

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 )  
**RICHARD A. LOWE** ) STIPULATION AND ORDER  
TO PRACTICE AS A PHARMACIST AND )  
TO DISPENSE CONTROLLED SUBSTANCES ) CASE NO DOPL 2008-- 275  
IN THE STATE OF UTAH )

**RICHARD A. LOWE** ("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 Board of Pharmacy ("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 understands that by signing this document Respondent hereby waives the right to a hearing, the right to present evidence on Respondent's own behalf, the right to call witnesses, the right to confront adverse witnesses, and any other rights to which Respondent may be entitled in connection with said hearing Respondent understands that by signing this document Respondent hereby waives all administrative and judicial review as set forth in §§ 63G-4-301 through 63G-4-405, and Utah Administrative Code R156-46b-12 through R156-46b-15

5 Respondent waives the right to the issuance of a Petition and a Notice of Agency Action in this matter

6 Respondent understands 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 On or about August 1, 1984 Respondent was first licensed to practice pharmacy and to dispense controlled substances in the State of Utah

- b On or about June 15, 2005, Pharmacy X (identity withheld for purposes of confidentiality) was licensed by the Division to operate as a Class A retail pharmacy and to dispense controlled substances in the State of Utah Respondent was hired to work at Pharmacy X on average 20 to 25 hours a month and was paid a contracted amount Respondent also worked as the pharmacist-in-charge at Pharmacy Y which is also a class A-retail pharmacy
- c Between June 15, 2005 and July 15, 2007, Respondent worked as the pharmacist-in-charge at Pharmacy X Respondent primarily worked after hours when no other employees of Pharmacy X were present Respondent would review and dispense between forty to eighty prescriptions each day he worked at Pharmacy X Respondent would review prescriptions which had allegedly been issued by prescribing practitioners throughout the United States for patients who also resided throughout the United States, as well as those that resided in Utah These prescriptions had allegedly been verified by customer service representatives at Pharmacy X
- d On or about June 28, 2006 Respondent signed a "Pharmacy Self-Inspection Report" for Pharmacy X, whereby Respondent, as the pharmacist-in-charge for Pharmacy X, attested that the information contained in the self inspection report was truthful, correct, and complete
- e On or about August 14, 2006 Respondent while working at Pharmacy Y was questioned by a Division investigator as to whether Respondent was currently working at any other pharmacy Respondent denied working at any other pharmacy besides pharmacy Y, although Respondent was currently working at Pharmacy X.
- f On or about July 18, 2007 the Drug Enforcement Agency ("DEA") executed a search warrant at Pharmacy X At this same time Respondent was interviewed by two Division investigators at Pharmacy Y Respondent acknowledged that Pharmacy X was in violation of several state and federal laws and rules
- g The findings from the investigation and search warrant by the Division and the DEA found that Pharmacy X had engaged in the following violations
- (1) Pharmacy X knowingly dispensed controlled substances on the basis of prescriptions that were not issued in the usual course of professional treatment, or for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice, in violation of 21 C F R § 1306.04

(2) On six occasions between September 2006 and June 2007, Respondent personally dispensed Phentermine, a Schedule IV controlled substance, to investigators who ordered the substance from the website [www.rxdietbill.com](http://www.rxdietbill.com). On each of these six occasions, investigators provided false identities, false physician names, and false DEA registration numbers. The false names used by the investigators had common surnames, mailing addresses, and billing addresses. Respondent failed to verify the prescription information provided, and dispensed approximately 540 dosage units of Phentermine to the investigators. Pharmacy X knew or had reason to know that the investigators were attempting to obtain drugs by fraud or misrepresentation.

(3) Pharmacy X routinely referred customers without legitimate controlled substance prescriptions to the website [www.usdietmed.com](http://www.usdietmed.com). On five occasions between September 7, 2006 and October 5, 2006, when it appeared that online patients could not provide legitimate physician information, Pharmacy X referred the online patients to another Internet website that would provide controlled substances without prescriptions. Pharmacy X informed the customers who did not have legitimate prescriptions as follows: "If you do not have a doctor that will prescribe this medication then you can order from [www.usdietmeds.com](http://www.usdietmeds.com). They have the lowest prices for those without a prescription, which is more expensive than us, but way cheaper than going to a doctor" or words to that effect. Pharmacy X received a fee from online customers to whom it provided this information. Investigators subsequently purchased controlled substances from the website [www.usdietmeds.com](http://www.usdietmeds.com) without legitimate prescriptions. Pharmacy X solicitations violated the federal Controlled Substance Act.

