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**BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL  
LICENSING**

**OF THE DEPARTMENT OF COMMERCE**

**OF THE STATE OF UTAH**

IN THE MATTER OF THE LICENSES OF )  
**RODNEY F. KIRK** ) **STIPULATION AND ORDER**  
TO PRACTICE DENTISTRY WITH A CLASS )  
I ANESTHESIA PERMIT AND TO ) **Case No DOPL-2007- 162**  
ADMINISTER AND PRESCRIBE )  
CONTROLLED SUBSTANCES )  
IN THE STATE OF UTAH )

**RODNEY F. KIRK** ("Respondent") and the **DIVISION OF  
OCCUPATIONAL AND PROFESSIONAL LICENSING** of the Department of  
Commerce ("Division") stipulate and agree as follows

1. Respondent admits the jurisdiction of the Division over Respondent and over the subject matter of this action
- 2 Respondent acknowledges that Respondent enters into this Stipulation knowingly and voluntarily.

3. Respondent understands that Respondent has the right to be represented by counsel in this matter and is represented in this matter by David P Sheldon, Attorney at Law

4. Respondent understands that Respondent is entitled to a hearing before the Utah State Dentist and Dental Hygienist Licensing Board ("the Board"), or other Division Presiding Officer, at which time Respondent may present evidence on Respondent's own behalf, call witnesses, and confront adverse witnesses. Respondent acknowledges that by executing this document Respondent hereby waives the right to an immediate hearing and any other rights to which Respondent may be entitled in connection with said hearing Respondent, however, may apply or reapply for licensure to administer and prescribe controlled substances in the State of Utah and request that the Division lift the restriction on Respondent's license to practice as a dentist in the State of Utah, with all rights to review and hearing, as detailed, *infra*

5 Respondent waives the right to the issuance of a Petition and a Notice of Agency Action in this matter

6 Respondent acknowledges that this Stipulation and Order, if adopted by the Director of the Division, will be classified as a public document and may be released to other persons and entities

7. Respondent admits the following facts

- a Respondent was until recently a Captain in the United States Public Health Service ("USPHS") serving with United States Coast Guard ("USCG") at the USCG clinic in North Bend, Oregon
- b Respondent was placed on administrative leave effective February 27, 2006 by his USCG Commanding Officer due to concerns about patient safety In March 2006 a USCG Special Professional

Review Committee ("SPRC") found that while there were potential standard of care concerns, the SPRC did not feel there were sufficient evidence to make a clear determination whether or not standards of care or patient safety were compromised. A Focus Review Team recommended in May 2006 that Respondent's privileges be restricted. Respondent reports that he was subsequently medically retired under Title 10 of the United States Code from the USPHS.

Respondent suffered from severe back pain and had undergone major back surgery. The USCG determined that due to these ongoing health problems, Respondent, during periods of his employment with the USCG, exhibited signs of misusing prescription narcotics and drug-seeking behavior. Respondent disputes this determination by the USCG and will be seeking redress.

In or about April 2006 Respondent completed an employer-mandated inpatient drug abuse rehabilitation program conducted by the New Bridge Foundation, Inc.

Respondent's clinical privileges were reduced by the USCG on or about June 19, 2006.

- f. The USCG maintains that Respondent failed to disclose a significant medical condition to the USCG as required, constituting a false official statement.
- g. The USCG reported to the National Practitioner Data Bank in June 2006 that Respondent had failed to meet standards of care for periodontal disease diagnosis, demonstrated general lack of thorough treatment planning and documentation, placed patient safety at risk by failure to determine the need for bacterial dental endocarditis prophylaxis and performed dental extractions that led to an adverse outcome. Respondent disputes these conclusions and will be seeking redress.

8 Respondent, without admitting or denying any wrongdoing, agrees that if the USCG's determinations are true and not reversed, Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(1)(a), (e) and (h). Respondent recognizes that such conduct justifies disciplinary action against Respondent's license pursuant to Utah Code Ann. § 58-1-401(2)(a). Respondent agrees

an Order, which constitutes disciplinary action pursuant to Utah Administrative Code R156-1-102(7) and Utah Code Ann. § 58-1-401(2), may be issued in this matter providing for the following action against Respondent's licenses

