

THE
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY *[Signature]*

NO. 39042-6-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

JOSEPH R. AMEDSON,

Appellant,

v.

DEPARTMENT OF HEALTH,
BOARD OF PHARMACY,
an agency of the State of Washington,

Respondents.

BRIEF OF RESPONDENT

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I. INTRODUCTION

Mr. Amedson (“Amedson”) acted unprofessionally under the Uniform Disciplinary Act (“UDA”), RCW 18.130.180, by participating in a prescription reimbursement scheme (“Zyprexa Coupon Scheme”) that prevented 14 patients from receiving free medications and defrauding a drug manufacturer out of \$7,000. After an administrative hearing, at which Amedson refused to appear, the Board of Pharmacy (“Board”) revoked Amedson’s credential to practice as a pharmacist in the state of Washington.

In this appeal, Amedson attempts to avoid professional discipline for these acts by claiming he was a whistleblower in another matter and had received an oral promise of immunity, and by further alleging constitutional violations and requesting new constitutional protections.

Amedson’s arguments fail with respect to every issue raised. Without conceding that Amedson was a whistleblower, he cannot hide behind any whistleblower statute to avoid the consequences of his own unprofessional conduct. Amedson provides no basis for his assertion that a unilateral, “subjective belief” is sufficient to support an alleged oral immunity agreement that precludes adjudication of his unprofessional conduct. Amedson cannot claim he was deprived of counsel when he initiated contact with the investigators and had ample opportunity over the

next 16 months to seek the advice of counsel before disclosing detailed information about his and his employer's misconduct. Finally, he cannot attest to every fact and issue and then later invoke the Fifth Amendment in order to avoid the admission of his statements. For these reasons, the Respondents, Department of Health ("Department") and the Board, respectfully request that this Court affirm the Board's final order.

II. COUNTER STATEMENT OF THE ISSUES

1. Do the whistleblower statutes, RCW 43.70.075 and RCW 4.24.510, prevent the Board from initiating and taking disciplinary action against Amedson for his own acts of unprofessional conduct?
2. Did an oral immunity agreement exist between Amedson and the Board that would have prevented disciplinary action against him?
3. Does RCW 18.130.095(2)(a), which gave Amedson the opportunity to seek the advice of counsel before providing a written statement, require a criminal "mini-Miranda" standard?
4. Can a witness knowingly, willingly and voluntarily make statements against interest as a witness and seek to later exclude those statements under the Fifth Amendment in an administrative disciplinary hearing against the person's professional license?

III. COUNTER STATEMENT OF THE CASE

A. The Investigation Of Mr. Amedson.

In October 2004, Amedson worked as a pharmacist for AZ Pharmacy. AR 456; AR 804-14; AR 849-52; AR 875; AR 895.¹ At that time, the Department and the federal Department of Health and Human Services (“HHS”) were already investigating AZ Pharmacy. *Id.* The Department had two open investigations: one involved allegations that the pharmacy was selling illegal imported drugs as over-the-counter medications and the second focused on prescription fraud. *Id.* After these investigations had been initiated, Amedson contacted the Department and requested a meeting to discuss AZ Pharmacy’s prescription and billing practices. AR 875; AR 894-95. Amedson’s recitation of the facts as to whom he contacted and why is based on a motion in limine to suppress oral and written statements (AR 113-35), which was unsupported by evidence and previously rejected by the presiding officer. AR 429-37.² His alleged facts are still unsupported by evidence.

¹ The complete certified agency record (“AR”) is located at CP 21, and Bates numbered 1 through 905. The hearing transcript is included in CP 21 (Bates Nos. 855 – 905). For purposes of citation, the agency record will be referred to as “AR ____.”

² For the first time on appeal, Amedson takes great effort in detailing conversations with another state agency, DSHS, that is not a party to this matter and has no jurisdiction over the Department’s investigations or the Board’s determinations. An appellate court will generally not consider facts raised for the first time on appeal. RAP 10.3(a)(5); RCW 34.05.558; RCW 34.05.562. Additionally, a party cannot refer to or incorporate pleadings from below by reference. *U.S. West v. Utils & Transp. Comm’n*,

On October 25, 2004, Department Investigators McLean and Jeppesen met Amedson at the Red Lion Hotel in Bellevue. AR 895. Without providing any detail, Amedson claimed that AZ Pharmacy was billing Medicaid for prescriptions that are not actually filled (“cloaking”), and that many of those prescriptions were being generated for automatic refills without physician authorization (“prescription pumping”). AR 850-2; AR 875-6; AR 887; AR 895-7. Amedson provided the investigators a list of drugs that could be part of these schemes, including Zyprexa.³ AR 851; AR 876; AR 897. At no time during the meeting did Amedson admit to his own complicity in any prescription fraud schemes. AR 876; AR 897-8; AR 900.

On November 10, 2004, federal agents for HHS conducted a search of AZ Pharmacy. AR 873. The evidence that was gathered was catalogued and evaluated by the Department and HHS through inter-agency cooperation. AR 875-8. The investigators discovered prescription fraud schemes involving Zyprexa,⁴ some of which were linked to

134 Wn.2d 74, 112, 949 P.2d 1337 (1997); *McNeil v. Powers*, 123 Wn. App. 577, 591, 97 P.3d 760 (2004).

³ Zyprexa is a drug used for the treatment of mental illnesses, including schizophrenia and bipolar disorders. AR 495.

⁴ The “Zyprexa Coupon Scheme” did not involve Medicare fraud. Eli Lilly, the manufacturer of Zyprexa, issued vouchers to health care providers that allowed patients with valid prescriptions to receive thirty Zyprexa tablets free of charge. AR 495; AR 889-890. The vouchers entitled the submitting pharmacy to full reimbursement for the cost of the Zyprexa given to the patient. AR 808.

Amedson.⁵ AR 456-8; AR 816-47; AR 878. Based on this information, Investigator Jeppesen filed a complaint with the Board in December 2005 about Amedson's likely involvement in prescription fraud. AR 457; AR 583; AR 878. In February 2006, the Board approved an investigation of Amedson (Investigation Case No. 06-10400). AR 455-71; AR 584; AR 879.

On March 16, 2006, Amedson voluntarily met with Department Investigator Jeppesen and HHS Special Agent Hinkley at a Barnes and Noble in Bellevue, Washington. AR 879. Prior to the meeting, Investigator Jeppesen informed Amedson that an investigation had been opened against him. AR 880. At the meeting, Amedson signed a Respondent's Written Statement Notice that identified the "Respondent" as "Joseph Amedson" and informed him that

You may consult with an attorney, at your expense, prior to providing a written statement. Your statement may be used in a hearing if disciplinary action is deemed necessary regarding this matter.

AR 802 (Appendix 1). The acknowledgement in the notice states:

I received this notice from WSBP Investigator Stanley Jeppesen before providing my voluntary written statement.

Id.

⁵ At least two of the falsified prescriptions were submitted using Amedson's name as the patient. AR 821-22; AR 835-36. Amedson did not have a valid prescription for Zyprexa. AR 497; AR 893.

At this meeting, evidence that was seized from AZ Pharmacy was presented to Amedson who then orally provided detailed information about the prescription fraud that occurred at AZ Pharmacy, including, for the first time, his involvement in the Zyprexa Coupon Scheme. AR 880-81. At no time was Amedson promised immunity for his own behavior, nor did the investigators indicate that the Board would not take disciplinary action against him. AR 584 at ¶ 9; AR 882; AR 885-86.

Five days later, on March 21, 2006, Amedson again willingly met the investigators at the HHS offices. AR 882. They presented him with a summary of his oral admissions from the previous meeting. AR 882-85. Amedson requested changes to his statement, and over a two-hour time period, Investigator Jeppesen incorporated all of his requested changes. *Id.* Amedson signed the eleven page statement. AR 804-14. On each page, Amedson also initialed the following statement:

I have received no threats, promises or coercion, in preparing this statement. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and I will so testify.

Id. (Appendix 2). In his written statement, Amedson admitted to participating in the Zyprexa Coupon Scheme, which provided, in part:

Lilly Zyprexa Coupons: I, Amedson state that I took the Zyprexa coupons . . . from Valley Medical Center, Prescription Pad Pharmacy. That I (Amedson) was working as a relief Pharmacist and that a coupon book

containing fourteen coupons for Zyprexa prescription full reimbursement were in the Pharmacy. I, Amedson attest to the following:

- I, Amedson took the Zyprexa coupons for myself. That it was my idea that the coupons could be billed for reimbursement to my gain, which was the reason that I took them Valentina Milman at the AZ Pharmacy.
- That the coupon reimbursement was approximately \$7000 and I received approximately \$3,500 for myself,

...

AR 808-809.

B. The Administrative Hearing And The Board Of Pharmacy's Final Order

On June 5, 2007, the Department issued a Statement of Charges alleging unprofessional conduct by Amedson under RCW 18.130.180(1), (6), (7) and (13), RCW 18.64.160(3), and RCW 69.41.020(5). AR 1-3. Amedson answered by denying the allegations; stating affirmative defenses; and requesting a hearing. AR 103-110.

During discovery, Amedson refused to appear at the deposition to which he was subpoenaed (AR 153-56) on December 3, 2007 under a claim of immunity with the federal prosecutors arising from the criminal prosecution of AZ Pharmacy⁶ and a Fifth Amendment claim against self-incrimination. The presiding officer denied Amedson's motion to quash

⁶ The Board of Pharmacy revoked the licenses of AZ Pharmacy, Lakeshore Pharmacy, Alex Milman, Valentina Milman, and Oleg Ordinartsev (DOH Docket Nos. M2008-117599 through -117606) based on federal criminal convictions of Conspiracy to Commit Health Care Fraud, Structuring Currency Transactions, and Conspiracy to Launder Money (W.D. WA Docket No. CR06-00245-JLR-001 through -003).

the deposition notices. AR 199-208 (Prehearing Order “PHO” No. 2); AR 380-2 (PHO No. 4). In support of his motion to reconsider, Amedson provided a declaration which now claimed an oral immunity agreement with the Department investigator, but was still unsupported by any other evidence of an immunity agreement with any agency or prosecutor. AR 278-84. Subsequently, Amedson made a motion to suppress all oral and written statements provided to the investigators, which was denied because he failed to show the existence of an oral immunity agreement by clear and unequivocal evidence. AR 429-37 (PHO No. 5). The Department moved for sanctions for Amedson’s refusal to appear at his December deposition, and the presiding officer ordered Amedson to appear and claim whatever privilege he believes to be the basis for not answering each and every question. AR 586-92 (PHO No. 6); AR 732-5 (PHO No.9). Amedson again refused to appear at the February 4, 2008 deposition to which he was subpoenaed. AR 743. Finally, Amedson’s motion to dismiss the case was denied because he had not established that an immunity agreement existed; and had not established that he was a whistleblower or that he could be protected under the whistleblower statutes. AR 622-32 (PHO No. 7).

At a final prehearing conference, the presiding officer ruled on and summarized all pretrial rulings and defined the conduct for hearing.

AR 736-53 (PHO No. 10). The presiding officer also ruled that Amedson willfully interfered with the Board of Pharmacy's proceedings by refusing to attend two depositions scheduled by the department. AR 756-79. After concluding that sanctions were warranted for Amedson's actions, the presiding officer precluded Amedson himself from now testifying for the first time at hearing about the immunity agreement when he could have previously shared the information with the Department. *Id.* The presiding officer did not prevent Mr. Amedson from calling his own witnesses, cross-examining Department witnesses, or presenting documentary evidence. *Id.* One week before hearing, Amedson filed a Notice of Intent Not to Attend Hearing because he was protesting the prehearing orders. AR 756-79.

