

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

IN THE MATTER OF THE LICENSES OF  
**KENNETH J. NIELSON**  
TO PRACTICE AS A PHARMACIST  
AND TO DISPENSE  
CONTROLLED SUBSTANCES  
IN THE STATE OF UTAH

AMENDED ORDER

Case No. DOPL-2007-220

BY THE DIVISION:

The Division's Stipulation and Order, dated June 11, 2009, is hereby amended as follows:

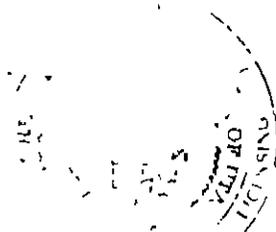
IT IS HEREBY ORDERED the probationary conditions requiring Respondent to attend a 12-step program (AA) and to participate in a professional support group (PIR) be amended to allow Respondent to attend either Professionals in Recovery (PIR) or a 12-Step program such as AA/NA. Respondent must attend at least six (6) support group meetings per month.

All other conditions identified in the June 11, 2009 Stipulation and Order shall remain the same and in effect

Dated this 20 day of January, 2010.

  
Mark B. Steinagel  
Director

S E A L



**RECEIVED**  
**JUN 08 2008**  
**DIVISION OF OCCUPATIONAL**  
**& PROFESSIONAL LICENSING**

Dan Lau (U S B No 8233)  
Assistant Attorney General  
MARK L SHURTLEFF (U S B 4666)  
Attorney General  
Commercial Enforcement Division  
Heber M Wells Building  
Box 146741  
Salt Lake City, UT 84114-6741  
Telephone (801) 366-0310

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

IN THE MATTER OF THE LICENSE OF )  
KENNETH NIELSON, RPH, ) **STIPULATION AND ORDER**  
TO PRACTICE AS A PHARMACIST )  
AND TO DISPENSE CONTROLLED ) **CASE NO DOPL 2007-220**  
SUBSTANCES IN THE STATE OF UTAH )

Kenneth Nielson ("Respondent") and the Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah ("Division") stipulate and agree as follows:

1. The Respondent admits the jurisdiction of the Division over the Respondent and over the subject matter of this action.
2. The Respondent acknowledges that he enters into this Stipulation knowingly and voluntarily
3. The Respondent is represented by William J Stilling of the law firm Parsons, Behle & Latimer
4. The Respondent understands that he is entitled to a hearing before the Utah State Board of Pharmacy ("the Board"), or other Division Presiding Officer, at which time he may present evidence on his own behalf, call witnesses, and confront adverse witnesses. The Respondent

acknowledges that by executing this document he hereby waives the right to a hearing and any other rights to which he may be entitled in connection with said hearing

5 The Respondent has received a Petition and a Notice of Agency Action in this matter, and he has filed an Answer in this case

6 The 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 The Respondent admits the following facts

a On or about August 17, 1987, the Respondent obtained licensure as a pharmacist and to dispense controlled substances within the State of Utah. From 1992 until he sold the pharmacy, the Respondent was the owner and pharmacist in charge for San Juan Pharmacy, a licensed class A/retail pharmacy in Monticello, Utah. The Respondent's license to dispense controlled substances expired on September 30, 2007, and his license to practice as a pharmacist expired on May 31, 2008. The Respondent's pharmacist license has been conditionally renewed until April 1, 2009.

b On or about April 2, 2003, the Respondent and San Juan Pharmacy entered into Stipulation and Order No. 2002-250 with the Division, placing both of the licenses mentioned in provision 7(a) on probation. The Stipulation and Order was for violations of certain provisions of the Utah Pharmacy Practice Act, U.C.A. § 58-17a-101 to -801 and the Utah Pharmacy Practice Act Rules R156-17a-101 to -620.

c On or about July 29, 2004, the above Stipulation and Order was terminated, and the licenses of the Respondent and San Juan Pharmacy were reinstated with full privileges.

d. On April 18, 2005, the Division sent a letter of concern to the Respondent after information had been received that he had been arrested for DUI or driving under the influence of alcohol on or about March 6, 2001 in Cortez, Colorado.

e On or about January 10, 2007, a Division investigator conducted a pharmacy inspection at San Juan Pharmacy, where the Respondent was practicing as the pharmacist in charge. The initial inspection and subsequent review of the Division's records yielded the following findings:

1) The Respondent, as the pharmacist in charge, had not submitted required information to the Utah Controlled Substance Database ("UCSD") as required in Utah Code Ann. § 58-37-7.5(4), and Utah Administrative Code R156-37-

609(6) for the following dates

(a) January 1, 2006 through December 31, 2006

2) The Respondent could not retrieve any documentation from the pharmacy which documented when the pharmacy had submitted information to the UCSD

3) The Respondent acknowledged to a Division investigator that one of the reasons why he had not submitted information to the UCSD was because he had not been able to verify a Drug Enforcement Agency Registration for the prescribing practitioner and/or obtained the patient's date of birth for some controlled substance prescriptions which he had dispensed

4) Prescriptions were dispensed from San Juan Pharmacy without beyond use dates or expiration dates on the dispensing labels

5) The last annual inventory completed for the pharmacy was performed on July 25, 2004. No annual inventory has been performed subsequent to July 25, 2004, as required by Utah Admin. Code R156-17b-605(1).

6) During the course of the investigation when the Division investigator was in San Juan, the Respondent did not identify his name and licensure classification to callers when communicating by telephonic means

f During the course of the investigation, the Division investigator stated that he could smell alcohol on the Respondent's breath. The Respondent stated that he occasionally stays overnight in the pharmacy to complete administrative work. The Respondent subsequently agreed to submit to a portable breathalyzer test, which was administered by a Monticello County Sheriff Deputy. The result of the portable breathalyzer test was 0.11%, which is approximately 1/8th of the legal limit for impairment while driving. The Respondent was asked to submit to a urine toxicology test. He refused to take this test.

g On or about November 21, 2005, the Respondent submitted a pharmacy self inspection report for San Juan Pharmacy to the Division. Within the self inspection report, the Respondent, based on his personal belief, attested as the pharmacist-in-charge that the pharmacy was compliant with all requirements as detailed within the self inspection report. One of those requirements that the Respondent answered "yes" to was that information is submitted to the UCSD, as required, with proper documentation kept on sight.

8 The Respondent admits that his conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2), Utah Administrative Code R156-37-502(8), Utah

Administrative Code R156-17b-502(14), as further described in Utah Administrative Code

R156-17b-603(14) and (17), and that said conduct justifies disciplinary action against Respondent's license pursuant to Utah Code Ann § 58-1-401(2)(a) and Utah Code Ann § 58-37-7 5(12)

Therefore, the Respondent agrees that an Order shall be entered in this matter as follows

- a The Respondent shall pay a fine to the Division in the amount of \$1,000 (one thousand dollars), pursuant to Utah Code Ann. § 58-37-7 5(12), due and payable within 90 days of the effective date of this Stipulation and Order
- b When the Respondent has completed all of the necessary steps to renew his licenses to dispense controlled substances and to practice as a pharmacist, the Division will renew these licenses but immediately place them on probation for a period of five (5) years. The period of probation shall commence on the effective date of this Stipulation and Order, which is the date the Division Director signs the Order. If the Board/Division later deems any of the conditions unnecessary, such deletions may be made by an amended order issued unilaterally by the Division
- c The Respondent shall meet with the Board within thirty (30) days of the effective date. The Respondent shall then meet with the Board on a quarterly basis or at such other greater or lesser frequency as the Board or Division may direct. The Respondent agrees to meet with an assigned staff member prior to the first Board meeting
- d The Respondent shall notify the Board in writing within one (1) week of any change of employer, employment status, or practice status. This notification is required regardless of whether the Respondent is employed in his profession
- e If the Respondent leaves the State of Utah for a period longer than sixty (60) days, he shall notify the Division and Board in writing of the dates of his departure and return. The licensing authorities of the jurisdiction to which the Respondent moves shall be notified by the Respondent in writing of the provisions of this Stipulation and Order. Periods of residency or practice outside the State of Utah may apply to the reduction of the period this Stipulation and Order is in effect, if the new state of residency places equal or greater conditions upon the Respondent as those contained in this Stipulation and Order
- f If the Respondent is arrested or charged with a criminal offense by any law enforcement agency, in any jurisdiction, inside or outside the State of Utah, for any reason, or should the Respondent be admitted as a patient to any institution in this state or elsewhere for treatment regarding the abuse of or dependence on any

chemical substance, or for treatment for any emotional or psychological disorder, the Respondent agrees to cause the Division and Board to be notified immediately. If the Respondent at any time during the period of this agreement is convicted of a criminal offense of any kind, with the exception of a minor traffic offense, or enters a plea in abeyance to a criminal offense of any kind, including a pending criminal charge but excluding criminal charges arising out of the circumstances that form the basis for this Stipulation and Order, the Division may take appropriate action against the Respondent, including imposing appropriate sanctions, after notice and an opportunity for a hearing. Such sanctions may include revocation or suspension of the Respondent's license, or other appropriate sanctions.