(4) Dr. Doe (identity withheld for purposes of confidentiality) and his medical office staff consistently referred weight-loss seeking customers to Pharmacy X and the website [www.rxdietbills.com](http://www.rxdietbills.com). The website advised its customers to use Dr. Doe as the prescribing practitioner. Pharmacy X likewise advised drug-seeking customers who did not have a physician to list Dr. Doe as their authorizing physician. Dr. Doe subsequently filled those prescriptions. Dr. Doe had signed an agreement with DEA not to prescribe Phentermine. Pharmacy X violated the Utah Pharmacy Practice Act each time it dispensed a controlled substance prescription that was purportedly prescribed by Dr. Doe because Dr. Doe was not then authorized to prescribe Phentermine. The owners and most employees of Pharmacy X knew that Dr. Doe was restricted from prescribing Phentermine by the DEA. The owners and employees of Pharmacy X

knew or had reason to know that prescriptions prescribed by Dr. Doe were being prescribed in violation of Utah Administrative Code R156-37-604

(5) On or about January 31, 2006 the Tennessee Board of Pharmacy issued a Cease and Desist Order to Pharmacy X forbidding it from dispensing prescription medications to residents of Tennessee. Pharmacy X was not licensed to dispense prescription medications to residents of Tennessee. Pharmacy X failed to report the Tennessee Cease and Desist Order to the Division.

(6) On or about December 18, 2006 the North Carolina Board of Pharmacy issued a Cease and Desist Order to Pharmacy X forbidding it from dispensing prescription medications to residents of North Carolina. Pharmacy X was not licensed to dispense prescription medications to residents of North Carolina. Pharmacy X failed to report the North Carolina Cease and Desist Order to the Division.

(7) Pre-counted and unlabeled bottles of a drug later identified as different dosage units of Phentermine were stacked within the pharmacy. The pharmacy was not equipped to permit the orderly storage of prescription drugs and devices in a manner to permit clear identification, separation, and easy retrieval of products in an environment necessary to maintain the integrity of the product inventory.

(8) Frequently no pharmacist was present in Pharmacy X. Non-licensed pharmacy personnel were routinely able to access the pharmacy area. The alarm system of Pharmacy X was not functioning and it could not detect entry of individuals into the pharmacy area at all times when the pharmacy was closed.

(9) No controlled substance inventory existed for any of the controlled substances within Pharmacy X.

(10) Respondent did not maintain a medication profile system for patients of Pharmacy X.

(11) Non-licensed pharmacy personnel had access to controlled substances and delivered controlled substance prescriptions to patients when a pharmacist was not present at the pharmacy.

(12) Non-licensed supportive personnel engaged in activities which constituted the practice of pharmacy at Pharmacy X.

(13) Pharmacy X did not have current editions of all applicable reference publications in print or electronic format readily available and retrievable

(14) Pharmacy X did not post the licenses of all licensed pharmacy employees

(15) Pharmacy X sink did not provide hot water

(16) From on or about July 1, 2005 to on or about July 1, 2007 Respondent failed to submit accurate and complete information to the Utah Controlled Substance Database ("database") as set forth in Utah Code Ann § 58-37-7 5(4) and Utah Administrative Code R156-37-502(8) Pharmacy X was informed of the failure to report by the database manager, but Pharmacy X failed to provide the required data Respondent, as the pharmacist-in-charge for Pharmacy X was responsible for ensuring that all controlled substances dispensed from Pharmacy X were properly submitted to the Utah Controlled Substance Database

h Respondent, as the pharmacist-in-charge for Pharmacy X, failed to follow the operating standards for a pharmacist-in-charge as set forth in Utah Administrative Code R156-17b-603

(7) Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann § 58-1-501(2)(a) and (h), § 58-37-7 5(4), § 58-17b-502(1), (6), and (7), Utah Administrative Code R156-17b-502(6), (11), and (14), R156-17b-603, and R156-37-502(2) and (8), 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 against Respondent's licenses by the Division 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

(1) Respondent shall pay an administrative penalty to the Division in the amount of \$1,000 00 (one-thousand dollars), pursuant to Utah Code Ann § 58-17b-401(6), § 58-17b-504(5), and Utah Administrative Code R156-17b-402, within ~~90 days~~ of the effective date of this Stipulation and Order.

6

Fine paid in full  
0198 5-18-2009  
am

6 (Six) months  
Jan 22  
147 d

- (2) Respondent's licenses shall be revoked. Those revocations shall be immediately stayed and Respondent's licenses shall be subject to term of probation for a period of three 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. 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 and Division within thirty (30) days of signing of the accompanying Order and on a quarterly basis, or at other greater or lesser frequency as determined by the Board and Division for the duration of the probationary period thereafter to assess the progress of Respondent's probation. Respondent shall meet with the Board and Division at the first scheduled Board meeting after the effective date of the Order with a plan for Respondent's probation. Respondent shall meet with a Division staff member to review the Stipulation and Order prior to meeting with the Board.
  - (b) Respondent shall submit a practice plan to the Division and Board. Once approved by the Division and Board, Respondent shall practice according to the terms of the practice plan. The Division and Board may periodically require changes in the practice plan.
  - (c) Respondent may not work as a pharmacist-in-charge until the Board and Division determine that Respondent may do so.
  - (d) Respondent shall notify any employer of Respondent's restricted status and the terms of this Stipulation and Order. Respondent shall provide a copy of this Stipulation and Order to Respondent's employer and cause Respondent's employer to acknowledge to the Division and Board in writing that a copy of the Order has been provided to the employer. The employer shall submit employer reports to the Division and Board on a monthly basis for the first six months and quarterly thereafter, or at such frequency as directed by the Division or Board. The employer shall write the Division and indicate whether the employer will provide the periodic employer reports.
  - (e) Respondent shall work under the general supervision of a pharmacist licensed in good standing with the Division.
  - (f) 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 Respondent has not successfully completed all the terms and conditions of Respondent's criminal probation at the time Respondent's administrative probationary period ends, the period of Respondent's administrative probation shall be extended until all the conditions of Respondent's criminal probation have been successfully completed.

- (g) Respondent shall notify the Division and Board within one (1) week of any change of employer or employment status. This is required regardless of whether Respondent is employed in Respondent's licensed occupation. The notification shall be in writing.
- (h) Respondent shall limit Respondent's practice in accordance with the terms of probation, unless the Division and the Board authorize changes.
- (i) In the event that Respondent leaves Utah for a period longer than 60 days, Respondent shall notify the Division and the Board in writing of the dates of departure and return. The licensing authorities of the jurisdiction to which Respondent moves must be promptly notified of the provisions of this Stipulation and Order. Periods of residency or practice outside Utah may apply to the reduction of the probation period if the new state of residency places Respondent's license on probation with equal or greater terms and conditions.
- (j) Periods of unemployment or employment in other fields of practice shall be reported by Respondent to the Division and shall not count toward completion of probation. Should Respondent not be employed in Respondent's licensed occupation during Respondent's probationary period for a consecutive period of more than sixty (60) days, that period shall not apply to the reduction of probation, though the terms of probation shall remain applicable. If the Respondent works less than full-time in Respondent's licensed occupation, the reduction of any remaining probationary time shall occur on a pro-rata basis, in relation to a full-time position of 40 hours worked per week. 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 Respondent's profession.
- (k) Should other acts of unprofessional conduct come to the attention of the Division or Board which have occurred prior to the entry of the Order in this case or should Respondent violate probation in any respect, the Division may, in addition to taking action as provided for herein, after giving Respondent notice and the opportunity to be heard, revoke

probation or impose sanctions in accordance with applicable law

- (l) If a petition is filed against Respondent during Respondent's probation, the period of probation shall be extended until the matters alleged in the petition are fully resolved
- (m) Respondent shall immediately notify the Division, in writing, of any changes in private or professional address and agrees that written communication by the Division and/or the Board shall be mailed to Respondent at the last address provided to the Division via first class U S Mail, and shall constitute notice to Respondent
- (n) Failure to pay for any of the costs associated with this probation shall be considered a violation of this Order Respondent further agrees to complete all conditions of probation in a timely manner Where a specific time for completion is not stated in this Order, it shall be within the Division and Board's discretion to set a time for completion
- (o) Respondent shall successfully complete four hours of continuing professional education courses focusing on ethics and pharmacy law The courses shall be pre-approved by the Board and Division The courses shall be completed within one year of the effective date of this Stipulation and Order The courses shall not count toward the regular continuing professional education requirement for license renewal Respondent shall provide documentation to the Division and Board of successful completion of the courses
- (p) Respondent shall keep Respondent's Utah licenses current during the period of probation
- (q) Respondent shall notify the Division immediately if Respondent is charged or arrested with any criminal conduct and understands that a conviction is a violation of this agreement Respondent shall notify the Division if Respondent is hospitalized or enters into a treatment program
- (r) Respondent shall not work in any floating, on-call, PRN ("pro re nata"), "as needed" pools, or temporary staff agencies
- (s) Respondent shall complete and submit to the Board a self-assessment report monthly for the first six months, then quarterly thereafter, unless directed by the Division or Board to submit the report at another frequency The self-assessment report shall be completed on a form prescribed by the Division

9 Upon approval by the Director of the Division this Stipulation and Order 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 they might otherwise have with regard to the Director by virtue of her having reviewed this Stipulation, and this waiver shall survive such nullification

10 Respondent shall abide by and comply with all applicable federal and state laws, regulations, rules and orders related to the Respondent's licensed practice

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 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 this Stipulation and Order are without 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 The accompanying Order becomes effective immediately upon the approval of this Stipulation and signing of the Order by the Division Director Respondent shall 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 comply with and

timely complete all the terms and conditions of probation. 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 comply with and timely complete a term or condition shall constitute a violation of the Stipulation and Order and may subject Respondent to revocation or other sanctions.

13. 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.

14. 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 *Laura Poe*  
**LAURA POE**  
Bureau Manager

DATE 12-1-08

MARK L SHURTLEFF  
ATTORNEY GENERAL

BY *L. Mitchell Jones*  
**L. MITCHELL JONES**  
Counsel for the Division

DATE 26 Nov 2008

RESPONDENT

BY *Richard A. Lowe*  
**RICHARD A. LOWE**

DATE 11-25-08

**ORDER**

THE ABOVE STIPULATION, in the matter of **RICHARD A. LOWE**, 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 1 day of *December*, 2008

DIVISION OF OCCUPATIONAL AND  
PROFESSIONAL LICENSING

*F. David Stanley*  
F DAVID STANLEY  
Director

Investigator Jared Memmott