On March 7, 2008, the Board commenced a hearing on the allegations that Amedson acted unprofessionally under the UDA. AR 855-858. Neither Amedson nor his counsel appeared, placed any objections on the record, made an opening or closing statement, or cross-examined witnesses. AR 859. The presiding officer found Amedson in default and proceeded with the disciplinary hearing in his absence. AR 861-62. The Board listened to testimony of Investigator Jeppesen (AR 869-93) and Investigator McLean (AR 894-900), and reviewed five exhibits (AR 801-852). Then, on April 26, 2008, the Board issued its final

order revoking Amedson's license to practice as a pharmacist in Washington, with no right to re-apply for reinstatement for 20 years. AR 787-99 (Appendix 3). Amedson filed a petition for judicial review on May 14, 2008. CP 4. Thurston County Superior Court affirmed the Board's final order in a letter ruling on February 25, 2009 with the order entered on March 4, 2009. CP 32; CP 33. Amedson filed this appeal on March 17, 2009.

IV. STANDARD OF REVIEW

A. The Standard Of Review Is Very Deferential To The Board of Pharmacy's Decision, And Amedson Bears A Heavy Burden In Seeking To Overturn It.

In reviewing an administrative action, the appellate court sits in the same position as the superior court, applying the Administrative Procedures Act ("APA") to the record before the agency. RCW 34.05.510; RCW 34.05.574(1); *Ames v. Dep't of Health*, ___ Wn.2d ___ (Docket No. 80644-6, June 4, 2009); *DaVita, Inc. v. Dep't of Health*, 137 Wn. App. 174, 151 P.3d 1095 (2007). The agency record constitutes the exclusive basis for judicial review of an agency's adjudicative proceedings. RCW 34.05.558. A party challenging the validity of an agency's action bears the burden of showing the action was invalid. RCW 34.05.570(1); *Lang v. Dep't of Health*, 138 Wn. App. 235, 243, 156 P.3d 919 (2007).

A petitioner challenging a finding of fact must show that the findings are clearly erroneous. *Haley v. Med. Disciplinary Bd.*, 117 Wn.2d 720, 728, 818 P.2d 1062 (1991). The Board’s findings of facts were based on the evidence presented at hearing. Amedson assigns error to 10 of the 11 findings of facts and five of the eight conclusions of law, but does not support those assignments of error with legal argument or authority.⁷ “Courts do not review a challenge to findings that does not cite to the records showing why the findings are not supported by the record. Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration. An assignment of error will not be considered unless its merit is apparent on its face.” *Green v. McAllister*, 103 Wn. App. 452, 469, 14 P.3d 795 (2000) (citations omitted);⁸ RAP 10.3(a)(5).

The court reviews the Board’s legal conclusions *de novo* under an error of law standard. *Haley v. Med. Disciplinary Bd.*, 117 Wn.2d 720,

⁷ Amedson did not contest or assign error to any of the Board’s findings of facts or conclusions of law at the Superior Court review of the Board’s final order. CP 27. Generally, an issue may not be raised for the first time on appeal. RAP 2.5(a).

⁸ *Howell v. Spokane & Inland Empire Blood Bank*, 117 Wn.2d 619, 624, 818 P.2d 1056 (1991) (assignment of error unsupported by legal argument will not be considered on appeal); *State v. Farmer*, 116 Wn.2d 414, 433, 805 P.2d 200 (1991) (claims that trial court’s findings were legally insufficient were deemed to be without merit since the issues were unsupported by citation to authority); *Saunders v. Lloyd's of London*, 113 Wn.2d 330, 345, 779 P.2d 249 (1989) (absent adequate and cogent argument and briefing, the court will not entertain complex legal arguments); *Saviano v. Westport Amusements, Inc.*, 144 Wn. App. 72, 180 P.3d 874 (2008) (issues raised on appeal must be supported by relevant argument and pertinent authority); *King County v. Seawest Inv. Assocs.*, 141 Wn. App. 304, 317, 170 P.3d 53 (2007).

728, 818 P.2d 1062 (1991); *Lang*, 138 Wn. App. at 243. On mixed issues of law and fact, the court determines the law independently and then applies it to the facts. *Lawrence v. Dep't of Health*, 133 Wn. App. 665, 672, 138 P.3d 124 (2006). Constitutional challenges are reviewed *de novo*. *Hale v. Wellpinit School Dist. No. 49*, 165 Wn.2d 494, 503, 198 P.3d 1021 (2009). Notwithstanding the *de novo* standard of review, courts grant substantial weight to an agency's interpretations of the statutes and rules it administers. *Lang v. Dep't of Health*, 138 Wn. App. 235, 243, 156 P.3d 919 (2007); *Pub. Util. Dist. No. 1 of Pend Oreille Cy. v. Dep't of Ecology*, 146 Wn.2d 778, 790, 51 P.3d 744 (2002).

B. The Board Of Pharmacy Has The Authority To Investigate Complaints Of Misconduct And To Discipline Pharmacists For Unprofessional Conduct.

The discipline of health care professionals is governed by the UDA and the Model Procedural Rules for Boards. RCW 18.130; WAC 246-11. The Board acts as a disciplining and regulatory body for pharmacies and pharmacists in the State of Washington. RCW 18.64, WAC 246-856 through WAC 246-907. The Board consists of panels which conduct reviews, authorize investigations, approve charges, and hear disciplinary proceedings. RCW 18.130.050. The Board has the authority to adopt standards of professional conduct or practice. RCW 18.130.050(14) (formerly RCW 18.130.050(12)). A presiding officer issues all rulings on

evidentiary, procedural and policy matters prior to and during the disciplinary hearing. RCW 18.64.005(4); RCW 18.130.095(3); *see also* WAC 246-11; WAC 246-856-020. The hearing panel makes the final determination of unprofessional conduct. RCW 18.130.050(10) (formerly RCW 18.130.050(8)). If the hearing panel concludes that unprofessional conduct occurred, the panel must order sanctions. RCW 18.130.160.

V. ARGUMENT

A. **Amedson Was Not A Good Faith Whistleblower And Cannot Claim Immunity Under The Whistleblower Statute.**

Amedson attempts to claim the status of a whistleblower in the investigation of AZ Pharmacy in order to assert an immunity defense in the disciplinary proceeding against his pharmacist license. He is not a whistleblower, and nothing protects him from disciplinary action for his own misconduct.

1. **In An Already Open Investigation, Amedson Did Not Provide Information In Good Faith When He Omitted His Own Complicity In Prescription Fraud.**

In health disciplinary proceedings, a “whistleblower” is defined as “a consumer, employee, or health care professional who in good faith reports alleged quality of care concerns to the department of health.” RCW 43.70.075(1)(c); *see also* WAC 246-15-010(9). The statute provides specific and limited protections to a whistleblower:

The identity of a whistleblower who complains, in good faith, to the department of health . . . shall remain confidential. The provisions of RCW 4.24.500 through 4.24.520 providing certain protections to persons who communicate to government agencies, shall apply to complaints and notifications or reports of adverse events or incidents filed under this section. The identity of the whistleblower shall remain confidential unless the department determines that the complaint or notification or report of the adverse event or incident was not made in good faith. An employee who is a whistleblower, as defined in this section, and who as a result of being a whistleblower has been subjected to workplace reprisal or retaliatory action has the remedies provided under chapter 49.60 RCW.

RCW 43.70.075(1); *see also* WAC 246-15-001; *see also* *Dewey v. Tacoma Sch. Dist. No. 10*, 95 Wn. App. 18, 30-31, 974 P.2d 847 (1999) (knowing of misconduct and even reporting it to officials does not necessarily constitute whistleblowing activity).

For the protection of this statute to apply, a whistleblower must complain “in good faith” to the Department. The legislature determined that a health care provider sharing information is presumed to be doing so in good faith. RCW 4.24.250(1). But the legislature also charged the Department with making a determination whether a particular complaint has been made in good faith. RCW 43.70.075(1).⁹ If it is shown that the

⁹ While RCW 43.70.075 does not provide a definition of “good faith,” it can be found by analogy in the state employee whistleblower statute. RCW 42.40.020(3) (a person who knowingly omits relevant information is not acting in good faith)

information provided was knowingly false or deliberately misleading, then whistleblower loses civil immunity from damages. RCW 4.24.250(1).

Amedson also confuses anonymity with immunity. Even under the Department's whistleblower rules, the protection of anonymity is not absolute.¹⁰

The department will protect the identity of the whistleblower **by revealing it only:**

- (a) To appropriate department staff or **disciplining authority** member;
- (b) By court order; **or**
- (c) **If the complaint is not in good faith.**

WAC 246-15-020(2)(a-c) (emphasis added). The rule contemplates that the Board can evaluate every whistleblower and that individual's actions.

The multiple investigations into AZ Pharmacy's practices were initiated long before Amedson provided inconclusive information to the Department's investigators. Amedson was originally a witness, who voluntarily came forward, but did not provide any information about his own complicity in an unlawful scheme until confronted with evidence obtained separately by state investigators. Amedson actively participated in a criminal enterprise that included health care fraud, theft, deception, unprofessional conduct, acts of moral turpitude, misrepresentation and fraud. Because he knowingly and deliberately concealed his participation

¹⁰ As a potential witness in the AZ Pharmacy matter, Amedson's identity was revealed during discovery. RCW 18.130.095(2)(b).

from investigators until they confronted him with evidence they had obtained, his complaint to the Board was not made in good faith. Amedson's dishonest and corrupt practices as a pharmacist remove any protections that might have been afforded to him with respect to the investigation against his employer. Amedson's subjective belief that he could be given immunity from prosecution for alluding to illegal conduct by his employer without providing information about his own involvement in that illegal conduct is without merit and contradicts the purpose of the whistleblower statutes.

2. The Special Rights Of Action And Special Immunities Statute, RCW 4.24.510, Does Not Provide A Whistleblower Immunity For Other Acts.

Amedson's reliance on the "special rights of action and special immunities" chapter is misplaced. RCW 4.24.500-.520. A whistleblower is not immune from prosecution for illegal, criminal, tortuous, or unprofessional conduct. The purpose of RCW 4.24.510 is to provide a bona fide whistleblower protection from a civil lawsuit by those whom the whistleblower complained about, i.e. an employer's "reprisal or retaliatory actions" against the employee or an "anti-SLAPP" suit.¹¹ RCW 43.70.075(2)(b); *Right-Price Recreation, LLC v. Connells Prairie*

¹¹ SLAPP (Strategic Lawsuits Against Public Participation) suits are designed to intimidate the exercise of First Amendment rights under Article I, section 5 of the Washington state Constitution. *Right-Price Recreation, LLC v. Connells Prairie Cmty. Council*, 146 Wn.2d 370, 383, 46 P.3d 789 (2002); RCW 4.24.510, Intent 2002 c.232.

Cnty. Council, 146 Wn.2d 370, 382, 46 P.3d 789 (2002). “Additionally, it is important to note that RCW 4.24.510 protects only communications made to governmental agencies that are reasonably of concern to that agency. *RCW 4.24.510 does not provide immunity for other acts.*” *Gontmakher v. City of Bellevue*, 120 Wn. App. 365, 372, 85 P.3d 926 (2004) (emphasis added).¹²

Moreover, RCW 4.24.250(1) provides only limited immunity. Even if Amedson’s communications to the Board had been made in good faith, this statute provides immunity only “from civil action for damages” arising out of a complaint filed with the Board. *Port of Longview v. Int’l Raw Materials*, 96 Wn. App. 431, 979 P.2d 917 (1999) (statute inapplicable to unlawful detainer action because not a civil action for damages); *see Ballard v. Popp*, 142 Wn. App. 307, 174 P.3d 681 (2007) (under RCW 18.130.070(3), a witness is provided immunity from civil liability for providing information to the Department). A professional disciplinary action is not a “civil action for damages,” but rather an administrative enforcement action against a professional license. A professional disciplinary action is not barred by RCW 4.24.250(1), any more than a criminal prosecution would be barred by that statute.

¹² Even under the federal whistleblower statute, Amedson would not be entitled to benefit from his complaint if he failed to timely disclose violations of the law or is also convicted of criminal wrongdoing. 31 USC § 3729(a)(1)(7)(A); 31 USC § 3730 (d)(3).

A bona fide whistleblower can still be sanctioned for violating court orders and the law. *In re Discipline of Schafer*, 149 Wn.2d 148, 167-168, 66 P.3d 1036 (2003) (RCW 4.24.500-.520 applies to good faith communications with government agencies and a whistleblower must still abide by the rules governing his profession); *Eugster v. City of Spokane*, 139 Wn. App. 21, 33-34, 156 P.3d 912 (2007) (anti-SLAPP statute does not divest court of the power to sanction a party); *Emmerson v. Weilep*, 126 Wn. App. 930, 937, 110 P.3d 214 (2005) (whistleblower not protected by anti-SLAPP statute when he harassed and threatened municipal employees, and a protection order could be issued against him); *see Deatherage v. Bd. of Psychology*, 134 Wn.2d 131, 139, 948 P.2d 828 (1997) (in professional disciplinary licensing matters, witness immunity does not extend to [un]professional opinions provided in lawsuits).

Even if Amedson was a whistleblower, which the Board does not concede, he cannot hide behind the whistleblower statutes to avoid the consequences of his own unprofessional conduct. Furthermore, the legislature mandates that the Board investigate every license holder who “may have engaged in unprofessional conduct.” RCW 18.130.080(2). Once the Board learned that Amedson had participated in a fraudulent prescription scheme, it had an obligation to investigate Amedson and, if warranted, to take disciplinary action. The presiding officer correctly

ruled that Amedson was precluded from arguing that the whistleblower statutes prevents the Board from determining whether he engaged in unprofessional conduct. AR 629-31; AR 742.

B. During The Board's Investigation of Amedson and AZ Pharmacy, No Offer Of Immunity Was Ever Promised Or Offered To Amedson.

Amedson's second attempt at securing immunity from prosecution for unprofessional conduct is to claim that he was orally promised an immunity agreement. AR 278-84; AR 372-78. The Board made a specific finding in its final order that no immunity had been granted, and Amedson voluntarily signed a statement admitting to activities that constituted unprofessional conduct. AR 794.

There was no immunity agreement.¹³ Amedson alleges the existence of an "informal immunity agreement," which involves a willing witness, and which is evaluated using contract analysis. *See State v. Bryant*, 146 Wn.2d 90, 98-100, 110, 42 P.3d 1278 (2002) (neighboring county did not have authority to enter into an immunity agreement for another county). Accordingly, had Amedson brought forth credible evidence that there was an immunity agreement, the type and scope of that agreement would be important to the analysis of a case. *Id.* at 97.

¹³ Like law enforcement officers, investigators for the Board lack general authority to offer immunity from a disciplinary action. *See State v. Unga*, 165 Wn.2d 95, 104-08, 196 P.3d 645 (2008) (police cannot offer a defendant immunity).

Informal immunity agreements are not blanket protections that shield against all attacks – they are limited by their scope and range. *Unga*, 165 Wn.2d at 101-08 (under the totality of the circumstances, defendant could still be charged with the crime of taking a motor vehicle without permission to which he confessed, even after being promised immunity from vandalism charges for graffiti inside the car); *see State v. Harrison*, 148 Wn.2d 550, 61 P.3d 1104 (2003) (the scope of the plea agreement only covered the extent to which he should receive a downward departure, and did not cover sentencing ranges).¹⁴ Even where immunity is granted to compel incriminating testimony, the witness may still be prosecuted for some portion of the illegal conduct about which he is testifying if the prosecutor can show that the source of his evidence is wholly independent from the witness’s testimony. *Bryant*, 146 Wn.2d at 98.¹⁵

In this case, the investigators independently discovered the Zyprexa Coupon Scheme for which Amedson was disciplined. AR 456-8;

¹⁴ In entering into an informal written immunity agreement, a defendant “essentially gives up his right to later assert his Fifth Amendment privilege not to incriminate himself within the context of the testimony he agrees to provide, or face the consequences of breaching the immunity agreement.” *United States v. McFarlane*, 309 F.3d 510, 514 (8th Cir. 2002).

¹⁵ *See United States v. Nersesian*, 824 F.2d 1294, 1320 (2nd Cir. 1987) (both the Defendant and the prosecutor agreed that an oral cooperation agreement existed whereupon he would cease distributing heroin; however, the court found that there was enough independent evidence to establish probable cause for the wiretap, thereby rendering defendant’s disclosures cumulative).

AR 878. During his discussions with the investigators in October 2004, Amedson did not disclose his own participation with AZ Pharmacy against Eli Lilly, and he did not seek to protect himself when providing equivocal information about Medicaid fraud occurring at his place of employment.

AR 849-53. Amedson had every opportunity to negotiate an immunity agreement, and distinguish his actions from those of other parties. More than a year later when Amedson's actions were discovered, the Board opened a separate investigation against him. AR 455-71. Soon thereafter, the investigators asked Amedson sign the *Respondent's Written Statement Notice*, where Amedson is specifically identified as the "Respondent."

AR 802. A common definition for "respondent" is "one who answers in various legal proceedings."¹⁶ No where on the form does it offer or reference an "immunity agreement." AR 802. Five days later, Amedson initialed all 11 pages of his statement acknowledging that he received "no threats, promises, or coercion." AR 804-814.

During the administrative proceedings, Amedson failed to demonstrate the existence of an immunity agreement. A bare assertion of an immunity agreement is insufficient to establish immunity or to move the burden of proof to the prosecution to disprove the existence of any such alleged agreement. In prehearing orders, the presiding officer

¹⁶ Webster's Third New Int'l Dictionary.

correctly ruled that if Amedson was seeking protection under an oral immunity agreement, he was required to prove the terms, character, and existence of the agreement by evidence that is clear and unequivocal and which leaves no doubt as to the terms. AR 429-37; AR 622-32. Amedson had every opportunity to provide information about the alleged oral immunity agreement. However, he refused to participate in the administrative process, claiming the protection of the Fifth Amendment, and therefore provided no evidence supporting his assertion that there was an immunity agreement with the Board.

C. Amedson's Due Process Rights and Constitutional Rights Were Not Violated When He Voluntarily Cooperated In the Department's Investigation Whereupon He Admitted to The Zyprexa Coupon Scheme.

The assertion of a Fifth Amendment right to remain silent does not preclude the Board from investigating allegations of professional misconduct against a pharmacist, or holding a hearing on those charges, or from calling the pharmacist as a witness for a deposition or at hearing. In health disciplinary proceedings, due process requires notice and opportunity to be heard, it does not require a new standard of "mini-*Miranda*" protections because the disciplining authority has no ability to detain a health care professional. When subpoenaed to testify, the pharmacist must, at least, appear and claim whatever privilege he believes

to be the basis for not answering each and every question posed to him. Amedson cannot attest to some facts and then later seek to invoke the Fifth Amendment to preclude introduction of those statements as evidence. Ultimately, all of Amedson's oral and written admissions could be used as evidence in a hearing, whether or not he chose to participate.

1. The Full Panoply of Fifth Amendment Privileges Does Not Apply To A Licensed Pharmacist Refusing To Participate In A Disciplinary Proceeding After Having Waived The Right And Testifying To Some Matters.

The Board's proceedings are not so related to criminal proceedings as to automatically invoke the full panoply of protections of the Fifth Amendment.¹⁷ There is no blanket Fifth Amendment right to refuse to answer questions based on the assertion that they may be incriminatory. *State v. Lougin*, 50 Wn. App. 376, 381, 749 P.2d 173 (1988) (right only attaches to a defendant in custody or on trial); *Eastham v. Arndt*, 28 Wn. App. 524, 532-33, 624 P.2d 1159 (1981). The right to remain silent has been applied in civil proceedings where it has been shown conclusively that the penalty to be imposed is punishment tantamount to a criminal sanction. *In re Young*, 122 Wn.2d 1, 51, 857 P.2d 989 (1993)

¹⁷ The Fifth Amendment provides that "[n]o person shall ... be compelled in any criminal case to be a witness against himself." The Washington Constitution, article 1, section 9 states: "no person shall be compelled in any criminal case to give evidence against himself." Courts interpret the two provisions in the same manner. *State v. Easter*, 130 Wn.2d 228, 235, 922 P.2d 1285 (1996) (prearrest silence prior to Miranda warnings can only be commented on for purposes of impeaching a defendant's exculpatory statements). The right can be invoked during in any investigation, criminal, civil or adjudicatory proceeding where criminal activity may be implicated. *Id.* at 238.

(right to remain silent did not apply to SVP commitment proceedings because the action is not a criminal case); *see Chavez v. Martinez*, 538 U.S. 760, 123 S. Ct. 1994, 155 L.Ed.2d 984 (2003) (can only invoke in a civil proceeding if the criminal charges were brought prior to the civil matter). In civil matters, the trial court can direct the witness to answer if the silence is not warranted. *Lougin*, 50 Wn. App. at 382. Such determinations are vested with the trial court in its sound discretion. *Id.*

The mere existence of an ongoing criminal investigation does not bar a professional disciplinary proceeding arising out of the same factual allegations, and both the prosecuting Assistant Attorney General and the Board can still pose questions to him. *King v. Olympic Pipe Line Co.*, 104 Wn. App. 338, 352, 16 P.3d 45 (2000) (ongoing criminal investigation does not bar civil litigation arising from same factual allegations). The Fifth Amendment is one of seven factors balanced by the court in determining whether a stay or protective order is warranted when a parallel criminal investigation or charges exists. *Id.* The protections of the Fifth Amendment turn on whether the litigant is in real danger of self-incrimination in a subsequent criminal proceeding—the privilege protects against “real dangers, not remote and speculative possibilities.” *Id.* at 359. The danger of incrimination must be substantial and real, not merely speculative: unless the answer to a question would “obviously and

clearly” incriminate the witness, the witness must establish a factual predicate from which the court can conceive of a sound basis for the claim.” *State v. Hobble*, 126 Wn.2d 283, 290, 892 P.2d 85 (1995). Here, the Board’s action against Amedson solely related to the Zyprexa Coupon Scheme, which did not involve federal Medicaid fraud. AR 1-3.

