

KARL G PERRY (# 2570)
Assistant Attorney General
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Utah Attorney General
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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)
GARY WHITLEY, D.C.) **STIPULATION AND ORDER**
TO PRACTICE AS A)
CHIROPRACTIC PHYSICIAN) **CASE NO DOPL 2007-33**
IN THE STATE OF UTAH)

GARY WHITLEY, D.C (“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 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 The Respondent understands that Respondent has the right to be represented by counsel in this matter and Respondent's signature below signifies that Respondent has either consulted with an attorney or Respondent waives Respondent's right to counsel in this matter

4 Respondent understands that Respondent is entitled to a hearing before the Utah State Chiropractic Physicians 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 a hearing and any other rights to which Respondent may be entitled in connection with said hearing

5 Respondent acknowledges that he has received 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

- a On or about November 17, 2001, Respondent was arrested by South Salt Lake Police after being observed masturbating by another person On April 14, 2003 the Respondent entered into a Plea and Abeyance agreement with the South Salt Lake Justice Court On April 21, 2003 Respondent entered into a Diversion agreement with the court Respondent completed the Diversion agreement and the charges were dismissed
- b On or about July 31, 2003, the Division received a complaint from CH (name withheld to protect confidentiality), who was a patient of

Respondent CH complained that Respondent was mentally and verbally abusive toward her

- c On or about May 12, 2004, in accordance with the provisions of Utah Code Ann 58-73-401(b), Respondent was required by the Division to submit to a mental health examination. The evaluator determined Respondent was suffering from a variety of mental health issues that could impact public safety if Respondent's mental health issues are not resolved through treatment. That, if Respondent continues to practice as a Doctor of Chiropractic without any therapy, educational, supervision or other appropriate services he will present a risk to public safety.
- d The Respondent has rejected the recommendations of Michael D Brunson for therapy, supervision and intensive treatment and educational services in the areas of patient boundaries, unprofessional and unethical behavior.

8 While Respondent neither admits nor denies the alleged facts or conduct described above, Respondent acknowledges that if they were proven at hearing they would constitute unprofessional conduct as defined in Utah Code Ann §§ 58-1-501(2)(c) and (k). Further, Respondent acknowledges that any such conduct proven at any such hearing may justify disciplinary action against Respondent's license pursuant to Utah Code Ann § 58-1-401(2)(a). In order to avoid the necessity of an adjudicative hearing in this matter, Respondent agrees an Order may be issued providing for the following action against his license:

- (1) Respondent's license to practice as a Chiropractic physician in the State of Utah expires on May 31, 2008. Any remaining residual licensing rights of Respondent shall be revoked. Respondent shall not seek renewal of said license and the State of Utah Division of Occupational and Professional Licensing shall not issue Respondent a license after the expiration of his current license until the following requirements are met as determined by the Board/Division:
 - a Respondent shall at his own expense shall either (A) complete all recommendations contained in the psycho/sexual evaluation done by Michael D Brunson on May 13, 2004 and provide satisfactory proof to the

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Division/Board, or (B) receive a psycho/sexual evaluation by a licensed mental health practitioner approved by the board. Respondent waives any objections to the Division providing any information obtained in its investigation to the evaluating psychologist and sharing with the Board and the Division the results of his evaluation and any information underlying those results. Respondent shall cause the report and findings of this evaluation to be forwarded to the Board and Division. The Board will also determine the therapist who must provide such treatment. Respondent may present to the Board his recommendations as to which therapist he wishes to perform any necessary treatment and may show what therapeutic steps he has taken to correct his behavior.

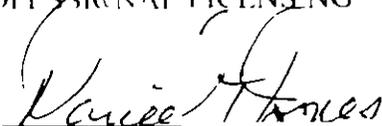
- b. The Board/Division may, after reviewing the report and hearing from Respondent, impose a practice plan, which addresses any safeguards deemed by the Division and Board to be necessary to protect the public.
- c. The Board/Division may impose other conditions upon any license it may grant to Respondent. These conditions may include having the Respondent not examine, treat or counsel any female patient over ten (10) years of age without the presence of a chaperon. The presence of a chaperon shall be documented in the patient's file and on a form, designed by the Respondent, and signed by the chaperon or having Respondent complete a course approved by the Board/Division which addresses boundary issues in the practice of the medical professions.

9. This Stipulation and Order, upon approval by the Director of the Division, shall be the final compromise and settlement of this. 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.

10 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.

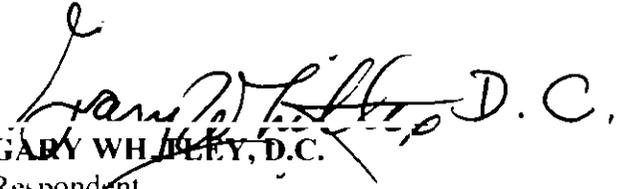
11 The terms and conditions of this Stipulation and Order become effective immediately upon the approval of this Stipulation and signing of the Order by the Division Director. Respondent must comply with all the terms and conditions of this Stipulation immediately following the Division Director's signing of the Order page of this Stipulation and Order.

DIVISION OF OCCUPATIONAL &
PROFESSIONAL LICENSING

BY 
DANIEL T. JONES
Bureau Manager

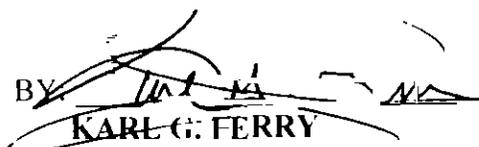
DATE _____

RESPONDENT

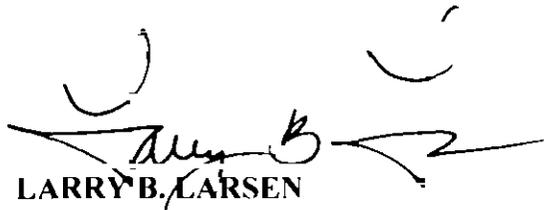
BY 
GARY WHITLEY, D.C.
Respondent

DATE 9 April 08

MARK L. SHURTLEIFF
ATTORNEY GENERAL

BY 
KARL G. FERRY
Counsel for the Division

DATE 4/17/08

BY 
LARRY B. LARSEN
Counsel for Respondent

DATE 4, 9 / 08

ORDER

THE ABOVE STIPULATION, in the matter of **GARY WHITLEY, D.C.**, 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 terms and conditions of the Stipulation are incorporated herein and constitute my final Order in this case.

DATED this 17 day of April, 2008

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING


F DAVID STANLEY
Director