COPY

DANIEL E. LUNGREN, Attorney General
of the State of California
HEIDI R. WEISBAUM,
Deputy Attorney General
Department of Justice
110 West A Street, Suite 700
San Diego, California 92101
Telephone: (619) 237-7771

Attorneys for Complainant

BEFORE THE
PHYSICIAN ASSISTANT EXAMINING COMMITTEE
DIVISION OF ALLIED HEALTH PROFESSIONS
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: DOUGLAS A. DRAKE, P.A. 2433 Bella Vista Drive Vista, California 92084 Physician Assistant License No. PA12158 Respondent.	No. D-4472 ACCUSATION

Complainant Ray E. Dale alleges as follows:

1. He is the Executive Officer of the Physician Assistant Examining Committee ("Committee"), and makes this Accusation solely in his official capacity.

LICENSE STATUS

2. On or about May 13, 1988, Physician Assistant License No. PA12158 was issued to respondent Douglas Allen Drake ("Respondent"). At all relevant times, the license was and is current.

//

STATUTES

3. This Accusation is brought pursuant to the following sections of the Business and Professions Code ("Code"):

a. Section 3527(a) provides in part that the Committee may suspend, revoke or impose probationary conditions upon a physician's assistant license for unprofessional conduct which includes, but is not limited to, a violation of the California State Medical Practice Act, Code section 2000 et seq.

b. Section 2305 provides that "discipline by another state of a license . . . issued by the state . . . shall constitute grounds for disciplinary action for unprofessional conduct . . . ."

ALLEGATIONS OF UNPROFESSIONAL CONDUCT

4. Respondent is subject to disciplinary action pursuant to Code sections 3527(a) and 2305 in that on January 5, 1989, the Division of Occupational and Professional Licensing of the Department of Business Regulation of the State of Utah imposed discipline on respondent's license to practice as a chiropractor in that state by ordering that respondent's license be suspended for one year and that respondent be placed on probation for five years subject to certain terms and conditions. (A true and correct copy of the Order is attached hereto as Exhibit "A" and incorporated herein by reference.)

//

//

//

WHEREFORE, complainant requests that a hearing be held on the matters alleged herein, and that following the hearing, the Committee issue its decision revoking or suspending Physician Assistant License No. PA12158 previously issued to respondent Douglas A. Drake, P.A., or taking such other and further action as the Committee deems proper.

DATE: March 20, 1991

RAY E. DALE, Executive Officer
Physician Assistant Examining Committee
Division of Allied Health Professions
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

A

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING

OF THE DEPARTMENT OF COMMERCE

OF THE STATE OF UTAH

State of Utah County of Salt Lake	ss.	DOUGLAS A. DRAKE Case No. OPL-88-50

I hereby certify that the foregoing consists of a true and correct copy of the original Petition, Findings of Fact, Conclusions of Law, Recommended Order and Order, in the above-entitled matters or cause, now of record or on file in the office of the Division of Occupational and Professional Licensing of the State of Utah.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Division this 20th day of April, 1989.

SEAL

Carol W. Inglesby
Executive Secretary

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING

OF THE DEPARTMENT OF BUSINESS REGULATION

OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE OF DOUGLAS A. DRAKE TO PRACTICE AS A CHIROPRACTOR IN THE STATE OF UTAH	CASE NO. OPL-88-50 O R D E R

The attached Findings of Fact, Conclusions of Law and Recommended Order are hereby adopted by the Director of the Division of Occupational & Professional Licensing of the State of Utah.

Dated this 5th day of January, 1989.

DAVID E. ROBINSON, DIRECTOR

S E A L

Administrative review of this Order may be obtained by filing a request for review within thirty (30) days after the issuance of this Order. Any request for review shall comply with the requirements set forth in Section 63-46b-12(1) and the departmental rules which govern agency review.

Judicial review of this Order may be obtained by filing a petition for review within thirty (30) days after the issuance of this Order. Any petition for judicial review shall comply with the requirements set forth in Section 63-46b-16.

STATE OF UTAH }
COUNTY OF SALT LAKE }

I, the undersigned Notary Public, certify this document to be an accurate and complete photocopy of the original, presented to me this 20th day of April, 19 89.

Carol W. Inglesby SEAL
Notary Public
Commission Expires 3-17-93

NOTARY PUBLIC
CAROL W. INGLESBY
160 E. 300 So.
S.L.C., UT 84111
COMMISSION EXPIRES
MARCH 17, 1993
STATE OF UTAH

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING

OF THE DEPARTMENT OF BUSINESS REGULATION

OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE OF DOUGLAS A. DRAKE TO PRACTICE AS A CHIROPRACTOR IN THE STATE OF UTAH	: : : : :	CASE NO. OPL-88-50 FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER

Appearances:

Richard J. Culbertson for the Division of Occupational & Professional Licensing

Anthony J. Famulary for Respondent

BY THE BOARD:

Pursuant to notice duly served by certified mail, the above-entitled matter came on regularly for hearing on December 8, 1988, before J. Steven Eklund, Administrative Law Judge for the Department of Business Regulation, and the Chiropractic Board. Thereafter, evidence was offered and received.

The Board, being fully advised in the premises, now enters the following Findings of Fact, Conclusions of Law and Recommended Order:

FINDINGS OF FACT

1. Respondent is, and at all times relevant to these proceedings has been, a licensee of the Division of Occupational & Professional Licensing of the State of Utah. Specifically, Respondent has been licensed to practice as a chiropractor since January 24, 1984.

2. In October 1987, Respondent took the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician's Assistants, Inc. In early January 1988, he

became aware that he had passed the examination. By letter, dated January 22, 1988, written notice was provided to Respondent that he had successfully completed that examination. At that time, Respondent also received a certificate as a physician assistant and was advised that he could use the designation "PA-C" (Physician Assistant - Certified). The January 22, 1988 letter further recited that such national certification did not authorize Respondent to function as a physician assistant independent of the statutory or rulemaking provisions of any given state.

3. On January 10, 1988, Respondent contacted the Division and requested an application form for possible licensure as a physician assistant. Respondent subsequently returned the form and made payment of the $100.00 application fee by check. Approximately two weeks later, Respondent contacted the Division and was informed that the application form and accompanying fee had not been received. In late January 1988, Respondent requested that another application form be sent to him.

4. On February 23, 1988, the Division received a complaint that Respondent was allegedly practicing as an unlicensed physician assistant. Gay Trello, a Division investigator, thereafter interviewed Respondent on February 29, 1988, at which time Respondent advised her that he had sent an application and accompanying fee for licensure as a physician assistant to the Division and that, when said application had not been received, he had prepared another application form. Respondent gave that form to Ms. Trello on February 29, 1988 and it was his understanding that she would submit it to the Division for processing. Respondent did not provide Ms. Trello with the necessary application fee and she merely placed the application in her investigative file.

5. Respondent believed that he could commence his practice as a physician assistant in this state by reason of the national certification which he had received and his filing of an application with the Division for licensure as a physician assistant. From January 11, 1988 through February 27, 1988, Respondent prescribed certain prescription drugs to forty-six (46) different patients over a total of fifty-four (54) occasions.

6. After his interview with Ms. Trello on February 29, 1988, Respondent ceased prescribing any drugs for patients under his care. Any billings which Respondent made for services he provided during January 1988 and February 1988 were made in his capacity as a licensed chiropractor. At various times during those months, Respondent used the designation "P.A." after his name and he also utilized a business card bearing the name "Roosevelt Chiropractic and Medical Clinic" and the designations "D.C." (Doctor of Chiropractor) and "P.A.,-C."

7. Respondent left Utah in late October 1988 and presently resides in California. Respondent is licensed in that state as a physician assistant and he anticipates that he will continue his practice in that regard on a permanent basis.

