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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 LICENSES OF )  
**DAVID MICHAEL POPE** ) **STIPULATION AND ORDER**  
TO PRACTICE AS A )  
PHYSICIAN/SURGEON AND TO )  
ADMINISTER AND PRESCRIBE ) **CASE NO DOPL 2008- 121**  
CONTROLLED SUBSTANCES )  
IN THE STATE OF UTAH )

**DAVID MICHAEL POPE** (“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 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 State of Utah's Physician Licensing Board ("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 The Division may release this Stipulation and Order, and will release other information about this disciplinary action against Respondent's licenses, to other persons and entities

7 Respondent admits the following facts are true

- a Respondent was first licensed to practice as a physician and to administer and prescribe controlled substances on or about July 6, 1992 Respondent practiced at a central Utah family medicine clinic ("clinic") that Respondent owns at all times relevant to the following facts Respondent also practices at an emergency room at a central Utah hospital and at a care center in central Utah
- b Between 2002 and 2008 Respondent engaged in the treatment of pain management, a specialized area of medicine that was beyond the scope of Respondent's competence, ability, and education

- c Between 2002 and 2008 Respondent failed, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain," 2004, established by the Federation of State Medical Boards
- d An expert evaluator, who is an M D board certified by the American Board of Medical Specialties in Anesthesiology, with a subspecialty certification in pain management, reviewed the clinical records of three randomly selected patients who were treated by Respondent between 2002 and 2008 The expert evaluator determined the following
  - (1) Respondent failed to document examination findings consistent with chronic pain diagnoses or justifying the amounts and frequency of controlled substance pain medications prescribed Respondent added large doses of opioid medication to existing pain management regimen without properly noting any objective findings, assessing the patient's pain, or consulting an appropriate specialist
  - (2) Respondent failed to document providing patients with informed consent which contains information about the risks and benefits of the use of the controlled substance prescribe or administered by Respondent
  - (3) Respondent failed to provide adequate follow up evaluations after beginning pain management treatment Respondent failed to follow DEA recommended guidelines for patient follow-up visits and issued prescriptions for Schedule II controlled substances for intervals of more than 90 days in violation of United States Code of Federal Regulations § 1306.12
- e In 2007 Respondent prescribed or administered excessive amounts of oxycontin to Jane Doe (identity withheld for purposes of confidentiality), a drug dependent person, as defined in Utah Code Ann § 58-37-2(s)

8 Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann § 58-1-501(2)(a) and (t), and Utah Administrative Code R156-1-502(6) Respondent agrees by engaging in such conduct the Division is justified in taking 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 against Respondent's

license by the Division 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 shall pay an administrative penalty of \$1,000 00 (one-thousand dollars) to the Division, pursuant to Utah Code Ann § 58-67-402, within three months of the effective date of this Stipulation and Order PAID IN FULL  
9-9-2008
- (2) Respondent's licenses shall be revoked, however those revocations shall be immediately stayed and Respondent's licenses shall be subject to a two (2) year term of probation. The period of probation shall commence on 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.
- a Respondent shall meet with the Board within thirty (30) days of the signing of the accompanying Order. Respondent shall meet with a Division staff person prior to Respondent's first meeting with the Board to review this agreement. For the remainder of the duration of probation, Respondent shall meet with the Board or with the Division, as directed by the Division, annually or at such other greater or lesser frequency as the Division may direct.
  - b Respondent shall successfully complete a comprehensive pain management education course and a prescribing course that have been pre-approved by the Division and Board within sixty (60) days of the signing of this Stipulation and Order.
  - c Respondent shall not engage in the practice of pain management at Respondent's clinic unless prior written approval is granted by the Division and Board until the course referred to in subparagraph 2(b) above has been completed. Any patient needing treatment for pain beyond 30 days shall be referred out to a qualified pain treatment specialist.
  - d Respondent shall identify a supervising physician to supervise Respondent's practice at Respondent's clinic. The supervising physician must be in good standing with the Division. The

supervising physician shall agree to co-manage practice care issues with Respondent to include the review of 10% of Respondent's pain management medical charts from Respondent's clinic, focusing on Respondent's prescribing practices. Respondent shall bear all expenses related to such supervision. The supervising physician must be approved by the Division and Board and shall consult with Respondent on a weekly basis regarding practice issues. Respondent shall cause the supervising physician to meet with the Board at the first meeting with the Board following the effective date of this Order, to discuss oversight issues and the responsibilities expected of a supervising physician. Respondent shall further cause the supervising physician to submit performance evaluations to the Board on a quarterly basis. If Respondent is not employed as a physician, Respondent shall submit the employer performance report form on the date it is due and indicate on the form that Respondent is not currently practicing as a physician or that Respondent is not currently working.

