

IN THE UTAH COURT OF APPEALS

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Michael Paul Maness,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner,)	
)	Case No. 20080157-CA
v.)	
)	
Department of Commerce,)	F I L E D
Division of Occupational and)	(May 15, 2008)
Professional Licensing,)	
)	2008 UT App 180
Respondent.)	

Original Proceeding in this Court

Attorneys: Michael Paul Maness, LaVerkin, Petitioner Pro Se
Mark L. Shurtleff and Nancy L. Kemp, Salt Lake City,
for Respondent

Before Judges Billings, Davis, and McHugh.

PER CURIAM:

Michael Paul Maness petitions for review from the revocation of his massage therapist license. This is before the court on the Division of Occupational and Professional Licensing's (DOPL) motion for summary disposition based on the lack of a substantial question for review.

On review, Maness challenges only DOPL's failure to add material to the record on agency review. Maness asserts that the preliminary hearing transcript in his criminal case and a recording made in the course of the criminal case should be part of the administrative record on review, although the materials were not made a part of the record of the adjudicative proceeding. However, it is well settled that new material may not be added to the record on review or appeal. See State v. Law, 2003 UT App 228, ¶ 2, 75 P.3d 923 (mem.).

Maness argues, without support, that a record of any hearing with testimony given under oath is part of the record of an adjudicative proceeding. The Utah Administrative Code provides that "[t]he record of an adjudicative proceeding includes the pleadings and exhibits filed by the parties, . . . any transcript

of a hearing, and orders or other documents issued by any presiding officer in the adjudicative proceeding or on agency review or reconsideration of the adjudicative proceeding." Utah Admin. Code R151-46b-18(1). It is axiomatic that the definition of the record of an adjudicative proceeding is limited to the documents and transcripts of that specific adjudicative proceeding. The record of the license revocation proceeding against Maness is comprised of the documents and transcripts generated and presented during the course of his revocation proceeding only. The criminal proceeding, even though based on the same facts, is a separate proceeding in the criminal justice system and is not part of the license revocation proceeding.

Accordingly, the preliminary hearing transcript is not part of the record of the adjudicative proceeding to revoke Maness's license, unless it was specifically made part of the adjudicative record as an exhibit. During the adjudicative hearing, counsel did not offer the preliminary hearing transcript as an exhibit. Therefore, it is not part of the adjudicative record.

Likewise, the recording is not part of the record of the adjudicative proceeding and cannot be added to the record on review. In fact, at the time of the adjudicative hearing, neither party knew that a real recording or transcript of the recording existed. The officer thought that the recording device had not worked.

In sum, the record of an adjudicative proceeding is limited to the documents and transcripts generated or presented during the course of that specific proceeding. Materials beyond that record cannot be added on review. Accordingly, the revocation of Maness's license and the denial of his request for reconsideration is affirmed.

Judith M. Billings, Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge