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

**OF THE DEPARTMENT OF COMMERCE**

**OF THE STATE OF UTAH**

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IN THE MATTER OF THE LICENSE OF )  
SUSAN MACON, RPH, TO PRACTICE AS A ) **STIPULATION AND ORDER**  
PHARMACIST AND TO DISPENSE )  
CONTROLLED SUBSTANCES IN THE ) **CASE NO. DOPL 2008- 125**  
STATE OF UTAH )

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Susan Macon ("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 she enters into this Stipulation knowingly and voluntarily.
3. The Respondent is represented by William J. Stilling and Scott S. Bell of the law firm Parsons, Behle & Latimer.
4. The Respondent understands that she is entitled to a hearing before the Utah State Board of Pharmacy ("the Board"), or other Division Presiding Officer, at which time she may present evidence on her own behalf, call witnesses, and confront adverse witnesses. The Respondent

acknowledges that by executing this document she hereby waives the right to a hearing and any other rights to which she 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 she 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 11, 1986, the Respondent obtained licensure as a pharmacist and to dispense controlled substances within the State of Utah.

b. On or about October 24, 2003, the Respondent pled guilty to one count of retail theft, a class B misdemeanor. This misdemeanor has subsequently been expunged from the Respondent's record.

c. On or about April 15, 2005 and August 22, 2007, the Respondent renewed her licenses with the Division. On the renewal application forms, the Respondent did not include the criminal history listed in provision 7(b) of this Stipulation and Order.

d. On or about January 2, 2008, the Respondent was interviewed by two Division Investigators. At this time, the Respondent acknowledged that she did not include her prior criminal history to the Division in her license renewal applications in 2005 and 2007. The Respondent submitted to a urine drug screen which subsequently tested positive for Hydrocodone and Lorazepam. The Respondent's last prescription for Hydrocodone was for thirty tablets which was dispensed on or about April 3, 2007, and the Respondent has never received a prescription for Lorazepam, although she had received a prescription for the generic version of Xanax, Alprazolam. During the interview the Respondent acknowledged that she had been prescribed Suboxone, and that she had smoked marijuana in the past.

e. On or about January 29, 2008, the Division received a copy of the Respondent's discharge summary for her drug and alcohol treatment records. The discharge summary noted the following:

i. The Respondent admitted herself for detoxification of Opiates

ii. The Respondent informed the medical staff that she had been using 10-15

- tablets of Lortab 10 mg. for the past two years.
- iii. The Respondent was diagnosed with opiate dependency continuous, soma dependency continuous, opiate withdrawal syndrome, soma withdrawal and other unrelated medical conditions.
  - iv. The Respondent was discharged after three days with a prescription for Suboxone and was to make plans for a treatment program.

8. Therefore, the Respondent admits that the conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2); and that said conduct justifies disciplinary action against her license pursuant to Utah Code Ann. § 58-1-

401(2)(a). 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 \$3,000 (three thousand dollars), pursuant to Utah Admin. Code R156-17b-402(13), (14) and (50), due and payable within 90 days of the effective date of this Stipulation and Order. paid
- b. The Respondent's licenses will be placed on probation for a period of three (3) 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 her profession.
- e. If the Respondent leaves the State of Utah for a period longer than sixty (60) days, she shall notify the Division and Board in writing of the dates of her departure and return. If the Respondent seeks licensure in another jurisdiction, she shall adhere to the licensing requirements of that

jurisdiction regarding notification 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 her criminal probation at the time her 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, she shall notify the Board in writing of the date she ceased practicing. The period of time in which she 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 her case was impractical or unduly burdensome. The

Respondent must work at least sixteen (16) hours per week and no more than fifty (50) hours per week (unless otherwise approved for more hours by the Board) 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, and it shall address how the Respondent intends to prevent the recurrence of any facts admitted in provision 7 of this Stipulation and Order.
- l. The Respondent shall notify any employer of her restricted status and the terms of this agreement by providing each of her 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. She shall further cause her employer to submit performance evaluations to the Board on a quarterly basis for a period of three years (unless otherwise approved for a shorter period of time by the Board). 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, she shall submit the required employer report form on the date it is due and indicate on that form that her current employment is not in pharmacy or that she is not currently working.
- m. The Respondent shall practice under the general supervision of a pharmacist licensed in good standing in the State of Utah, as defined by Utah Admin. Code R156-1-102a(4)(c), with the additional requirement that the Respondent can never be alone in the pharmacy during her probationary period. A pharmacy technician, another pharmacist or the supervising pharmacist must be present in the pharmacy with the Respondent at all times during her probationary period. The supervisor shall submit to the Board a statement indicating his or her willingness to supervise and submit reports, a resume and on a quarterly basis for the duration of the Respondent's probation (unless the Board determines that this is unnecessary) a report on the Respondent's work performance and any relevant observations, concerns, etc. about the Respondent's work performance.
- n. 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 also 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.

- o. 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.
- p. 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.
- q. 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.
- r. 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.
- s. 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. At a minimum, the Respondent will submit samples to a Division-approved testing center at least once a week. The Division shall determine when and where the Respondent is to submit herself 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.

- t. The failure of the Respondent to pay the costs associated with this Stipulation and Order constitutes a violation of the Stipulation and Order.
- u. 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 her 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.
- v. 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.
- w. The Respondent shall not fill prescriptions for controlled substances for herself or her immediate family.
- x. The Respondent shall not act as a pharmacist in charge.
- y. 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.

- z. 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 her 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.

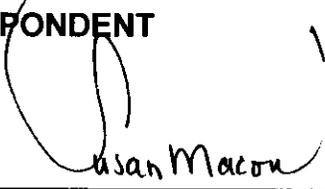
14. The Respondent has read each and every paragraph contained in this Stipulation and Order. She understands each and every paragraph contained in this Stipulation and Order, and she has no questions about any paragraph or provision contained in this Stipulation and Order.

**DIVISION OF OCCUPATIONAL &  
PROFESSIONAL LICENSING**

BY:   
**NOEL TAXIN**  
Bureau Manager

DATE: 12/19/09

**RESPONDENT**

BY:   
**SUSAN MACON**  
Respondent

DATE:  Dec. 18. 2009

**APPROVED AS TO FORM:**

MARK L. SHURTLEFF  
ATTORNEY GENERAL

BY: \_\_\_\_\_

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

DATE: \_\_\_\_\_

12/19/09

BY: \_\_\_\_\_

  
**Scott S. Bell**  
Counsel for the Respondent

DATE: \_\_\_\_\_

12/18/09

**ORDER**

THE ABOVE STIPULATION, in the matter of **SUSAN MACON**, 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 21<sup>st</sup> day of December, 2009.

**DIVISION OF OCCUPATIONAL AND  
PROFESSIONAL LICENSING**

*W. Ray Walker, Acting Director*  
Mark B. Steinagel  
DOPL Director