CONCLUSIONS OF LAW

Respondent asserts that there is no basis to enter any sanction as to his licensure as a chiropractor because his above-described conduct was taken under color as a physician assistant and, thus, this Board lacks any jurisdiction to sanction his license as a chiropractor. Respondent concedes that he did not complete the application process for possible licensure as a physician assistant, but urges that he acted in good faith, did nothing to jeopardize the health, safety and/or welfare of any patients and that his practice as a chiropractor was unrelated to his role as a physician assistant.

Section 58-1-15, Utah Code Ann. (1953), as amended, provides that the Division may revoke the license of any licensee who:

> (1) is or has been guilty of unprofessional conduct, as defined by statute or rule.

Section 58-1-2 generally defines unprofessional conduct to include:

> (6) acts, knowledge, and practices which fail to conform with the accepted standards of the specific licensed occupation or profession and which could jeopardize the public health, safety or welfare and includes the violation of any statute regulating an occupation or profession under this title.

Section 58-12-52(1)(a) provides that a license to practice chiropractic may be suspended, revoked or the licensee placed on probation if said licensee is guilty of unprofessional conduct. Section 58-12-53 defines unprofessional conduct to include:

> (15) Any conduct or practice, contrary to the recognized standards of ethics of the chiropractic profession, or any conduct or practice which does or might constitute a danger to the health, welfare or safety of the patient or the public, or any conduct, practice or condition which does or might impair the ability safely and skillfully to practice chiropractic.
>
> . . . .
>
> (17) Violation of any rule of the division establishing a rule of conduct.

R153-12e-1(A) provides that a licensed chiropractor shall not:

> (12) advertise in a manner which is false or misleading or which has as its object deception or fraud.

To be further noted is Section 58-12-51.6, which provides:

> (2) A chiropractor may examine, diagnose and treat only within the scope of Subsection (1), and may not perform major or minor surgery, or acupuncture, <u>prescribe or administer drugs or medicines for which an authorized prescription is required by law</u>, treat cancer, practice obstetrics or prescribe or administer x-ray therapy. (Emphasis added).

Respondent's assertion that his conduct is justified by reason of his good faith belief that he could properly act as a physician assistant is not well-founded. Respondent initiated attempts to obtain licensure as a physician assistant, yet said application was never completed. Thus, no action on that application was taken by the Division. With knowledge of the foregoing, Respondent nevertheless prescribed certain drugs for his patients aware that he was not licensed as a physician assistant in this state.

Notice had been provided to Respondent that his national certification as a physician assistant did not obviate compliance with any statutes or rules governing his practice as a physician assistant in any given state. When the Division provided an application form to Respondent for licensure as a physician assistant, notice was further provided to him as to the action necessary to process said application prior to issuance of any license in that regard. It may well be that Respondent did not fully avail himself of the opportunity to become advised as to the requirements which exist in this state pertinent to the licensing of a physician assistant. In any event, Respondent's failure to do so does not operate to relieve him from compliance with those requirements. Under the circumstances, there is no reasonable basis upon which Respondent could believe, in good faith, that he could proceed to practice as a physician assistant.

Without proper licensure as a physician assistant, Respondent was not authorized to prescribe drugs. Clearly, he could not do so as a licensed chiropractor and the prohibition set forth in Section 58-12-51.6 is properly applicable in the instant case. Respondent's failure to confine his practice within the properly authorized scope of his licensed profession also constitutes unprofessional conduct contrary to the recognized standards of

that profession and conduct which could have constituted a danger to the health, safety or welfare of the patient or the public, in violation of Section 58-12-53(15). Absent proper licensure as a physician assistant, the manner in which Respondent held himself out to the public in that respect also constitutes unprofessional conduct violative of Section 58-12-53(17) and R153-12e-1(A)(12), relative thereto. In essence, Respondent utilized the umbrella of his chiropractic licensure to engage in conduct beyond the scope of that licensure. The services Respondent purportedly rendered as a physician assistant were billed in his capacity as a licensed chiropractor. Further, those patients for whom Respondent prescribed drugs knew him as a chiropractor, yet it was incumbent upon Respondent to attain proper licensure as a physician assistant in order to render that service.