Amedson’s reliance upon *Boyd v. United States*, 116 U.S. 616, 6 S. Ct. 524, 39 L.Ed. 746 (1886)¹⁸ is misplaced. The *Boyd* case cites to the Fifth Amendment for the sole purpose of showing that civil forfeiture is a criminal proceeding for all the purposes of the Fourth Amendment, and any statements found in documents that are improperly compelled under a court order require a man to become a witness against himself. *Id.* at 634-35; accord *Deeter v. Smith*, 106 Wn.2d 376, 721 P.2d 519 (1986) (for the purposes of the Fourth Amendment exclusionary rule, civil forfeiture cases are quasi-criminal in nature); but see *State v. Catlett*, 133 Wn.2d 355, 364-5, 945 P.2d 700 (1997) (for the purposes of Fifth Amendment double jeopardy claims, the fact that the basis for the forfeiture is criminal activity does not render the forfeiture proceeding

¹⁸ Overruled on other grounds by *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 87 S. Ct. 1642, 18 L.Ed.2d 782 (1967) and later cases which characterize protections under the Fourth Amendment. The case was further distinguished by the United States Supreme Court in *Fisher v. United States*, 425 U.S. 391, 96 S. Ct. 1569, 48 L.Ed.2d 39 (1976) (compliance with a summons directing taxpayers to produce accountant’s documents, which were not taxpayer’s “private documents” would involve no incriminating testimony with the protection of the Fifth Amendment) and distinguished by the Washington Supreme Court in *State v. Catlett*, 133 Wn.2d 355, 364-5, 945 P.2d 700 (1997) under Fifth Amendment double jeopardy claims.

either criminal or punishment for double jeopardy purposes). Thus, absent any indication that a criminal purpose was intended, or actually served by the statute, the stated civil goals of the legislature are controlling. *Catlett*, 133 Wn.2d at 367 (citing *In re Young*, 122 Wn.2d at 23). The factual distinction between this case and those criminal proceedings cannot be harmonized.

The proceedings here, and the statute under which they were carried out, are not criminal in nature. Here, the legislation has a rational connection to some nonretributive purpose.¹⁹ The legislature created the Board in order to protect and promote the public's health, safety, and welfare. RCW 18.64.005. The purpose of the Board's proceedings is "to assure the public of the adequacy of professional competence and conduct in the healing arts." RCW 18.130.010. While protecting the public, the Board may also protect the standing of the profession so that the public can place its trust in the individuals and companies that provide medicines. RCW 18.130.010; *Heinmiller v. Dep't of Health*, 127 Wn.2d 595, 605; 903 P.2d 433(1995), *Haley*, 117 Wn.2d at 733-734. Moreover, Amedson

¹⁹ Ultimately, the sanctions that may be imposed against the license of a health care professional under RCW 18.130.160 have no correlation to any criminal penalties, nor are the nature of the Board's charges similar to criminal violations (Compare UDA violations RCW 18.130.180(1), (6), (7) and (13) (unprofessional conduct), RCW 18.64.160(3) (unprofessional conduct also includes violation of drug laws), RCW 69.41.020(5) (prohibited acts involving prescription drugs) with criminal violations under RCW 9A.56.030 (Theft in the First Degree); RCW 74.09.230 (false statements); and 18 USC § 1347 (Health Care Fraud)).

had no expectation of privacy in AZ Pharmacy's prescription records.²⁰ Thus, he was not compelled to produce evidence against himself. However, once confronted with evidence of the Zyprexa Coupon Scheme, obtained independently by the investigators, Amedson chose to acknowledge his involvement. Any delay based on claims that Amedson's employer was facing federal criminal health care fraud charges would have a detrimental affect on the Board's ability to monitor and sanction Amedson's unprofessional conduct.

Once a witness waives his privilege and testifies as to some matters, he is then subject to cross examination on questions germane to his direct theory of the case. *Lougin*, 50 Wn. App. at 380. It would be a curious rule of evidence which allows one party to bring up a subject, drop it at a point where it no longer advantageous to him, and then bar the other party from further inquiries about it. *Id.* After making testimonial statements, Amedson claimed the Fifth Amendment in order to avoid inquiry into his self-serving claims of immunity; whistleblower protection; and undeniable involvement in the Zyprexa Coupon Scheme. In October 2004, Amedson telephoned the Department's investigators and requested a

²⁰ There is no absolute right to privacy and once the government agency establishes a legitimate governmental interest and complies with the regulatory rules, the records shall be released. *Murphy v. State*, 115 Wn. App. 297, 315, 62 P.3d 533 (2003) (legislature intended law enforcement access to patient pharmacy records for purposes of enforcing prescription laws); *State v. Mark*, 23 Wn. App. 392, 396, 597 P.2d 406 (1979) (Board of Pharmacy has right to audit pharmacy records).

private meeting in order to discuss potential prescription fraud at his place of employment. At this meeting, Amedson directed the investigator's attention to Zyprexa as one of the medications being submitted for financial gain. On March 21, 2006, Amedson provided a declaration that outlined his complicity in the Zyprexa Coupon Scheme, and distinguished his actions from those indicted in the federal criminal Medicaid fraud case. On November 5 and 15, 2007, Amedson personally attested to the facts stated in his motion to quash and motion in limine, but then simultaneously claimed a Fifth Amendment privilege. AR 76-92; AR 113-35. On December 5, 2007 and December 14, 2007, he signed two separate declarations as to his version of the events and simultaneously claimed a Fifth Amendment privilege. AR 278-84; AR 372-78.

There is no absolute, unqualified right against self-incrimination and it cannot be used as a shield to stall or forgo administrative disciplinary actions. The public relies upon the Board to timely review the competency and conduct of licensed pharmacists. The Board must have the ability to promptly protect the public from unscrupulous pharmacists. Amedson attempts to circumvent the purpose of the administrative process by claiming a Fifth Amendment privilege when it suits his needs in order to avoid any probing of his defenses. Amedson waived any Fifth Amendment privilege with respect to his involvement in the Zyprexa

Coupon Scheme. He declared under penalty of perjury under the laws of the State of Washington that his statements were true and correct, and that he would so testify. AR 804-814. He signed that statement after unconditionally meeting with the Department's investigators on three separate occasions. Amedson cannot willingly volunteer information and then seek to escape disciplinary action under a misguided belief that he is immune from prosecution under the Fifth Amendment.

2. The Designation Of Health Professional Disciplinary Matters As "Quasi-Criminal" Does Not Entitle A Licensed Pharmacist To Claim A Due Process Violation When He Refuses To Participate.

Health professional disciplinary proceedings may be referred to as "quasi-criminal" but such designation does not make them criminal proceedings as Amedson appears to suggest. The label of "quasi-criminal" refers merely to the level of process due to the license, including, in the case of health professionals, a heightened standard of proof. *Ongom v. Dep't of Health*, 159 Wn.2d 132, 148 P.3d 1029 (2006) (the burden of proof in all health professional licensing cases is clear and convincing); *Medical Disciplinary Board v Johnston*, 99 Wn.2d 466, 474, 663 P.2d 457 (1983) (quasi-criminal proceedings are accorded due process protections); *In Re Kindschi*, 52 Wn.2d 8, 11, 319 P.2d 824 (1958) (licensing matters are not strictly criminal but must minimally comply

with due process and equal protection rights before a license is revoked for lack of good moral character). The fundamental requirement of due process is notice and the opportunity to be heard. *Sherman v. State*, 128 Wn.2d 164, 184, 905 P.2d 355 (1995); *Olmstead v. Dept. of Health*, 61 Wn. App. 888, 892, 812 P.2d 527 (1991).

Amedson's due process rights were protected at all stages of the administrative proceedings. When he received his statement of charges, the Department notified him of his right to a hearing before the Board. AR 3-13. Amedson requested an adjudicative proceeding to contest the charges, and, thus, assented to appear at all stages of the proceedings. AR 103-11; WAC 246-11-030; WAC 246-270-(1)(c). Neither due process nor the rules applicable to these proceedings authorize Amedson to pick and choose which part of the administrative proceedings he will participate, and then claim a due process violation when he refused to appear at the hearing. Since Amedson was given proper hearing notices and failed to appear at the hearing, the Board was entitled to proceed in his absence and enter a final order. RCW 34.05.434(2)(i); RCW 34.05.440(2); WAC 246-11-030(5); WAC 246-11-280(3). The Board's Final Order finding that Amedson acted unprofessionally is supported by substantial evidence in the record and relates to the issues alleged in the statement of charges.

3. *Miranda*-Style Warnings Are Not Necessary During An Administrative Investigation And When A Party Is Not In Custody.

The circumstances under which Amedson gave statements to the Board, through its investigators, do not give rise to the safeguards outlined in *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed.2d 694 (1966). The protections prescribed by *Miranda* become applicable as soon as a suspect's freedom of action is curtailed to a degree associated with formal arrest. *State v. Daniels*, 160 Wn.2d 256, 266, 156 P.3d 905 (2007). In criminal cases, a person voluntarily accompanying police to the station during an investigation as a material witness is not under custodial interrogation if his freedom is not curtailed. *State v. Harris*, 106 Wn.2d 784, 790, 725 P.2d 975 (1986) (criminal defendant initiated contact with police and would not have been arrested even if he refused to cooperate); *Unga*, 165 Wn.2d at 102 (police interrogation is not coercive if suspect can make a rational decision about whether to inculcate himself). In driver licensing proceedings, the courts have consistently held that a statement given prior to a DUI arrest can be used in a civil license revocation proceeding. *Ball v. Dep't of Licensing*, 113 Wn. App. 193, 53 P.3d 58 (2002); *Williams v. Dep't of Licensing*, 46 Wn. App. 453, 731 P.2d 531 (1986).

Here, the Department acted properly throughout the investigation and disciplinary action against Amedson for unprofessional conduct. Amedson came to the Department with information about his employer that ultimately lead to the discovery of his own involvement in fraudulent activity. AR 455-58; AR 849-52; AR 875-79. On the three occasions that Amedson met with the Department's investigators, he was not in custody, deprived of his freedom, or coerced into providing information that would elicit an incriminating response. The investigators on behalf of the disciplining authority have no authority to detain or arrest a licensee in a health disciplinary investigation. *See* RCW 18.64.005; RCW 18.64.160; RCW 18.130.050. When Amedson was asked to provide a written statement, the Department followed the procedural requirements of RCW 18.130.095(2)(a)²¹ and informed him that he could seek counsel, and, in fact, gave him five days to confer with counsel before signing his statement. AR 802; AR 804-14. Amedson chose to speak with

²¹ The UDA provides Uniform Procedural Rules for conducting investigations. The statute provides, in part:

(2) The uniform procedures for conducting investigations shall provide that **prior to taking a written statement:**

(a) For violation of this chapter, the investigator shall inform such person, in writing of: (i) The nature of the complaint; (ii) that the person **may consult with legal counsel at his or her expense prior to making a statement;** and (iii) that any statement that the person makes may be used in an adjudicative proceeding conducted under this chapter;

RCW 18.130.095(2)(a) (emphasis added).

Department investigators and waived every opportunity to seek counsel. Amedson was solely in control of the conversations. At any of the three meetings, he could have terminated the discussions. Amedson's arguments fail to rise to the level that implicates *Miranda* warning requirements in administrative health disciplinary proceedings.

4. Only At Critical Stages Of Criminal Proceedings Is A Defendant Entitled To Counsel.

Amedson does not cite any authority for the proposition that he is entitled to be informed that he has a right to counsel during every step of a non-criminal investigation. A fundamental rule of appellate procedure is that issues raised on appeal must be supported by relevant argument and pertinent authority. *Saviano v. Wesport Amusements, Inc.*, 144 Wn. App. 72, 180 P.3d 874 (2008). Only in criminal proceedings does a criminal defendant have a constitutional right to counsel at all stages of a criminal prosecution. *Juckett v. Evergreen Dist. Cout*, 100 Wn.2d 824, 828, 675 P.2d 599 (1984). However, no such Sixth Amendment right attaches until after the initiation of formal judicial criminal proceedings. *Id.* Even when a criminal defendant is in police custody, if he fails to unequivocally invoke the right of counsel, after waiving his *Miranda* rights, then all questioning may continue. *State v. Radcliffe*, 164 Wn.2d 900, 906-7, 194 P.3d 250 (2008).

