and considered information in the form of testimony, affidavits and exhibits. The Division, having considered the committee's recommendations, makes the following Findings of Fact, Conclusions of Law, and Order.

#### **FINDINGS OF FACT**

1. That since January 13, 2005 the Respondent has been licensed to practice as a physician and surgeon, and to prescribe and administer controlled substances in the State of Utah, license numbers 5767298-1205 and 5767298-8905.
2. That on or about July 2013, four of the Respondent's office staff members postponed a surgical procedure because they believed the Respondent was not fit or in the right physical condition at the time to competently handle the surgical procedure. The Respondent was acting nervous, sweating profusely and his hands were shaking abnormally. The Respondent told these

staff members that he had consumed a number of Red Bull energy drinks. The Respondent then admitted to his staff that he had been taking controlled substances from his office and using them, and that he had always had a drug problem. He promised to go to drug rehabilitation if anything more ever happened. The Respondent denied being impaired on this day and finished the surgery that was postponed.

3. That on or about July 2013, the Respondent asked VR, a registered nurse in the Respondent's office, to dispose of altered and/or opened drug containers. VR refused to do so because she would have been violating federal drug laws by improperly disposing of the drugs.

4. That on or about September 9, 2013, the Drug Enforcement Agency ("DEA") executed a search warrant on the Respondent's medical offices in Cottonwood Heights, Utah upon allegations that the Respondent was obtaining controlled substances from the medical office's drug lock-box for self use, and that the Respondent was changing or forging the drug dispensing log at Vincent Surgical Arts, LLC. The DEA seized opened or altered containers of Demerol, Fentanyl, Ketamine, Medazolam, Hydromorphone and Ativan from the Respondent's drug lockbox.

5. That on September 16, 2013, the Respondent voluntarily surrendered his DEA registration certificate for controlled substances schedules 2-5 after the DEA learned of allegations that the Respondent was diverting controlled substances in his office.

6. That on June 12, 2014 the Division suspended the Respondent's controlled substance license, number 5767298-8905, pursuant to Utah Code Annotated § 58-37-6(4)(g), after the

Division learned the Respondent had surrendered his DEA registration certificate for controlled substances schedules 2-5.

7. That on December 20, 2012 and March 27, 2013, VR and KW, the Respondent's CRNA, noted discrepancies in the Respondent's Controlled Substance Log. VR and KW signed the logs indicating discrepancies were present with the drug counts and informed the Respondent of these discrepancies.

8. On May 21, 2015, the Respondent arrived to work late. His surgical patients were waiting. AP, the Respondent's scrub technician, was in the operating room for the first surgery of the day. She and KW, the office CRNA, were present when the Respondent sedated the patient. The Respondent commonly leaves the operating room for approximately 15 minutes after a patient is sedated and while the CRNA and scrub technician are monitoring the patient. In this particular case, the Respondent had not returned for approximately an hour, and the patient had been maintained in a sedated state for the entire time. TR, one of the Respondent's employees, went to get the Respondent and found him asleep or passed out in his office. AP and KW met with JJ, the office manager, after the first surgery to discuss their serious concerns about the Respondent's ability to safely perform surgeries. KW and AP believed the Respondent was impaired and wanted to cancel the remaining four scheduled surgeries that day.

Before the second surgery, the Respondent again left the operating room after sedating the patient, and he was again found asleep in his office prior to the surgery. AP observed that this second surgery went "a little better" than the first operation, but she also thought the

Respondent was still “out of it”. Prior to being anesthetized, the second patient, concerned about the Respondent’s physical condition that day, asked the Respondent, “are you ok to do the surgery?” After the second surgery was completed, the Respondent forgot about the remaining four scheduled surgeries, and no one reminded him of the waiting patients. The four remaining surgeries were cancelled and rescheduled.

### **CONCLUSIONS FROM THE FACTS**

1. That the Respondent’s unprofessional conduct as described above and pursuant to Utah Code Ann. § 58-1-501(2)(a), (b), and (e) poses an immediate and significant danger to the public health, safety, and welfare; and requires immediate action by the Division. In particular, the Respondent has a history of drug use and drug diversion. He admitted to taking controlled substances from his office and using them, he promised to go to drug rehabilitation if anything more ever happened, and he offered to give up his keys to his medical office so that even if he did obtain the code to the drug lock-box, he would be unable to access the controlled substances. The Respondent voluntarily surrendered his DEA registration for controlled substances schedules 2-5, the Division suspended the Respondent’s controlled substance license, number 5767298-8905, and there is a pending disciplinary proceeding dealing with the Respondent’s controlled substance problems. Even though the Respondent has been put on notice of the Division’s serious concerns with his substance abuse issues and erratic professional behavior, he still left a patient sedated for approximately an hour on May 21, 2015 while he was either passed out or asleep in his office. The office CRNA and scrub technician in the operating room described his

physical state as “out of it” during the first surgery. The Respondent then refused to cancel the remaining four scheduled surgeries that day and performed one more surgery. Prior to this second surgery, he again fell asleep in his office. The second patient, prior to being sedated, actually asked the Respondent if he was “ok to do the surgery.” This conduct endangers the Respondent’s especially vulnerable patients, who are under anesthesia while the Respondent is impaired and/or in an “out of it” state while he is performing surgery on these patients.

