

L MITCHELL JONES (U S B 5979)
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 LICENSES OF)
SAN JUAN PHARMACY) **STIPULATION AND ORDER**
(LICENSE NO. 127102-1703 & 127102-8913))
TO PRACTICE PHARMACY AND TO) Case No DOPL-2007- 72
DISPENSE CONTROLLED SUBSTANCES)
WITHIN THE STATE OF UTAH)

SAN JUAN PHARMACY ("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 Dana Nielson is the owner and pharmacist-in-charge of Respondent pharmacy Dana Nielson is authorized to act on behalf of and enter into legally binding agreements for Respondent pharmacy

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 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 Board of Pharmacy ("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 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 is a licensed Class A retail pharmacy in the State of Utah
- b On or about January 9, 2007, a Division investigator conducted an inspection of Respondent's premises The following discrepancies and deficiencies were noted by the investigator
 - i Respondent pharmacy was not secured in such a way as to prevent unauthorized entry into the pharmacy by non-licensed personnel
 - ii Unlicensed pharmacy employees were allowed access to the pharmacy after regular business hours without a pharmacist present in order to distribute medications to pharmacy customers

- iii Several pre-filled medication bottles did not have a "beyond use" date listed on the label
- iv Stock inventory contained within the pharmacy were expired Some of the inventory had expired as long ago as the year 2000
- v Pharmacy personnel did not require customers to provide positive identification before receiving controlled substances
- vi Notice and literature regarding the "offer to counsel" was not displayed and maintained
- vii Two pharmacy technicians did not have their licenses displayed

8 Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Administrative Code R156-17b-502(8), R156-17b-614, and Utah Code Ann § 58-17b-502(3) and (7), and that said conduct justifies disciplinary action against Respondent's license pursuant to Utah Code Ann § 58-1-401(2)(a) Respondent agrees that an Order, which constitutes disciplinary action pursuant to Utah Administrative Code R156-1-102(7) and Utah Code Ann § 58-1-401(2), shall be entered in this matter as follows

- a Respondent's licenses shall be subject to a term of probation for a period of one (1) year 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 During the period of probation, Respondent shall be subject to all of the following terms and conditions If the Board or Division later deems any of the conditions unnecessary such deletions may be made by an amended order issued unilaterally by the Division
- b Respondent shall pay a fine of \$2,000 00 (two-thousand dollars), pursuant to Utah Code Annotated § 58-17b-504(3)(a), within 60 days of the effective date of this Stipulation and Order
- c Dana Nielson, Respondent's pharmacist-in-charge and owner, shall draft a practice plan, and shall meet with the Board within thirty (30) days of the signing of this Stipulation and Order to discuss the practice plan The practice plan submitted by Dana Nielson shall include proposed methods for rectifying deficiencies noted above and

- i Documentation showing policies and procedures established at San Juan Pharmacy for preventing access to the pharmacy by non-licensed personnel, duties of pharmacy employees, storage and disposal of outdated medications, and obtaining positive identification from customer before dispensing of controlled substances
- ii Plans for securing the pharmacy, both when the pharmacy is open and closed
- iii Ensuring printed labels meet all regulations and standards

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

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 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

1

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.

12. 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. 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 Pharmacy. Respondent shall immediately notify the Division in writing of any change in Respondent's residential or business address.

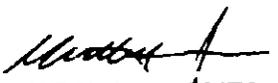
13. Respondent has read each and every paragraph contained in this Stipulation and Order. Respondent understands each and every paragraph contained in this Stipulation and Order. Respondent has no questions about any paragraph or provision contained in this Stipulation and Order.

DIVISION OF OCCUPATIONAL &
PROFESSIONAL LICENSING

BY 
DIANA BAKER
Bureau Manager

DATE 10 Apr 08

MARK L SHURTLEFF
ATTORNEY GENERAL

BY 
L MITCHELL JONES
Counsel for the Division

DATE 09 Apr 2007

RESPONDENT

BY 
DANA NIELSON
Owner
San Juan Pharmacy

DATE 4/3/07

ORDER

THE ABOVE STIPULATION, in the matter of **SAN JUAN PHARMACY**, 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 12 day of April, 2007

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING


F DAVID STANLEY
Director

INVESTIGATOR JARED MEMMOTT