Here, a licensed health professional may seek advice of counsel prior to providing a written statement, but he is not entitled to counsel. Nothing prohibits an investigator from inquiring into an allegation. At any stage of an interview, the licensee can stop or defer the discussion. At any stage of the administrative proceedings, Amedson could have sought the advice of counsel. In this case, he voluntarily initiated contact with the Department investigators. The investigators did nothing to hinder his ability to seek counsel.

5. When A Witness, In A Civil Suit, Refuses To Answer A Question On The Grounds That It Might Incriminate Him, The Trier Of Facts Is Entitled To Draw Any Negative Inferences From His Refusal To Testify.

When a witness in a civil suit refuses to answer a question by invoking the Fifth Amendment, the trier of fact is entitled to draw a negative inference from his refusal to testify. WAC 246-11-490(2); *Ikeda v. Curtis*, 43 Wn.2d 449, 458-59, 261 P.2d 684 (1953) (fraud in the sale of a hotel); *State Farm v. Huynh*, 92 Wn. App. 454, 462, 962 P2d 854 (1998) (insurance fraud). If parallel criminal and civil cases implicate a defendant's Fifth Amendment privileges, a court may consider granting a stay of the civil action after balancing seven factors. *Olympic Pipe Line*, 104 Wn. App. at 352. If a stay is not requested nor granted, the trier of fact in a civil proceeding may still draw an inference from any invocation

of the Fifth Amendment. *Id.* at 355-356. Mr. Amedson did not request a stay of the Board proceedings, nor was one granted.

The presiding officer correctly admitted Amedson's written and oral statements into evidence. A trial court abuses its discretion when its evidentiary ruling is manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons. *State v. Downing*, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004). Amedson's statement was a party admission under ER 801(d)(2). Admissions of a party opponent are not hearsay and admissible as substantive evidence. *Saldivar v. Momah*, 145 Wn. App 365, 400, 186 P.3d 1117 (2008); RCW 34.05.452. The Board was entitled to determine the persuasiveness of the evidence presented to it. *Ancier v. Dep't of Health*, 140 Wn. App. 564, 575, 166 P.3d 829 (2007).

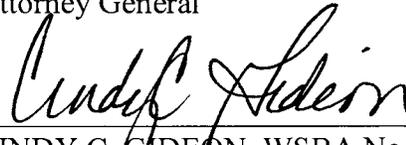
Even in Amedson's voluntary absence from the administrative hearing, the Board was entitled to rely upon Amedson's admissions which detailed his complicity in the Zyprexa Coupon Scheme. Furthermore, Amedson cannot claim that he was prejudiced by the admission of this evidence as he had notice of the evidence to be presented, and had every opportunity to participate in discovery and the administrative hearing. Thus, the presiding officer was correct when ruling that if Amedson refused to testify, then the Board could draw all adverse inferences from his refusal to testify. AR 744.

VI. CONCLUSION

Amedson's procedural arguments fail to rise to the required standard for this Court to reverse the Board's order. The Board heard the evidence, weighed the testimony, and made credibility determinations at the hearing. The Board's final order must be AFFIRMED.

RESPECTFULLY SUBMITTED this 29th day of June, 2009.

ROBERT M. MCKENNA
Attorney General



CINDY C. GIDEON, WSBA No. 28365
Assistant Attorney General
Attorneys for Department
360-664-0083
cindyg@atg.wa.gov



RESPONDENT'S WRITTEN STATEMENT NOTICE

Date: 3-16-2006

Time: 9:30 ^{PM} WSBP Case Number: 06-10400

Respondent Name Joseph Amedson

You may consult with an attorney, at your expense, prior to providing a written statement. Your statement may be used in a hearing if disciplinary action is deemed necessary regarding this matter.

Acknowledgment:

I received this notice from WSBP Investigator Stanley Jeppesen before providing my voluntary written statement.

Signed: Joseph R Amedson Date: 3/16/06
Respondent

Witness #1: Stanley Jeppesen Date: 3/16/06

Witness #1 Name Printed: _____

Witness #2: J. Timothy Hinckley Date: 3/16/06

Witness #2 Name Printed: J. TIMOTHY HINCKLEY

Dept's
EXHIBIT NO. 1
Admitted: ✓
Not Admitted: _____
Date: _____
Case: Amedson
Soc Preberg Owen
No. 10
p. 31 inv





STATE OF WASHINGTON
Department of Health
Board of Pharmacy

P.O. Box 47863 • Olympia, Washington 98504-7863
Telephone: (360) 236-4825 • Facsimile: (360) 586-4359

Depts
EXHIBIT NO. 2
Admitted: 11
Not Admitted: 11
Date: _____
Case: Amedson
See Prescrip Order No. 10
pp - 118 to 128 inv.

STATEMENT

Case #06-10400
Case #05-10184

I, Joseph Raise Amedson, R.Ph., make the following statement to Stan Jeppesen, Investigator, an authorized representative of the Washington State Department of Health, Board of Pharmacy, and Special Agent Tim Hinckley, Health and Human Services, regarding AZ Pharmacy and business practices.

My name is Joseph Raise Amedson. My address is 22522 SE 51st Street, Issaquah, WA 98029. My telephone contact number is 206-979-5020.

I was employed for AZ pharmacy in Bellevue for approximately 1.5 years, prior to November 2004.

I, Joseph Amedson provide the following information regarding photocopies of prescription information provided to me (Amedson) for review:

I (Amedson) did not recognize any of the handwriting for the following:

- Prescription #2928: Oxycodone 5mg Capsules #40, over the signature of Michael Washington for patient Serafima Rits, dated 12/24/2002.
- Prescription #2929: Meperidine 50mg tablets #30, over the signature of Michael Washington for patient Tamara Meleshko dated 12/24/2002.
- Prescription #5365: Oxycontin 20mg #100, over the signature of Michael Washington for patient Nadezhda Goroshko, dated 3/13/2002.

I have received no threats, promises or coercion, in preparing this statement. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and I will so testify. Initial JA

Signed: Joseph Amedson WSBP Case #06-10400 Page 1 of 11 pages
Date: 3/21/06 Time: 4:10 Place: Seattle Washington
Witness: [Signature] Print Name: ATT# 2 BOP
Witness: J. Tracy Hoy, HHS/OIG J. Timothy Hinckley - 10400
Print Name: _____
Page 8 of _____

AMEDSON, PHA
Inv. 000000118

808
PIP8

I, Joseph Amedson, provide the following information concerning prescriptions narcotic log records provided to me for review (see Att#1, pages 28 31): That all the entries were made my Valentina Milman with the exception a few that were noted with my initials "JA".

I, Joseph Amedson, provide the following information concerning prescriptions photocopies provided to me for review:

- Prescription #2927: Oxycontin 20mg #20, over the signature of Michael Washington (see Att#1, pg 52) for patient Zhaneta Goyzman, dated 12/24/2002. That the handwriting of the Physicians DEA number was in the hand of Valentina Milman. The other handwriting of the prescription I did not recognize.
- Rx5365: Patient Nadezhda Goroshko for Oxycontin 20mg #100, written over the signature of Dr. Washington. I, Amedson did not recognize the handwriting of this prescription.
- Prescription #5366: Morphine 30 mg ER tablets #30, over the signature of Diana Rybakov (Sister of Valentina Milman) for patient Maria Netchiporenko, dated 3/13/2002. Computer records indicate that this prescription was billed to DPA. I, Amedson did not recognize the prescription handwriting.
- Rx#8780: Zyprexa 20mg #60, over the signature of Dr. Robert Thompson (see Att#1, pg 41) , for patient Sarra Milman. That the prescription was written in the handwriting of Valentina Milman, dated 6/16/2003. I know that AZ Pharmacy was billing Sarra Milman's prescriptions to both DSHS (DPA) and to PCS for reimbursement at approximately the same time.
- Rx 15571: Zyprexa 20mg #60, (See Att#1, pg 85) over the signature of Dr. Sullivan for patient Sofiya Torban, dated 11/10/2003. That this prescription was written in the handwriting of Valentina Milman. **Val Milman initials are on the prescription.**
- I knew that Sofiya TORBAN is the mother of Valentina Milman.
- Rx 15574: Zyprexa 20mg 30, (see Att#1, pg 34) over the signature of Robert Thompson, for patient Sarra Milman, dated 9/5/2003. That the prescription was written in the handwriting of Valentina Milman, but that I, Amedson did not recognize the handwriting of the physician signature.

I have received no threats, promises or coercion, in preparing this statement. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and I will so testify. Initial JA

Signed: Joseph Amedson WSBP Case #06-10400 Page 2 of 11 pages
Date: 3/21/04 Time: 4:40 Place: Seattle Washington
Witness: [Signature] Print Name: ATT# 2 BOP
Witness: [Signature] - 10400
Print Name: _____
Page 9 of _____

AMEDSON, PHA 805
Inv. 000000119

APPENDIX 2

- **Rx 19598:** Norco 10/325 #100, for patient Sofiya Torban as written by Dr. Morton. I, Amedson recognized the handwriting for the Norco prescription as that of Valentina Milman, and Milman's initials are on the prescription **See Att#1, pg 90-91.**
- **Rx 28481:** Vicodin 5/500 #60, over the signature of Dr. Greenberg for patient Sarra Milman, dated 8/14/2004. Amedson identified the handwriting as his own, and the prescription as a telephone call in by **Teresa.**
- **Rx 2122:** Vicodin 5/500 #30, over the signature of **Dr. Rybakov,** for patient Sofiya Torban, dated 11/19/2002. that this prescription was written in the handwriting of Valentina Milman over the Dr. name of Rybakov who I know to be Valentina Milman's sister. Sofiya Torban is the mother of Valentina Milman. **See Att#1, pg 93-94.**
- **Rx 31087:** Vicodin 10/325 #100 for patient Sofiya Torban, as written by Dr. Morton dated 5/5/2004. I, Amedson identify the handwriting as that of Valentina Milman, with Milman's initials on the prescription. **See Att#1, pg 95-96.**
- **Rx 31088:** Alprazolam 0.5mg #100 for patient Sofiya Torban, as written by Dr. Morton dated 5/5/2004. I, Amedson identify the handwriting as that of Valentina Milman, with Milman's initials on the prescription. **See Att#1, pg 95-96**
- **Rx 19804:** Alprazolam 0.5mg #30, as prescribed by Dr. Morton for Patient Sofiya Torban, dated 1/30/2004. I, Amedson identify the handwriting of the prescription as that of Valentina Milman. Computer records indicated this prescription was billed to DPA. **See Att#1, pg 97-98.**
- **Rx 19805:** Hydrocodone 10/650, as prescribed by Dr. Morton for Patient Sofiya Torban, dated 1/30/2004. I, Amedson identify the handwriting of the prescription as that of Valentina Milman. Computer records indicated this prescription was billed to DPA. **See Att#1, pg 97-98.**
- **Rx 100:** Vicodin 5/500 #30, dated 8/21/2002 for patient Sofiya Torban as prescribed by Dr. Morton. I, Amedson identify the prescription as

I have received no threats, promises or coercion, in preparing this statement. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and I will so testify. Initial JA

Signed: Joseph Amedson WSBP Case #06-10400 Page 3 of 11 pages
 Date: 3/21/04 Time: 04:40 Place: Seattle Washington
 Witness: [Signature] Print Name: ATT# 2 BOP
 Witness: [Signature] - 10400 Print Name: _____
 Page 12 of _____