The fact that the Respondent has on more than one occasion been in a state that leads his operating room colleagues to believe that he is impaired is an aggravating circumstance that supports a conclusion that the Respondent’s continued practice of medicine creates a significant and immediate danger to the public. Further, the facts that the Respondent refuses to acknowledge the wrongful nature of his misconduct, that his continued impaired practice shows a dishonest or selfish motive, and that his misconduct involves especially vulnerable patients are all aggravating circumstances, pursuant to Utah Admin. Rule R 156-1-102(2), that justify an increase in the severity of an action taken against his professional licenses. All of the previously mentioned behavior constitutes an immediate threat to the public health, safety, and welfare since the Respondent has repeatedly and recently put patients at risk by performing surgery on these patients when he is impaired in some way.

2. The Division finds that, pursuant to Utah Code Ann. § 58-1-401(2)(a), there is a factual basis to conclude that the Respondent has engaged in unprofessional conduct, that he poses an immediate and significant danger/threat to the public health, safety, and welfare; and that the

Division should take immediate action to suspend and/or revoke his professional licenses.

### CONCLUSIONS OF LAW

1. The Division has jurisdiction and authority to act in this matter and has followed appropriate statutory procedures regarding the initiation of emergency adjudicative actions.
2. Utah Code Ann. § 63G-4-502 provides:
  - (1) An agency may issue an order on an emergency basis without complying with the requirements of this chapter if:
    - (a) the facts known by the agency or presented to the agency show that an immediate and significant danger to the public health, safety, or welfare exists; and
    - (b) the threat requires immediate action by the agency.
  - (2) In issuing its emergency order, the agency shall:
    - (a) limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;
    - (b) issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the agency's utilization of emergency adjudicative proceedings; and
    - (c) give immediate notice to the persons who are required to comply with the order.
  - (3) If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the agency shall commence a formal adjudicative proceeding in accordance with the other provisions of this chapter.
3. The actions of the Respondent constitute an immediate and significant danger to the public health, safety, and welfare; and require immediate action to protect the public health,

safety, and welfare.

4. That the Respondent has engaged in unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a), (b), and (e).

5. That the Respondent, by diverting controlled substances in his office and by using narcotics to the extent that it is reasonable to conclude that his ability to practice medicine and perform surgery was impaired, has engaged in unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a), (b) and (e).

6. That this Order is necessary to prevent harm to the public pending a formal adjudication of the matters addressed in this proceeding. Immediate action is necessary, and this Order is the least restrictive action needed to prevent or avoid the danger to the public health, safety, or welfare.

7. The Respondent may challenge the Order pursuant to Utah Admin, Code R151-46b-16 as follows:

R151-46b-16. Emergency Adjudicative Proceedings. Unless otherwise provided by statute or rule:

(1) When a division commences an emergency adjudicative proceeding and issues an order in accordance with Section 63G-4-502 which results in a continued impairment of the affected party's rights or legal interests, the division that issued the emergency order shall schedule a hearing upon written request of the affected party to determine whether the emergency order should be affirmed, set aside, or modified based on the standards set forth in Section 63G-4-502. The hearing will be conducted in conformity with Section 63G-4-206.

(2) Upon request for a hearing pursuant to this rule, the Division will conduct a hearing as soon as reasonably practical but not later than 20 days from the

receipt of a written request unless the Division and the party requesting the hearing agree to conduct the hearing at a later date. The Division shall have the burden of proof to establish, by a preponderance of the evidence, that the requirements of Section 63G-4-502 have been met.

(3) Except as otherwise provided by statute, the division director or his designee shall select an individual or body of individuals to act as the presiding officer at the hearing. The presiding officer shall not include any individual who directly participated in issuing the emergency order.

(4) Within a reasonable time after the hearing, the presiding officer shall issue an order in accordance with the requirements of Section 63G-4-502. The order of the presiding officer shall be considered final agency action with respect to the emergency adjudicative proceeding and shall be subject to agency review in accordance with Section R151-46b-12.

### **ORDER**

The license of Drake Glen Vincent to practice as a physician and surgeon in the State of Utah, license number, will be immediately suspended until a hearing can be convened pursuant to Utah Code Ann. § 63G-4-502 and Utah Admin. Code R151-46b-16, and a contravening order is issued. The Division will proceed with a formal adjudicative proceeding to uphold this suspension and/or revoke the Respondent's professional licenses.

The Respondent shall immediately cease and desist from his practice as a physician and surgeon in the State of Utah until a hearing can be convened pursuant to Utah Code Ann. § 63G-4-502 and Utah Admin. Code R151-46b-16, and a contravening order is issued.

### **RIGHT TO REVIEW**

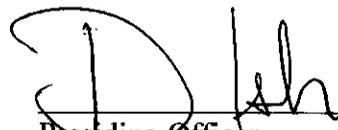
1. In accordance with Utah Admin. Code R151-46b-16, the Division will

schedule a hearing upon receipt of a written request from the Respondent. At the hearing it will be determined whether this Emergency Order should be affirmed, set aside, or modified, based on the standards set forth in Utah Code Ann. § 63G-4-502. The hearing will be conducted in conformity with Utah Code Ann. § 63G-4-206.

2. Upon receipt of a request for hearing pursuant to Utah Admin Code R151-46b-16, the Division will conduct a hearing as soon as reasonably practical, but not later than twenty (20) days from receipt of a written request, unless the Division and the party requesting the hearing agree to conduct the hearing at a later date.

DATED this 25<sup>th</sup> day of June, 2015.



  
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Presiding Officer  
Division of Occupational and Professional  
Licensing.