- g The Respondent must maintain current professional licenses at all times during the period of this agreement.
- h The Respondent shall immediately notify the Division in writing of any changes in his residential or business addresses.
- i The Respondent shall complete all terms and conditions of any criminal sanctions incurred before or during the period of this agreement, including probation or parole. If the Respondent has not successfully completed all the terms and conditions of his criminal probation at the time his administrative probationary period ends, the period of the Respondent's administrative probation shall be extended until all of the conditions of the Respondent's criminal probation have been successfully completed.
- j In the event the Respondent does not practice as a pharmacist for a period of sixty (60) days or longer, he shall notify the Board in writing of the date he ceased practicing. The period of time in which he does not practice shall not be counted toward the time period of this Stipulation and Order. It shall be within the discretion of the Board to modify this requirement if the Respondent satisfactorily explains to the Board that compliance in his case was impractical or unduly burdensome. The Respondent must work at least sixteen (16) hours per week and no more than forty-eight (48) hours per week to be considered "practicing" in the Respondent's profession.
- k The Respondent shall prepare and present a practice plan to the Board prior to practicing pharmacy in any location. The practice plan must be approved by the Board before the Respondent can resume practice as a pharmacist. The practice plan shall include a provision for at least a yearly controlled substance audit and how any discrepancies will be addressed.
- l The Respondent shall notify any employer of his restricted status and the terms of this agreement by providing each of his employers a copy of this Stipulation and

Order The Respondent will also cause each employer to acknowledge to the Board in writing that a copy of this Stipulation and Order has been provided to the employer. He shall further cause his employer to submit performance evaluations to the Board on a monthly basis for six months and quarterly thereafter. The receipt of an unfavorable report may be considered to be a violation of her probation. If the Respondent is not employed as a pharmacist, he shall submit the required employer report form on the date it is due and indicate on that form that his current employment is not in pharmacy or that he is not currently working.

- m The Respondent shall practice under the direct supervision of a pharmacist licensed in good standing in the State of Utah.
- n The Respondent shall meet with the Board at the first scheduled Board Meeting following the effective date of this Stipulation and Order. The Respondent shall provide to the Board a plan for his treatment, including the name(s) of the evaluators, prescribing practitioner, and the dispensing pharmacy.
- o Although the use and possession of alcohol is generally legal for persons age 21 and older, the Respondent agrees to abstain from the personal use of alcohol in any form. The Respondent agrees to abstain from the personal use or possession of controlled substances and prescription drugs, unless such controlled substances or prescription drugs are lawfully prescribed to the Respondent for a current bona fide illness or condition by a licensed practitioner and taken by the Respondent in accordance with that practitioner's instructions. The Respondent shall abstain from any and all other mood altering substances or use of mood altering substances for any other purpose other than the purpose for which the substance was lawfully prescribed for by a licensed practitioner.
- p The Respondent shall submit to the following course of treatment as part of his rehabilitation and at his own expense:
  - 1 The Respondent shall successfully complete a chemical dependency evaluation provided by a Division-approved licensed provider within ninety (90) days of the effective date of this Stipulation and Order. He will contact the Division-approved licensed provider for an initial appointment within 10 days of the effective date of this Stipulation and Order. The Respondent shall schedule the initial appointment to be held within 45 days of the effective date of this Stipulation and Order. He will attend all appointments and follow-up appointments in a timely manner. The Respondent shall cooperate fully with the evaluator to ensure a fair and complete evaluation. He will notify the Division immediately after successfully completing the evaluation and inform the Division that he has successfully completed the chemical dependency evaluation. The

Respondent agrees to cause the evaluation report to be sent to the Division within 90 days of the effective date of this Order

ii The Respondent shall successfully complete a psychological evaluation provided by a Division-approved licensed provider within ninety (90) days of the effective date of this Stipulation and Order. He will contact the Division-approved licensed professional for an initial appointment within 10 days of the effective date of this Stipulation and Order. The Respondent shall schedule the initial appointment to be held within 45 days of the effective date of this Stipulation and Order. He will attend all appointments and follow-up appointments in a timely manner. The Respondent shall cooperate fully with the evaluator to ensure a fair and complete evaluation. He will notify the Division immediately after successfully completing the evaluation and inform the Division that he has successfully completed the psychological evaluation. The Respondent agrees to cause the evaluation report to be sent to the Division within 90 days of the effective date of this Order.