AMEDSON, PHA 806
 Inv. 000000120

APPENDIX 2

written in the handwriting of Valentina Milman, and the check marks on the back are ones representative of Valentina Milman, doing the prescription checks. (see Att#1, page 88-89)

- Rx 14896: Is Another VMC copy that I obtained from Valley Medical Center and provided to AZ pharmacy.
- Rx 11958: I, Amedson state that this was a valid prescription billed to PCS.
- Rx 11254: I, Amedson state that this was a valid prescription billed to PCS.
- Rx 16270: Zyprexa 20mg #30, as prescribed by Dr. Robert Thompson, for patient Vladimir Gorb, dated 11/25/2003. I, Amedson identify the handwriting of the prescription as that of Valentina Milman. That the prescription had been changed from a dosage of 15mg to 20, and that the dosage change was made by Valentina Milman. That the patient was really on psychotic medications and perhaps Zyprexa and a patient of Dr. Thompson. Computer records indicate that this prescription was billed to PCS (Lilly coupon program) See Att#1, pg 69-70.
- Rx 16656: Zyprexa 20mg #30, as prescribed by Dr. Skolnick (DAN SKOLNICK BS3522275 -Bellevue)- for patient Doris Banek, dated 12/4/2003. That the form used for this prescription came from Valley Medical Center at the time when I, Amedson took the Zyprexa coupons provided by Lilly Pharmaceuticals. (See Att#1, pg 73-74)
- Rx 15575: Zyprexa 20mg #30, as prescribed by Dr. Robert Thompson, for patient Lyudmila Shkrebtan (see Att#1, page 36, 67-68) That the prescription was written in the handwriting of Valentina Milman. AZ computer records indicated that this prescription was billed to PCS.
- Rx 11415: Zyprexa 20mg #30, as prescribed by Dr. Robert Thompson, for patient Joseph Amedson. That this prescription was never seen before by myself (Amedson). That I, Amedson identified the initials(JA) (Att#1, page 33) on the prescription as my own. That the handwriting of my name Joseph Amedson and the prescription appears to be that of Valentina Milman. That the patient date of birth is not mine

I have received no threats, promises or coercion, in preparing this statement. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and I will so testify. Initial JA

Signed: Joseph Amedson WSBP Case #06-10400 Page 4 of 11 pages
Date: 3/21/04 Time: 4:40 Place: Seattle Washington
Witness: [Signature] Print Name: _____
Witness: J. Trinity King ATT# 2 BOP
- 10400 Print Name: _____

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AMEDSON, PHA
Inv. 00000121

APPENDIX 2

(Amedson's). I, Amedson did NOT recognize or recall the prescription. That the signature of Dr. Robert Thompson appeared to be the Physician's real signature. The initials of "JA" (Amedson) was recognized on the prescription, which indicated that I, Amedson filled the prescription. I feel that he felt that the name of a real patient's prescription was whited-out, with the prescription photocopied and my own name then written in. I don't understand how my initials got on the prescription stub on the back of the prescription. It is possible that this prescription was processed by the Technicians, and run by me for checking, and thus I put my initials on the prescription, with-out noticing that the prescription was for myself. It was a busy pharmacy, and I was processing about 150 prescriptions on an average day.

- Rx 16567. Zyprexa 20mg #30, as prescribed by Dr. Robert Thompson for Patient Joseph Raise Amedson. Prescription billed to PCS insurance under the name of Joseph Raise. The prescription dose was changed from 15mg to 20mg. I, Amedson identified the handwriting of the prescription as that of Valentina Milman. I, Amedson state that the handwriting of the dosage change was that of my own hand (15mg to 20mg) to increase the billing amount. See Att#1, page 39-40.
- Rx 16656, Zyprexa 20mg #30, as prescribed by Dr. Skolnick (see Att#1, pg 73) for patient Doris Banek, dated 12/4/2003. I, Amedson state that the prescription form was obtained by myself at Valley Medical Center when I (Amedson) took the Zyprexa coupons that were at the Prescription Pad Pharmacy where Amedson was working as a relief Pharmacist. Rx has my initials.
- 17256: Morphine 15mg #60 written for Berta Tseytlin under the name of Dr. Hoffert dated 12/16/2003. I, Amedson identified the "Rx Verified b MD" handwriting as that of Valentina Milman with her initials on the prescription. See Att#1, pg 51.

Lilly Zyprexa Coupons:

I, Amedson state that I took the Zyprexa coupons (see Att#1, page 53-54) from Valley Medical Center, Prescription Pad Pharmacy. That I (Amedson) was working as a relief Pharmacist, and that a coupon book containing fourteen coupons for Zyprexa prescription full reimbursement were in the Pharmacy.

I, Amedson attest to the following:

I have received no threats, promises or coercion, in preparing this statement. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and I will so testify. Initial JA

Signed: Joseph Amedson WSBP Case #06-10400 Page 5 of 11 pages
 Date: 3/21/04 Time: 4:42 Place: Seattle Washington
 Witness: Joseph Amedson Print Name: ATT# 2 BOP
 Witness: J. Tracy Henry - 10400 Print Name: _____

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AMEDSON, PHA 808
 Inv. 000000122

- That I, Amedson took the Zyprexa coupons for myself. That it was my idea that the coupons could be billed for reimbursement to my gain, which was the reason that I took them to Valentina Milman at the AZ pharmacy.
- That I, Amedson gave the coupons to Valentina Milman. That Alex Milman subsequently agreed to share the proceeds of submitting the coupons for reimbursement with myself.
- That the coupon reimbursement was approximately \$7000 and I received approximately \$3,500 for myself, and that Alex Milman kept \$3,500.
- That Alex Milman would not pay me until after he (Alex Milman) had received the reimbursement on the Zyprexa coupons.
- That Alex Milman would deposit the Zyprexa reimbursement check to the AZ store bank account, and then made a check out to JR Amedson Company for payment to myself, Amedson.
- That Valentina Milman and Alex would submit a couple of coupons per week to spread them out, and that I thought the timing of submissions was random.
- That when I, Amedson took the coupons from the Prescription Pad Pharmacies, the coupons were close to expiring in about 4-5 months.
- That I was also working part-time at the same time for AZ pharmacy three (3) days a week, and filling in at the Valley Medical Center, Prescription Pad Pharmacy.
- That I, Amedson was working as a 1099 employee for AZ Pharmacy, and that Alex Milman controlled the company finances. That almost all of the checks written to Amedson for working as a Pharmacist, were marked as payment for supplies, as instructed by Alex Milman.
- That I, Amedson confirm that the payments to JR Amedson Co. was a combination of payments for receipts from the Zyprexa coupon reimbursement payments from Alex Milman and payment for my employment as a Pharmacist working for AZ Pharmacy in Bellevue. That the payments totaled approximately \$121,823.

Zyprexa Lilly Coupon Prescriptions:

I, Amedson reviewed the compiled list of Zyprexa coupons submitted to PCS for reimbursement. A total of 14 prescriptions were found and correlate to the prescription coupons I took from Valley Medical Center (See Att#1, pages 53-54 and 55 to 82).

I have received no threats, promises or coercion, in preparing this statement. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and I will so testify. Initial JA

Signed: Joseph Amedson WSBP Case #06-10400 Page 6 of 11 pages
 Date: 3/21/04 Time: 4:40 Place: Seattle Washington
 Witness: [Signature] Print Name: _____
 Witness: [Signature] Print Name: _____
 ATT# 2 BOP
 - 10400 Print Name: _____

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 AMEDSON, PHA
 Inv. 00000123

APPENDIX 2

I, Amedson provide the following information regarding the acquisition of drugs:

- That McKesson was the primary wholesaler for the Bellevue store.
- That I, Amedson did very little borrowing or trading for drugs with other pharmacies. That no narcotics was purchased or traded with other stores.
- That purchases from other pharmacies were only for the purpose of filling prescriptions that could not be held until the drug could be ordered through the normal wholesale process.
- That usually medication shortages for filling prescriptions were handled by holding the prescription(s) and ordering the drug, and filling the prescription(s) when the drug order arrived.
- That no Zyprexa was purchased or obtained from other pharmacies.
- That only approximately \$7,000 to \$8,000 were spent on obtaining medications that were not in stock, and were needed at the time for filling a prescription that could not be held and filled later.
- That the suppliers for short medications were:
 - Bartell Drugs
 - Safeway Pharmacy
 - Local Hospitals.
- That shortage purchases happened at most once a month.
- That I (Amedson) was not aware of any Corvalol sales.
- That I, Amedson do not remember stocking any hydromorphone in the Bellevue Pharmacy.
- That the pharmacy had little C-II stock, and probably under \$2,000 in value. That I never recalled that the pharmacy had as many as 180 Oxycontin in stock. (See Rx 5518 - DPA reimbursed \$378)

I, Amedson provide the following information concerning AZ prescription labels:

- That generally these pre-printed and billed labels generated daily by the Technicians from the re-fill reminder report generated by the AZ computer system. The labels were stored in an alphabetical index storage system that was used to retrieve the label if and when the patient came into the pharmacy to pick up their prescription(s).
- That when a patient arrived, and the prescription was not in the prescription will-call pick up area, then the technician would check the pharmacy computer and note the last fill date, which would direct

I have received no threats, promises or coercion, in preparing this statement. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and I will so testify. Initial JA

Signed: Amel Amedson WSBP Case #06-10400 Page 7 of 11 pages
Date: 3/21/02 Time: 4:40 Place: Seattle Washington
Witness: [Signature] Print Name ATT# 2 BOP
Witness: [Signature] 10400 Print Name:
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AMEDSON, PHA 810
Inv. 000000124

APPENDIX 2

the technician to look in the label storage bin in order to retrieve the appropriate pre-billed prescription label.

- In the event that the label could not be found in either the prescription will-call area or the label storage file, then the Technicians would reverse the last prescription DSHS billing in the event that the patient's arrival was under 23 days since the prescription was previously billed to DSHS. The Technician would then re-run the prescription for that day, and re-bill the prescription to DSHS, that a prescription label could be generated and filled for the patient.
- That the pharmacy operation practice was for the Pharmacy Technicians to process the refill reminder report that was generated daily by the pharmacy computer system. That this report was programmed to list all patients that had prescription refills that were 23 days after the last fill date. That Alex and Valentina Milman knew that DSHS required refill quantities generally to be filled for monthly quantities, but that DSHS rules allowed that refills for a prescription could be filled on or after 23 days.

I, Amedson indicate the following regarding the use of the prescription labels generated by the AZ computer system:

- Part 1: use for the prescription vial
- Part 2: Caution stickers for the prescription vial.
- Part 3: Hard copy prescription sticker for the front or back of the prescription.
- Part 4: Prescription re-fill book sticker.
- Part 5: Patient signature sticker to acknowledge receipt of the prescription.
- Part 6: Patient coupon sticker of \$2.50 value, that could be used for the purchase of goods in the AZ pharmacy.
- That parts 3 and 4, were at times used interchangeably.

I, Amedson provide the following regarding the auto-prescription re-fill process and the daily refill reports:

- That the daily refill reminder reports generated by the AZ computer system were processed daily by the Technicians. That the reports generated prescriptions for three (3) consecutive days that could be refilled.

I have received no threats, promises or coercion, in preparing this statement. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and I will so testify. Initial JA

Signed: Joyk Amedson WSBP Case #06-10400 Page 8 of 11 pages
Date: 3/21/06 Time: 9:40 Place: Seattle, Washington
Witness: [Signature] Print Name: ATT# 2 BOP
Witness: [Signature] - 10400 Print Name: _____
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AMEDSON, PHA 811
Inv. 000000125

APPENDIX 2

- That the reports were programmed to list the DSHS patient prescriptions that were 23 days or longer from the last fill.
- That DSHS rules only allow for one(1) fill per month, but that DSHS will allow for an early fill as early as 23 days.
- That the Technicians routinely ran the daily refill reports to process the fills at 23 days, thus allowing for early DSHS reimbursement and the generation of extra prescription "fills" for the year.
- That reversals were only processed when the processed pre-run labels could not be found for filling, AND when the prescription was requested before the prescription could be billed again for the patient. At these times, the technician would reverse the earlier billing to DSHS in order to re-print the prescription label, and then re-bill the prescription to DSHS. The reversal in these situations was necessary because the patients prescription (refill) was requested at a point in time in which the request was less than 23 days from the time when the prescription was pre-run and billed.
- That auto-generated labels were placed in a patient file in the upstairs office. That when a patient arrive to pick-up the prescription, the Technician would retrieve the label from the upstairs file and then fill the prescription.
- That the automatic refill labels were originally downstairs in the pharmacy, but later moved to the upstairs office, as Amedson believed that Alex Milman did not want Amedson to see all the unfilled labels. That on one occasions I, Amedson went upstairs to eat lunch, and Alex Milman told me to NOT come upstairs, and that I was not allowed in the upstairs office.
- That new prescriptions were generated by the technicians for prescriptions that had expired or used all the fills authorized for the prescription. That in this case, the prescription label was filed, and often no hard copy was placed in the prescription file at all, and there would be then missing prescriptions in the file. At other times the prescription label was placed in the file with not other notation. **That no written hard copy of the prescription (such as a telephone order) would be generated for prescription file.** That the physicians were not contacted regarding the re-newed prescriptions, that can be identified by the N associated with the prescription number on the complete labels.
- That the technicians who only spoke Russian, never came to me with prescription interaction alerts (generated by the computer system) for the automated re-fill prescriptions, that required an interaction

I have received no threats, promises or coercion, in preparing this statement. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and I will so testify. Initial JA

Signed: Joy R Amedson WSBP Case #06-10400 Page 9 of 11 pages
 Date: 3/21/07 Time: 11:40 Place: Seattle Washington
 Witness: [Signature] Print Name: ATT# 2 BOP
 Witness: [Signature] - 10400 Print Name: _____
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AMEDSON, PHA 812
 Inv. 00000126

APPENDIX 2

over-ride by the pharmacist. That it was impossible to generate that many labels for prescriptions and not have some interaction alerts.

I, Amedson estimate that 30% of the prescriptions billed to DSHS were not actually filled or picked up by patients.

I, Amedson state the following regarding the return of prescriptions to AZ pharmacy drug stock:

- That prescriptions were routinely returned to the prescription drug stock bottles of the pharmacy. That the prescription labels were peeled of the vials and the label thrown in the garbage. That the returned prescription vials were reused for other prescriptions.
- **CHECK, CHECK That on one occasion, a bag of prescriptions that was filled by myself for Sarra Milman, was returned the following day by Alex Milman. Included in the bag was a Zyprexa prescription, and the Zyprexa stock bottle at the time was nearly empty. The following day the bag of prescriptions for Sarra Milman were gone, and the Zyprexa stock bottle was full when no new Zyprexa stock had come in.**
- That all of the used labels provided were billed to DSHS (DPA), and some labels were noted with the letters RTS written on the label to note "return to stock".
- That I, Amedson suspect that Val Milman, Yuliya Zubetz, and Danny Pereboynosm Marina Kremkov (see Kremkov memo) were all involved in the restocking of the billed DPA prescriptions during periods when Amedson was not present.
- I, Amedson know that AZ was billing Zyprexa prescriptions for Sarra Milman to DSHS (DPA) at the same time that AZ Pharmacy was billing Zyprexa prescriptions using the Lilly Zyprexa coupons to PCS.
- I, Amedson need to clarify that the full label sections generated by Valentina Milman, and provided to Investigator Jeppesen and Tim Hinckley were also retrieved from the pharmacy garbage.
- That it was the practice of the Technicians to discard the full label sections a month or two after they were generated and would no longer be needed, since a more recent automatic refill generation cycle had occurred. That if a patient were to request a refill, then the Technicians would retrieve the prescription label from the most current label stock, and the older label stock was no longer needed, and was thus discarded.

I, Amedson provide the following regarding pharmacy operations:

I have received no threats, promises or coercion, in preparing this statement. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and I will so testify. Initial JA

Signed: Joseph Amedson WSBP Case #06-10400 Page 10 of 11 pages
Date: 3/21/08 Time: 11:40 Place: Seattle, Washington
Witness: [Signature] Print Name: ATT# 2 BOP
Witness: [Signature] -10400 Print Name: _____

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AMEDSON, PHA813
Inv. 000000127

APPENDIX 2

- That Valentina Milman stated on numerous occasions that she was running and in-charge of all three pharmacies, but that Alex Milman was really the person in charge of Pharmacy operation.
- That Alex Milman controlled the finances, disbursement of money, authorized the payment of bills, and controlled the deposits of money to the business accounts.
- That on several occasions, Val Milman appeared to be under the influence of something, due to her coordination and speech behavior. Alex reported to me on one occasion that he and Valentina Milman had a fight.

I have received no threats, promises or coercion, in preparing this statement. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and I will so testify. Initial JA

Signed: Joseph Amador WSBP Case #06-10400 Page 11 of 11 pages
 Date: 3/21/2012 Time: 4:40 Place: Seattle Washington
 Witness: [Signature] Print Name: _____
 Witness: [Signature] ATT# 2 BOP
 _____ - 10400 Print Name: _____

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AMEDSON, PHA ⁸¹⁴
 Inv. 00000128

APPENDIX 2

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
BOARD OF PHARMACY

In the Matter of:)
) Docket No. 07-04-A-1080PH
) Master Case No. M2007-73807
)
 JOSEPH R. AMEDSON, R.Ph.,)
 License No. PH00011607,)
)
 Respondent.) FINDINGS OF FACT,
) CONCLUSIONS OF LAW
) AND FINAL ORDER
) (Failure to Appear)
)
 _____)

APPEARANCES:

Respondent, Joseph R. Amedson, by
Rhys A. Sterling, P.E., J.D., per
Rhys A. Sterling, Attorney at Law

Department of Health Pharmacy Program, by
Office of the Attorney General, per
Cindy C. Gideon, Assistant Attorney General

BOARD PANEL: Rebecca Hille, Public Member, Panel Chair
Dan Connolly, R.Ph.
George Roe, R.Ph.

PRESIDING OFFICER: Arthur E. DeBusschere, Health Law Judge

The Board of Pharmacy (Board) convened a hearing on March 7, 2008, in Tumwater, Washington. Neither the Respondent nor his counsel appeared at the hearing. The Presiding Officer granted the Department's motion and ordered the Respondent to be in default. Based upon the files and records for this case, along with the presentation of evidence made by the Department at the hearing, the Board issues this final order. License Revoked.

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I. ISSUES

- A. Whether the Respondent's conduct that has been alleged in the Statement of Charges constitutes unprofessional conduct under RCW 18.130.180(1), (6), (7), and (13), RCW 18.64.160(3), and RCW 69.41.010(5)?
- B. If the Respondent engaged in unprofessional conduct, then what sanction(s) as authorized by RCW 18.130.160 should be imposed?

In his prehearing filings and in his Answer, the Respondent indicated, in part, that he planned to argue in his defense (1) that the Respondent was granted immunity; and (2) the evidence should be suppressed, because it was gathered from his involuntary statements.

SUMMARY OF PROCEEDINGS

At the hearing, the Respondent failed to appear. The Presiding Officer found the Respondent in default and proceeded with the hearing. At the hearing, the Department presented the testimony of Stan Jeppesen and Kelly McLean. Before the hearing, the Presiding Officer issued an order admitting the Department and Respondent's exhibits: *See Prehearing Order No. 10: Order on Motions and Order on Conduct at Hearing.*

The following four Department exhibits were admitted:

- Department Exhibit No. 1: Respondent's Written Statement Notice, dated March 16, 2006.
- Department Exhibit No. 2: Respondent's Written Statement, dated March 21, 2006.
- Department Exhibit No. 3: Zyprexa Prescription Summary (14 prescriptions): A-Z Pharmacy & Medical Supply/ Eli Lilly and Company.
- Department Exhibit No. 4: Zyprexa Prescriptions.

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The following two Respondent's exhibits were admitted:

Respondent Exhibit No. 4: Investigative Memorandum, by Stan Jeppesen, March 7, 2005; Re: A-Z Pharmacy.

Respondent Exhibit No. 7: Memorandum from Stan Jeppesen to Joseph Amedson, dated July 6, 2007, Re: Personal Statement.

Based upon the evidence presented, the Presiding Officer makes the following:

I. FINDINGS OF FACT

1.1 On September 19, 1983, the State of Washington issued the Respondent a credential to practice as a pharmacist. The Respondent's credential is currently active.

1.2 Between approximately May 2002 and November 2004, the Respondent was employed as an independent contractor pharmacist at A-Z Pharmacy located in Bellevue, Washington.

1.3 In October 2004, Stan Jeppesen and Kelly McLean, Department of Health investigators for the Board of Pharmacy, met the Respondent. The Respondent had contacted Investigator McLean by voice mail. She returned the call, during which time the Respondent explained that he wanted to meet with her in person about issues that were going on at his workplace, A-Z Pharmacy in Bellevue. The Respondent voluntarily met with Mr. Jeppesen and Ms. McLean at the Red Lion Hotel in Bellevue, Washington.

1.4 At the meeting in October 2004, the Respondent revealed what he thought was illegal activities at A-Z Pharmacy for billing of prescriptions when the prescriptions

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were not actually filled. He called it prescription "pumping." He identified Zyprexa (a legend drug)¹ and other expensive drugs that should be looked at, because they would generate a high reimbursement. He mentioned that he had previously given some information to the Washington State Department of Social and Health Services, and to the federal government.

1.5 Mr. Jeppesen participated in the meeting with the Respondent in order to gain additional knowledge about an investigation of A-Z Pharmacy that he was already pursuing with an investigator from the United States Department of Health and Human Services (HHS). This federal agency was investigating Medicaid and Medicare fraud. At the October 2004 meeting, the Respondent spoke in general terms of activities at A-Z Pharmacy. The information provided by the Respondent confirmed and supported what Mr. Jeppesen had known as a result of his ongoing investigation. The Respondent did not inform or make any admissions of his illegal activities to Mr. Jeppesen and Ms. McLean. The Respondent was not at that time the focus of any investigation. No written statements were requested.

1.6 After the meeting with the Respondent in October 2004, Mr. Jeppesen shared the information obtained with a federal investigator Timothy Hinckley, HHS. Since Mr. Jeppesen had a doctorate in pharmacy and had been a pharmacist for 20 some years, Mr. Hinckley asked Mr. Jeppesen to help go through documents

¹ Zyprexa is the brand name of a generic drug called Olanzapine. It is an antipsychotic drug used to treat individuals with a chronic condition. The Pill Book, 9th Edition, Silverman, Harold M., Editor-in-Chief, p. 751.

obtained at A-Z Pharmacy. In December 2005, Mr. Jeppesen discovered an additional fraudulent scheme going on at A-Z Pharmacy regarding Lilly Pharmaceutical. On December 14, 2005, Mr. Jeppesen identified fraudulent Zyprexa prescriptions associated with the Respondent.