Given the foregoing, an appropriately severe sanction should enter as to Respondent's license to practice chiropractic in the State of Utah. The nature of the Recommended Order set forth herein is also predicated upon recognition that Respondent does not presently practice as a chiropractor in this state and it is unknown whether he may resume such practice in the future.

RECOMMENDED ORDER

WHEREFORE, IT IS ORDERED that Respondent's license to practice as a chiropractor in the State of Utah be suspended for one (1) year, said suspension to become effective thirty (30) days after approval of this Recommended Order by the Director of the Division of Occupational and Professional Licensing.

It is further ordered that Respondent's license shall thereafter be placed on probation for five (5) years, subject to the following terms and conditions:

1. Respondent shall provide written notice to the Board of any subsequent intent to resume practice in this state as a chiropractor.

2. Prior to commencement of any such practice, Respondent shall meet with the Board, at which time the Board will review the nature of Respondent's anticipated employment in this state and assess the need for any additional terms and conditions governing that employment during the probationary term set forth herein.

3. The probationary term herein shall only commence upon Respondent's resumption of practice in this state as a chiropractor. Any period of Respondent's non-residence in this state or the lack of an on-going practice as a chiropractor in this state shall not operate to satisfy the term of probation set forth herein.

Should Respondent fail to comply with the above-stated terms and conditions, or otherwise violate any statute or rule which governs his license to practice as a chiropractor in the state, further proceedings shall be conducted and a determination made whether a sanction of greater severity than that set forth herein is warranted.

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
Heber M. Wells Building
160 East 300 South - P. O. Box 45802
Salt Lake City, Utah 84145
Telephone: (801) 530-6628

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF BUSINESS REGULATION
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE OF DOUGLAS A. DRAKE TO PRACTICE AS A CHIROPRACTOR IN THE STATE OF UTAH	P E T I T I O N CASE NO. OPL-88-50

PRELIMINARY STATEMENT

These causes of action were investigated by the Utah Division of Occupational & Professional Licensing (the Division) upon complaints that DOUGLAS A. DRAKE, a licensee of the Division, has engaged in acts and practices which constitute violations of the Chiropractic Improvements Act, Utah Code Ann., §58-12-50, et seq.

PARTIES

1. The Division is a Division of the Department of Business Regulation of the State of Utah, established by virtue of Section 13-1-2, Utah Code Ann. (1953), as amended.

2. DOUGLAS A. DRAKE is licensed as a chiropractor. At no time relative to the facts described herein was DRAKE licensed or certified to prescribe any type of prescription drugs.

STATEMENT OF FACTS

3. a. On or about January 24, 1984, DRAKE received a license to practice chiropractic in the State of Utah.

b. On or about October 1987 to on or about February 1988, DRAKE engaged in the practice of medicine while claiming to be a physician assistant. This was evidenced by his use of the initials "P.A." after his name and by his reference to his business name as Roosevelt Chiropractic and Medical Clinic. DRAKE'S practice included the prescribing of prescription drugs for treatment of patients as follows:

DATE	PATIENT	DRUG	QTY
10-14-87	David Duddley	Cortisporin	bottle
10-15-87	Joyce Rogers	Tylenol #3	12
10-15-87	Joyce Rogers	Amoxil 25 oz	30
10-26-87	Shawnie Rogers	Ampecillin 250	30
10-30-87	Ann Johnson	Indocin 75 sr	20
11-05-87	Troy Dunsmore	Ceclor 250 mg	30
11-27-87	Nancy Bird	Flexeril 10 mg	16
12-01-87	Sharel Ann Carter	Lincocin 10cc	10 cc
01-11-88	Bill Hewit	Flexeril 10 mg	2
01-12-88	Richard Mountain	Flexeril 10 mg	20
01-19-88	Marleen Larson	Keflex 250	30
01-27-88	Larry Walker	Flexeril 10 mg	10
01-27-88	Derik Dunsmore	Ceclor 250 mg	50
01-28-88	Shanna Marshall	Amp 250 mg	30
01-30-88	John Lisonbee	Flexeril 10 mg	10
02-01-88	Glen Allred	Compazine 10 mg	12
02-02-88	John Nebeker	Amp 250 mg	30
02-04-88	Tana Dunsmore	Retin A .025%	20 gr
02-04-88	Larry Murray	Synatrol	10
02-05-88	Mel Allen	Flexeril 10 mg	20
02-05-88	Julia Abbott	Retin A .025%	20 gr
02-05-88	Larene Larsen	Keflex 250 mg	30
02-05-88	Illa Rae Gingell	Motrin 800 mg	30
02-05-88	Candice Dye	Ceclor 250 mg	30
02-06-88	Jessie Clark	Motrin 800 mg	30
02-09-88	Lisa Garner	Amoxil 125 mg	150
02-09-88	Dentin Lemon	Cephalexin 125 mg	200
02-09-88	Jim Friston	Feldane 20 mg	20
02-09-88	Ronnie Marshall	Septra D.S.	20
02-10-88	Jessie Clark	Flexeril 10 mg	20
02-11-88	Marlo Bell	Amoxil 200 mg	150
02-11-88	Marilyn Murphy	Flexeril 10 mg	20
02-11-88	Sharon Buchanan	Ceclor 250 mg	30

DATE	PATIENT	DRUG	QTY
02-11-88	Jana Gillies	Novahistine DH	bottle
02-15-88	Sharilyn Springer	Flexeril 10mg	30
02-15-88	Walt Wiegand	Methocarbamol 750 mg	40
02-16-88	Tana Dunsmar	Flexeril 10 mg	30
02-16-88	Candice Dye	Ceclor 200 mg	30
02-17-88	Harold Gee	Methocarbamol 750 mg	40
02-17-88	Alla Burton	Cephalixin 125 mg	150
02-17-88	Neal White	Ibuprofen 800 mg	30
02-18-88	Theron Clark	Methocarbamol 750 mg	40
02-18-88	Bruno Tomaino	Ibuprofen 800 mg	30
02-18-88	Kelly Fladeland	Methocarbamol 750 mg	40
02-18-88	Brad Allred	Methocarbamol 750 mg	40
02-18-88	Becky Murray	Methocarbamol 750 mg	24
02-18-88	Becky Murray	Ibuprofen 800 mg	24
02-18-88	Rodney Bird	Diazepam 5 mg	7
02-18-88	Boyd Braithwaite	Carisoprodol 350 mg	30
02-18-88	Boyd Braithwaite	Methocarbamol 750 mg	40
02-18-88	Tommy Braithwaite	Nystatin 100 mu/ml	bottle
02-18-88	Tommy Braithwaite	Nystatin 100 mu/gm	cream
02-18-88	Tommy Braithwaite	Amoxil 125 mg	150
02-19-88	Jeff Winn	Methocarbamol 750 mg	40
02-19-88	Nikki Winn	Amoxil 250 mg	30
02-19-88	Rose Price	Conj. Estrogen .625 mg	30
02-19-88	Rose Price	Methocarbamol 750 mg	40
02-21-88	Lewis Cooper	Diazepam 5 mg	15
02-24-88	Craig Ashby	Methocarbamol 750 mg	40
02-24-88	Lisa Gardner	Mycrology Cream	15 gr.
02-25-88	Whitney Duncan	Amoxil 250 mg/5 ml oral	
02-27-88	Preston J. Mitchell	Diazepam 5 mg	20
?????	Judy Miewe	Methocarbanol 750 mg	40

c. On or about February 29, 1988, DRAKE admitted to Gay Trello, Division Investigator, that he was practicing as a physician assistant without Utah State Certification.

COUNT I

4. The Division realleges and incorporates by reference the allegations set forth in paragraphs 1 through 3 above as if fully set out herein.

5. Section 58-1-15(1), Utah Code Ann. (1953), as amended, provides that the Division may revoke the license of any licensee who is or has been guilty of unprofessional conduct, as defined by statute or rule.