iii The Respondent shall successfully complete a physical evaluation provided by a Division-approved licensed provider within ninety (90) days of the effective date of this Stipulation and Order. He will contact the Division-approved licensed professional for an initial appointment within 10 days of the effective date of this Stipulation and Order. The Respondent shall schedule the initial appointment to be held within 45 days of the effective date of this Stipulation and Order. He will attend all appointments and follow-up appointments in a timely manner. The Respondent shall cooperate fully with the evaluator to ensure a fair and complete evaluation. He will notify the Division immediately after successfully completing the evaluation and inform the Division that he has successfully completed the physical evaluation. The Respondent agrees to cause the evaluation report to be sent to the Division within 90 days of the effective date of this Order.

iv The Respondent acknowledges receiving a current list of the Division-approved licensed providers

v If the Respondent fails to submit the evaluation(s) to the Division within the time stated above, the Division may take any action necessary pursuant to the Utah Administrative Procedures Act, Utah Code Annotated § 63-46b.

vi The Respondent shall successfully complete all treatment programs and treatment recommendations as outlined in the evaluations

vii In the interest of public safety, the Division may impose additional requirements above and beyond those recommended by the evaluator in the

chemical dependency, psychological, and physical evaluations set forth above  
The Respondent agrees to comply with these additional requirements

- q Unless otherwise approved by the Division, the Respondent shall, except as provided otherwise herein, receive prescriptions from only one prescribing practitioner, and the Respondent shall fill prescriptions at only one pharmacy. The Respondent shall not obtain the same or equivalent prescription drug or controlled substance from more than one practitioner. All prescribing practitioners must be informed of any and all of the Respondent's addiction/abuse problems. The Respondent shall not attempt, under any circumstance, to obtain prescription drugs in quantities or types that are not legitimately required. The Respondent shall submit the names of the prescribing practitioner and pharmacy to the Division and Board for approval. The Respondent shall provide the Division with a copy of all his prescriptions for prescription drugs, controlled substances, or any other mood altering substance, within forty-eight (48) hours after the prescription has been written.
- r Prescriptions from an emergency practitioner or referral practitioner must be submitted to the Division within forty-eight (48) hours of being issued. The Respondent shall report to the Division within forty-eight (48) hours any and all medications and controlled substances administered or dispensed to the Respondent by any other individual.
- s The Respondent shall report to the Division within forty-eight (48) hours any and all medications or controlled substances ingested by the Respondent from any source.
- t The Respondent shall provide to the primary prescribing medical practitioner a copy of this Stipulation and Order and have the practitioner inform the Division in writing receipt of this Stipulation and Order.
- u The Respondent shall provide samples (urine, blood, saliva, hair, or any other type of sample requested) for drug analysis upon the request of the Division, to be conducted by any company with which the Division has contracted to conduct drug testing. The designated company may also request such samples, and the Respondent shall comply with such requests. The Division shall determine when and where the Respondent is to submit himself for testing. The Respondent shall pay for the cost of drug testing and shall accurately complete and sign any and all release forms requested by the Division or the drug testing company with respect to drug testing, including but not limited to, forms authorizing the company to send the drug test results to the Division. Any report from a drug testing company that indicates that the Respondent failed to provide a sample for drug analysis as directed will be considered a positive drug test result for the Respondent and will subject the Respondent to additional sanctions. Any drug

test result or pattern of results that indicates that the sample provided by the Respondent for drug analysis is diluted to an extent that it cannot be analyzed, will be considered a positive drug test result for the Respondent and will subject the Respondent to additional sanctions

- v The failure of the Respondent to pay the costs associated with this Stipulation and Order constitutes a violation of the Stipulation and Order
- w. The Respondent shall participate in all therapy and aftercare that the Division and the Board may require, after completion of the Respondent's treatment program. Any treatment program or therapist from whom the Respondent has or will receive treatment must be approved by the Division and the Board, and the Respondent shall direct and authorize the Respondent's therapist to discuss the Respondent's diagnosis, treatment, and prognosis with the Division and the Board. The Respondent shall direct his therapist or aftercare provider to submit quarterly evaluations to the Board that address the Respondent's progress in treatment and the Respondent's prognosis. The Respondent may be subject to reevaluation upon notice and opportunity to be heard.
- x The Respondent shall participate in a professional support group to address his use of controlled substances and/or alcohol, and he shall submit documentation that reflects his continuing and regular attendance at such support group meetings. The Respondent shall submit such documentation to the Division on a quarterly basis. "Regular attendance" for the purpose of this paragraph shall be at least twice a month.
- y The Respondent shall attend a 12-step program, obtain a 12-step sponsor, work the 12-step program and submit quarterly reports to the Division documenting his participation. The frequency of participation shall be monitored and approved by the Board. Unless otherwise directed, the Respondent shall attend at least four times per month. The reports from the programs described in subsections w, x and y of provision 8 of this Stipulation and Order are to be submitted to the Board on a monthly basis for the first six months after the effective date of this Stipulation and Order. If these reports are found to be in compliance, the Respondent will submit them to the Division on a quarterly basis or at such frequency as the Board deems appropriate.
- z The Division may take appropriate action to impose sanctions if: (i) The Respondent tests positive for alcohol, a prescription drug, a controlled substance, or any mood altering substance which cannot be accounted for by an administration or prescription by a lawful practitioner for a current medical condition, or (ii) The Respondent violates any federal, state or local law relating to the Respondent's practice, the Controlled Substance Act, or a term or condition of this Stipulation and Order. Sanctions may include the revocation or suspension

of the Respondent's license, or other appropriate sanctions, in the manner provided by law

- aa The Respondent shall not fill prescriptions for controlled substances for himself or his immediate family
- bb The Respondent shall not act as a pharmacist in charge
- cc The Respondent shall complete, within one year of the effective date of the Stipulation and Order, an additional five (5) hours of continuing professional education in law and ethics and five (5) additional hours of continuing professional education in substance abuse approved by the Board and the Division
- dd The Respondent shall complete and submit to the Board a self-assessment report on a monthly basis for the first six months of the probationary period. If these reports are found to be in compliance, the Respondent will submit them on a quarterly basis or at such time as the Board deems appropriate for the remainder of the Respondent's probation

9 This Stipulation and Order, upon approval by the Director of the Division, shall be the final compromise and settlement of this matter. The 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 the Respondent might have with regard to the Director by virtue of his having reviewed this Stipulation, and this waiver shall survive such nullification

10 The Respondent agrees to abide by and comply with all applicable federal and state laws, regulations, rules and orders related to his practice as a pharmacist and the dispensing of controlled substances

11 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 and Order.

12. 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. The 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. The 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, the 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 the Respondent to revocation of his licenses or other sanctions.

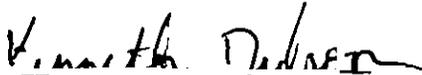
13. If the Respondent violates any term or condition of this Stipulation and Order, the Division may take action against the Respondent, including imposing appropriate sanctions, in the manner provided by law. Such sanctions may include revocation or suspension of the Respondent's licenses, or other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

14. The Respondent has read each and every paragraph contained in this Stipulation and Order. He understands each and every paragraph contained in this Stipulation and Order, and he has no questions about any paragraph or provision contained in this Stipulation and Order.

**DIVISION OF OCCUPATIONAL &  
PROFESSIONAL LICENSING**

**RESPONDENT**

BY   
**LAURA POE**  
Bureau Manager

BY   
**KENNETH NIELSON**  
Respondent

DATE 6-8-09

DATE 6/2/09

**APPROVED AS TO FORM**

**MARK L SHURTLEFF**  
ATTORNEY GENERAL

BY   
**Dan Lau, AAG**  
Counsel for the Division

BY   
**Scott Bell**  
Counsel for the Respondent

DATE 6/8/09

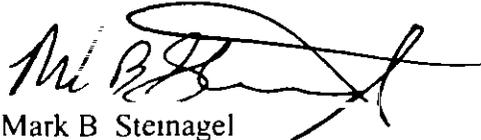
DATE 6/8/09

**ORDER**

THE ABOVE STIPULATION, in the matter of **KENNETH NIELSON**, 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 a 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 11 day of June, 2009

**DIVISION OF OCCUPATIONAL AND  
PROFESSIONAL LICENSING**



Mark B. Steinagel  
DOPL Director