1.7 In December 2005, Mr. Jeppesen submitted a complaint to the Board relative to the Respondent's conduct in this matter. The Board approved the investigation in the middle of February 2006. After approval, Mr. Jeppesen was assigned to the case. He and Mr. Hinckley arranged for an interview with the Respondent at the Barnes and Noble Store in Bellevue, Washington, to be held on March 16, 2007.

1.8 When Mr. Jeppesen was arranging the interview with the Respondent, he informed the Respondent that he was the subject of an investigation. When Mr. Jeppesen gave the Respondent the Written Statement Notice (the Notice) (Department Exhibit No. 1), it was part of an overall notice of investigation. On March 16, 2006, Mr. Jeppesen personally handed the Respondent the Notice, which, in part, read that the Respondent had a right to an attorney, prior to providing any written statement, and the statement may be used in a disciplinary action. The Respondent signed the statement. The Notice identified Joseph Amedson as the "Respondent." Then, Mr. Hinckley and Mr. Jeppesen spent two hours going over investigation materials including the Zyprexa coupons. Mr. Jeppesen did not promise the

Respondent any immunity. Moreover, at no time during this conversation was immunity discussed. Mr. Jeppesen informed the Respondent implicitly that he would anticipate that the Board would take action against his license. No written statement was obtained from the Respondent at that time.

1.9 Investigators Hinckley and Jeppesen arranged for a follow-up meeting with the Respondent one week later to go over the information discussed and to have the Respondent sign a written statement. The meeting would be at Mr. Hinckley's office in downtown Seattle, Washington. The Respondent agreed to be at the meeting scheduled for March 21, 2006. Based upon the information obtained from the Respondent on March 16, 2006, Mr. Jeppesen drafted a Statement for the Respondent to sign. At the meeting on March 21, 2006, Mr. Hinckley, Mr. Jeppesen, and the Respondent worked for two hours with a computer and printer. They went through the written statement line by line and made corrections and deletions for accuracy. The Respondent, Mr. Jeppesen, and Mr. Hinckley signed each page of the 18-page statement. (Department Exhibit No. 3).

1.10 At the meeting on March 21, 2006, Mr. Jeppesen did not discuss immunity with the Respondent. Mr. Jeppesen had informed the Respondent that he expected the Board to take action against his license, and if the Board wanted to offer any consideration for his help with the federal government, then that was up to the Board. At the end of the meeting, the Respondent discussed with Mr. Hinckley his relief of not being prosecuted federally. Mr. Jeppesen was not aware of any immunity agreement

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offered by the federal prosecutor. Mr. Jeppesen had not offered to the Respondent any whistleblower protection. After Mr. Jeppesen obtained the statement from the Respondent, he closed his investigation.

1.11 In the statement signed by the Respondent on March 21, 2006 (Department Exhibit No. 3), the Respondent admitted to participating in a reimbursement scheme to defraud a drug manufacturer for reimbursement of Zyprexa pharmaceutical. Between approximately June 2003 and December 2003, the Respondent engaged in a scheme with individuals at A-Z Pharmacy, wherein they forged prescriptions of Zyprexa, which were then reimbursed from the drug manufacturer using coupons the Respondent stole from another place of employment. The coupons were provided by the drug manufacturer for those who could not afford the medication, and thus could obtain it under the coupon. Some prescriptions were manufactured by taking legitimate prescriptions written by a physician with the patient's name whited-out and another patient's name written in. These prescriptions, therefore, would have a legitimate photo copy of a doctor's signature at the bottom of the prescription. In total, 14 coupons were fraudulently redeemed for more than \$7,000.00. For his participation in this scheme, the Respondent received half of this amount.

II. CONCLUSIONS OF LAW

2.1 The Respondent has been licensed to practice as a pharmacist at all times material to the Statement of Charges. The Board has jurisdiction to hear this matter, pursuant to Chapter 18.79 RCW, and the Uniform Disciplinary Act,

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Chapter 18.130 RCW. RCW 18.130.140 and RCW 18.79.120. See also WAC 246-11-001 through WAC 246-11-020.

2.2 The Board has the authority to discipline pharmacists under the Uniform Disciplinary Act, chapter 18.130 RCW and RCW 18.130.160.

2.3 If the Respondent fails to appear at a scheduled hearing, the Presiding Officer may issue an order of default. RCW 34.05.440(2) and WAC 246-11-280(3). At the hearing, the Presiding Officer ordered that the Respondent was in default and proceeded to hear this matter in the absence of the Respondent.

2.4 The Washington Supreme Court held that the constitutional standard of proof in a professional disciplinary hearing is clear and convincing evidence. *Ongom v. Dept. of Health*, 159 Wn.2d 132 (2006), cert. denied 127 S. Ct. 2115 (April 2007).

2.5 The Uniform Disciplinary Act, chapter 18.130 RCW, provides definitions of what conduct, acts, or conditions constitute unprofessional conduct. RCW 18.130.180. In this case, unprofessional conduct was alleged under four subsections of RCW 18.130.180:

The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the

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conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

RCW 18.130.180(1);

The possession, use, prescription for use, or distribution of controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, diversion of controlled substances or legend drugs, the violation of any drug law, or prescribing controlled substances for oneself;

RCW 18.130.180(6);

Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;

RCW 18.130.180(7); and

Misrepresentation or fraud in any aspect of the conduct of the business or profession;

RCW 18.130.180(13).

2.6 Under RCW 18.130.180(7), the Statement of Charges alleged two other statutory violations:

Disciplinary action against pharmacist's and intern's licenses — Grounds. In addition to the grounds under RCW 18.130.170 and 18.130.180, the Board of Pharmacy may take disciplinary action against the license of any pharmacist or intern upon proof that:

(3) He or she has knowingly violated or permitted the violation of any provision of any state or federal law, rule, or regulation

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governing the possession, use, distribution, or dispensing of drugs, including, but not limited to, the violation of any provision of this chapter, Title 69 RCW, or rule or regulation of the board;

RCW 18.64.160(3) and

Prohibited acts – Information not privileged communications. Legend drugs shall not be sold, delivered, dispensed or administered except in accordance with this chapter.

(5) No person shall make or utter any false or forged prescription or other written order for legend drugs.

RCW 69.41.020(5).

2.7 Based upon Findings of Fact 1.1 through 1.11, the Department proved by clear and convincing evidence that the Respondent violated RCW 18.130.180(1), (6), (7), and (13), RCW 18.64.160(3), and RCW 69.41.020(5). The above Findings of Fact do not support the Respondent's arguments made in his defense. The Board's investigator, Mr. Jeppesen, did not discuss immunity with the Respondent. There was no immunity agreement between the Respondent and the Board. Further, the Respondent voluntarily offered information to the Board investigators and voluntarily signed a statement admitting to activities that constituted unprofessional conduct.

2.8 As a result of the above Findings of Fact and these Conclusions of Law, the Presiding Officer may impose sanctions under RCW 18.130.160. Regarding sanctions, the Presiding Officer must first consider the protection of the public.

Safeguarding the public's health and safety is the paramount responsibility of every disciplining authority and in

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determining what action is appropriate, the disciplining authority must first consider what sanctions are necessary to protect or compensate the public. Only after such provisions have been made may the disciplining authority consider and include in the order requirements designed to rehabilitate the license holder or applicant.

RCW 18.130.160.

In this case, the Board concludes that to protect the public, the Respondent's license should be revoked. The Respondent knowingly participated in a fraudulent coupon scheme for his own personal gain and the conduct occurred in his work setting. The conduct was a planned scheme involving repeated acts of making fraudulent prescriptions. The Respondent should be prevented from practicing as a pharmacist in the state of Washington.

III. ORDER

Based upon the above, the Presiding Officer hereby orders:

3.1 The Respondent's license to practice as a pharmacist in the state of Washington is REVOKED;

3.2 The Respondent is prohibited from re-applying or reinstatement of his license to practice as a pharmacist for at least twenty (20) years from the date this order is signed; and

//

//

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3.3 Upon reapplication, the Respondent will be required to comply with the requirements existing for applicants at the time of his application.

Dated this 24th day of April, 2008.



REBECCA HILLE, Public Member
Panel Chair

FOR INTERNAL USE ONLY: (Internal tracking numbers)
Program No. 2006-02-0001

NOTICE OF PROTECTIVE ORDER

A protective order was issued in this matter. See Prehearing Order Number 11, which stated: The Presiding Officer GRANTS the Respondent's Motion for Confidentiality. Accordingly, the Presiding Officer ORDERS that the motions, responses, and replies filed by the parties (including the supporting documentation also filed by the parties), and Prehearing Orders Nos. 1 through 11, shall be exempt from public disclosure. Further, the Department's Exhibits Nos. 1 through 4 and Respondent's Exhibits Nos. 4 and 7 shall also be exempt from public disclosure. This Protective Order shall remain in full force and effect, unless there is a further order by a presiding officer releasing the records for public disclosure, or unless a court in review orders that the records be made available for public disclosure.

CLERK'S SUMMARY

<u>Charge</u>	<u>Action</u>
RCW 18.130.180(1)	Violated
RCW 18.130.180(6)	Violated
RCW 18.130.180(7)	Violated
RCW 18.130.180(13)	Violated

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ORDER OF DEFAULT

Within seven days after service of the Order of Default, the Respondent may file a written motion requesting that the order be vacated, and stating the grounds why the order should be vacated. During the time within which a party may file a written motion under this subsection, the Presiding Officer may adjourn the proceedings or conduct them without the participation of that party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. RCW 34.05.440(3). WAC 246-10-204. The motion must be filed with the Adjudicative Service Unit, P.O. Box 47879, Olympia, Washington 98504-7879. "Filing" means actual receipt of the document by the Adjudicative Service Unit. RCW 34.05.010(6). This Order of Default was "served" upon you on the day it was deposited in the United States mail. RCW 34.05.010(19).

NOTICE TO PARTIES

This Order is subject to the reporting requirements of RCW 18.130.110, Section 1128E of the Social Security Act, and any other applicable interstate/national reporting requirements. If adverse action is taken, it must be reported to the Healthcare Integrity Protection Data Bank.

Either party may file a **petition for reconsideration**. RCW 34.05.461(3); 34.05.470. The petition must be filed within 10 days of service of this Order with:

Adjudicative Service Unit
P.O. Box 47879
Olympia, WA 98504-7879

and a copy must be sent to:

Board of Pharmacy
PO Box 47863
Olympia, WA 98504-7863

The petition must state the specific grounds upon which reconsideration is requested and the relief requested. The petition for reconsideration is considered denied 20 days after the petition is filed if the Adjudicative Service Unit has not responded to the petition or served written notice of the date by which action will be taken on the petition.

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A petition for judicial review must be filed and served within 30 days after service of this Order. RCW 34.05.542. The procedures are identified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, however, the 30-day period will begin to run upon the resolution of that petition. RCW 34.05.470(3).

The Order remains in effect even if a petition for reconsideration or petition for review is filed. "Filing" means actual receipt of the document by the Adjudicative Service Unit. RCW 34.05.010(6). This Order was "served" upon you on the day it was deposited in the United States mail. RCW 34.05.010(19).

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the U.S. mail via state Consolidated Mail Service with proper postage
affixed to:

RHYS A. STERLING, ESQ.,
P.O. BOX 218
HOBART, WASHINGTON 98025

I declare under penalty of perjury, under the law of the State of
Washington that the foregoing is true and correct.

DATED this 29th day of June, 2009 at Olympia, Washington.


MARLENA MULKINS,
Legal Assistant