6. Section 58-1-2, Utah Code Ann. (1953), as amended, defines unprofessional conduct to include:

> (6) acts, knowledge and practices which fail to conform with the accepted standards of the specific licensed occupation or profession and which could jeopardize the public health, safety or welfare and includes the violation of any statute regulating an occupation or profession under this title.

7. By engaging in the acts and practices contained in paragraph number 3 above, DOUGLAS A. DRAKE has violated the provisions of Section 58-1-2(6), Utah Code Ann. (1953), as amended, constituting grounds for imposing an appropriate sanction against his license under the provisions of Section 58-1-15(1), Utah Code Ann. (1953), as amended.

COUNT II

8. The Division realleges and incorporates by reference the allegations set forth in paragraphs 1 through 7 above as if fully set out herein.

9. Section 58-12-52(1)(a), Utah Code Ann. (1953), as amended, provides that the Division may refuse to issue or renew, and may suspend or revoke the license of any licensee who is guilty of unprofessional conduct.

10. Section 58-12-53, Utah Code Ann. (1953), as amended, defines unprofessional conduct in relation to the practice of chiropractic to include:

> (15) Any conduct or practice, contrary to the recognized standards of ethics of the chiropractic profession, or any conduct or practice which does or might constitute a danger to the health, welfare or safety of the patient or the public, or any conduct, practice or condition which does or might impair the ability safely and skillfully to practice chiropractic.
>
> (17) Violation of any rule of the division, establishing a rule of conduct.

11. Rules of the Chiropractic Committee, Section A.(12) defines unprofessional conduct to include:

> (12) Advertise in a manner which is false or misleading or which has as its object deception or fraud.

12. By engaging in the acts and practices contained in paragraph number 3 above, DOUGLAS A. DRAKE has violated the provisions of Section 58-12-53(15) and (17), Utah Code Ann. (1953), as amended, and Rule (12) of the Rules of the Chiropractic Committee, constituting grounds for imposing an appropriate sanction against his license under the provisions of Section 58-12-52(1)(a), Utah Code Ann. (1953), as amended.

COUNT III

13. The Division realleges and incorporates by reference the allegations set forth in paragraphs 1 through 12 above as if fully set out herein.

14. Section 58-12-51.6, Utah Code Ann. (1953), as amended, provides that:

> (2) A chiropractor may examine, diagnose and treat only within the scope of Subsection (1), and may not perform major or minor surgery, or acupuncture, prescribe or administer drugs, or medicines for which an authorized prescription is required by law, treat cancer, practice obstetrics or prescribe or administer x-ray therapy.

15. By engaging in the acts and practices contained in paragraph number 3 above, DOUGLAS A. DRAKE has violated the provisions of Section 58-12-51.6(2), constituting grounds for imposing an appropriate sanction against his license under the provisions of Section 58-12-52(1)(a), Utah Code Ann. (1953), as amended.

WHEREFORE, the Division requests the following relief:

1. That DOUGLAS A. DRAKE be adjudged and decreed to have engaged in the acts alleged herein.

2. That by engaging in the above acts, DOUGLAS A. DRAKE be adjudged and decreed to have violated the provisions of the Chiropractic Improvements Act.

3. That an Order be issued imposing an appropriate sanction against the license of DOUGLAS A. DRAKE to practice as a chiropractor.

DATED this 15th day of August, 1988.

Division of Occupational &
Professional Licensing
Department of Business Regulation

STATE OF UTAH)

: ss.

COUNTY OF SALT LAKE)

On the 15th day of August, 1988, personally appeared before me Gay Trello, and after being duly sworn, deposes and says; that she has read the foregoing Petition and knows the contents thereof; and the same is true to the best of her knowledge except as to matters stated on information and belief, and that as to those matters she believes it to be true.

Investigator
Division of Occupational &
Professional Licensing

SWORN AND SUBSCRIBED to before me this 15th day of August, 1988.

Carol W. Ingersoll
NOTARY PUBLIC

My Commission Expires:
8-13-89