- (1) Respondent hereby voluntarily surrenders his license to administer and prescribe controlled substances in the State of Utah Respondent also voluntarily surrenders the Class I anesthesia permit associated with his Utah dental license
- (2) Respondent's license to practice as a dentist in the State of Utah shall be restricted to the non-clinical practice of dentistry. Respondent shall not examine, diagnose, or treat any clinical patient. Respondent has informed the Division that he intends to utilize his license to act as a consultant to insurance companies

9. Respondent intends to file an application to the Board for Correction of Military Records ("BCMR"), challenging the determinations made by the USCG The decision of the BCMR can be reviewed by a federal district court Should either the BCMR, a federal court, or any other reviewing authority make a final decision encompassing a finding that Respondent did not engage in any alleged misconduct described in paragraph 7 above, which the Division considers to be unprofessional conduct pursuant to Utah law, and Division has received no other information of unlawful or unprofessional conduct by Respondent, then the Division will (1) reinstate Respondent's controlled substance license upon proper application by Respondent, and (2) remove the restriction on Respondent's dental license, if Respondent has not let the license lapse Should other significant new relevant evidence come to light, Respondent may reapply for a controlled substance license and submit a request to the Division to remove the restriction from his dental license, and the Division agrees to carefully review such evidence and consider reinstating Respondent's controlled substance license, upon proper application by Respondent, and lift the restriction on Respondent's dental license, if the license has not lapsed.

10 This Stipulation and Order, upon approval by the Director of the Division, shall be an interim compromise and settlement of this matter. Respondent acknowledges that the Director is not required to accept the terms of this Stipulation and Order and that if the Director does not do so, this Stipulation and the representations contained therein shall be null and void, except that the Division and the Respondent waive any claim of bias or prejudgment Respondent might have with regard to the Director by virtue of his having reviewed this Stipulation, and this waiver shall survive such nullification.

11. Respondent agrees to abide by and comply with all applicable federal and state laws, regulations, rules and orders related to the Respondent's practice of dentistry.

12 This document constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, understandings or agreements between the parties regarding the subject of this Stipulation and Order. There are no verbal agreements that modify, interpret, construe or affect this Stipulation.

13. The terms and conditions of this Stipulation and Order become effective immediately upon the approval of this Stipulation and signing of the Order by the Division Director. Respondent must comply with all the terms and conditions of this Stipulation immediately following the Division Director's signing of the Order page of this Stipulation and Order. Respondent shall complete all the terms and conditions contained in the Stipulation and Order in a timely manner. If a time period for completion of a term or condition is not specifically set forth in the Stipulation and Order, Respondent agrees that the time period for completion of that term or condition shall be set by the Board. Failure to complete a term or condition in a timely manner

shall constitute a violation of the Stipulation and Order and may subject Respondent to revocation or other sanctions.

14. If Respondent violates any term or condition of this Stipulation and Order, the Division may take action against Respondent, including imposing appropriate sanction, in the manner provided by law. Such sanction may include revocation or suspension of Respondent's license, or other appropriate sanction.

15. Respondent has read each and every paragraph contained in this Stipulation and Order. Respondent understands each and every paragraph contained in this Stipulation and Order. Respondent has no questions about any paragraph or provision contained in this Stipulation and Order.

DIVISION OF OCCUPATIONAL &  
PROFESSIONAL LICENSING

RESPONDENT

BY:

*Daniel T. Jones*  
**DANIEL T. JONES**

Bureau Manager

BY:

*Rodney F. Kirk*  
**RODNEY F. KIRK**

DATE:

*July 25, 07*

DATE:

*12 JUL 07*

MARK L SHURTLEFF  
ATTORNEY GENERAL

BY

*L. Mitchell Jones*  
**L. MITCHELL JONES**

Counsel for the Division

DATE:

*23 July 2007*

**ORDER**

THE ABOVE STIPULATION, in the matter of **RODNEY F. KIRK**, is hereby approved by the Division of Occupational and Professional Licensing, and constitutes my Findings of Fact and Conclusions of Law in this matter. The issuance of this Order is disciplinary action pursuant to Utah Administrative Code R156-1-102(7) and Utah Code Ann § 58-1-401(2) The terms and conditions of the Stipulation are incorporated herein and constitute my final Order in this case

DATED this 25 day of

*July*

. 2007

DIVISION OF OCCUPATIONAL AND  
PROFESSIONAL LICENSING

*F. David Stanley*  
F. DAVID STANLEY  
Director

Investigator Del Mortenson