- e All reports and documentation required in this Stipulation and Order shall be submitted to the Board on a monthly basis for the first six months of probation and quarterly thereafter, or at such frequency as directed by the Board and Division. The receipt of an unfavorable report may be considered to be a violation of probation.
- f Respondent shall issue prescriptions for controlled substances to patients at Respondent's clinic only on sequentially numbered triplicate scripts. One copy of each prescription shall remain in the patient chart and one copy of each prescription shall be sent by Respondent to the Division within one month of issuance.
- g Respondent shall maintain a log of controlled substances administered to patients in Respondent's clinic. Said log shall be submitted to the Division and the Board on a quarterly basis.
- h If Respondent enters into an employment arrangement whereby he is an employee, Respondent shall notify his employer of Respondent's restricted status and the terms of this Stipulation and Order, and shall further cause his employer to submit performance evaluations to the Board on a quarterly basis. Respondent shall cause his employer to acknowledge to the Board in writing that a copy of this Stipulation and Order has been provided to the employer by Respondent.

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- i Respondent is currently supervising two physician assistants Respondent may continue to supervise those two physician assistants until the Board and Division review Respondent's supervisory role and delegation of services agreement at Respondent's first meeting with the Board The Board and Division will determine at that meeting or subsequent meetings if and in what manner Respondent may continue to supervise physician assistants
  - j In the event Respondent does not practice as a physician for a period of sixty (60) days or longer, Respondent shall notify the Board in writing of the date Respondent ceased practicing The period of time in which Respondent 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 Respondent satisfactorily explains to the Board that compliance in Respondent's case was impractical or unduly burdensome
  - k 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 Respondent is employed in Respondent's profession
  - l If Respondent leaves the State of Utah for a period longer than sixty (60) days, Respondent shall notify the Division and Board in writing of the dates of Respondent's departure and return The licensing authorities of the jurisdiction to which Respondent moves shall be notified by 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
  - m If 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 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, Respondent agrees to cause the Division and Board to be notified

immediately. If Respondent at any time during the period of this agreement is convicted of a criminal offense of any kind, or enters a plea in abeyance to a criminal offense of any kind, including a pending criminal charge, the Division may take appropriate action against Respondent, including imposing appropriate sanctions, after notice and opportunity for hearing. Such sanctions may include revocation or suspension of Respondent's license, or other appropriate sanctions.

- n Respondent must maintain current Utah physician and controlled substance licenses at all times during the period of probation.
- o Respondent shall immediately notify the Division in writing of any change in Respondent's residential, business, or mailing address.
- p Failure of Respondent to pay the costs associated with this Stipulation and Order constitutes a violation of the Stipulation and Order.

9 This Stipulation and Order, upon approval by the Director of the Division, shall be the final compromise and settlement of this non-criminal administrative 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 Respondent agrees to abide by and comply with all applicable federal and state laws, regulations, rules and orders related to the Respondent's licensed practice.

11 Respondent agrees not to take any action or make any public statement that creates, or tends to create, the impression that any of the matters set forth in the Stipulation and Order are without a factual basis. A public statement includes statements to one or more Board members.

during a meeting of the Board Any such action or statement shall be considered a violation of this Stipulation and Order

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

BY   
NOEL TAXIN  
Bureau Manager

DATE 6/16/08

RESPONDENT

BY   
DAVID MICHAEL POPE  
Respondent

DATE 6/12/2008

MARK L SHURTLEFF  
ATTORNEY GENERAL

BY   
L. MITCHELL JONES  
Counsel for the Division

DATE 12 June 2008

**ORDER**

THE ABOVE STIPULATION, in the matter of **DAVID MICHAEL POPE**, 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 16 day of June, 2008

**DIVISION OF OCCUPATIONAL AND  
PROFESSIONAL LICENSING**

  
**F. DAVID STANLEY**  
Director

Investigator: Sandra Hise