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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)
MARCY M. PRUITT) **STIPULATION AND ORDER**
TO PRACTICE AS A)
COSMETOLOGIST/BARBER,) **CASE NO. DOPL 2008- 46**
COSMETOLOGIST/BARBER INSTRUCTOR,)
AND MASTER ESTHETICIAN)
IN THE STATE OF UTAH)

MARCY M. PRUITT (“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 Barbering, Cosmetology\Barbering, Esthetics, Electrology, and Nail Technology 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. In or about May 2007 Respondent obtained the driver license of J.B. (identity withheld for purposes of confidentiality) from J.B.'s purse while Respondent was working as a cosmetology/barbering instructor at Dallas Roberts Academy in Provo, Utah. J.B. was a co-worker at the Dallas Roberts Academy.

b. In or about June 2007 Respondent obtained the driver license of K.B. (identity withheld for purposes of confidentiality) from K.B.'s purse at Cabelas sporting goods store in Lehi, Utah.

c. On or about August 20, 2007 Respondent admitted to Officer Bart Smith of the Lehi Police Department that Respondent had used the driver licenses that she stole from J.B. and K.B. to misrepresent her own identity and pick up prescriptions issued for Lortab, a Schedule III controlled substance, from area pharmacies. Respondent had fraudulently called in the Lortab prescriptions to the pharmacies using the name of a nurse that she knew worked at local area doctor offices.

d. On January 4, 2008 Respondent pleaded guilty to six counts of falsely obtaining a prescription, each a 3rd degree felony, and each a violation of Utah Code Ann. § 58-37-8(3)(a)(ii), in Fourth District Court in American Fork, Utah. Respondent's guilty pleas were held in abeyance for a period of 30 months.

8. Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(c) and (h). Further 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 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's licenses shall be subject to a 30 (thirty) month term of probation, which shall become effective on the date the Division's director executes an Order in this matter. During the periods 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 underwent a chemical dependency evaluation at Alliance Clinical Services ("ACS"). Respondent shall comply

with all the recommendations set forth in the chemical dependency evaluation. In the interest of public safety, the Division may impose additional requirements above and beyond those recommended by the evaluator in the chemical dependency evaluation set forth above. Respondent agrees to comply with these additional requirements.

- c. If the chemical dependency evaluation so recommends, Respondent shall abstain from the personal use or possession of alcohol in any form. Respondent agrees to abstain from the personal use or possession of controlled substances and prescription drugs, unless such controlled substance or prescription drug is lawfully prescribed to Respondent for a current bona fide illness or condition by a licensed practitioner and taken by Respondent in accordance with that practitioner's instructions. Respondent shall abstain from the use of any and all other mood altering substances or use of mood altering substances for any other purpose than the purpose for which the substance is intended.

- d. 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 Respondent shall comply with such requests. Respondent has been providing samples for drug analysis through ACS. The Division will accept past and future ACS test results. 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 Respondent failed to provide a sample for drug analysis as directed will be considered a positive drug test result for Respondent and will subject Respondent to additional sanctions. Any drug test result or pattern of results that indicates that the sample provided by Respondent for drug analysis is diluted to an extent that it cannot be analyzed shall be considered a positive drug test result for Respondent and will subject Respondent to additional sanctions. Respondent may submit a request to the Board that this drug testing requirement be terminated after Respondent has successfully completed her intensive outpatient treatment program. No guarantee has been provided to Respondent that the Board will terminate this drug testing requirement. The

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Division may accept drug analysis results from Alliance Clinical Services if the testing meets the Division's standards.

- e. Failure of Respondent to pay the costs associated with this Stipulation and Order constitutes a violation of the Stipulation and Order.
- f. The Division may take appropriate action to impose sanctions if:
 - (i) Respondent tests positive for alcohol (if abstinence from alcohol is recommended by the evaluator), 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) Respondent violates any federal, state or local law relating to Respondent's practice, the Controlled Substance Act; or a term or condition of this Stipulation and Order. Sanctions may include revocation or suspension of Respondent's license, or other appropriate sanction, in the manner provided by law.
- g. 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. If Respondent is in compliance with all terms and conditions of the Order at the end of that time, all reports and documentation shall be submitted on a quarterly basis for the remainder of probation. If Respondent is not in compliance with all terms and conditions of the Order by the end of the first six (6) months of probation, all reports and documentation shall be submitted on a monthly basis until Respondent is in compliance with the Order, after which all reports shall be submitted on a quarterly basis.
- h. Respondent shall participate in all therapy and aftercare that the evaluator recommends. Respondent shall authorize all approved treatment programs or therapists from whom Respondent has received or will receive treatment to discuss Respondent's diagnosis, treatment, and prognosis with the Division and the Board. The program or therapist must also be directed to submit evaluations to the Board that address Respondent's progress in treatment and Respondent's prognosis at the frequency described above. Respondent may be subject to re-evaluation upon notice and opportunity to be heard.
- i. Respondent shall notify any employer of Respondent's restricted status and the terms of this agreement. Respondent shall further

cause Respondent's employer to submit performance evaluations to the Board at the frequency described in subparagraph (k) above. The receipt of an unfavorable report may be considered to be a violation of probation. If Respondent is not employed as a cosmetologist, Respondent shall submit the employer report form on the date it is due and indicate on that form that Respondent's current employment is not in nursing or that Respondent is not currently working.

- j. Respondent shall provide to Respondent's employer(s) a copy of this Stipulation and Order and cause each employer or school of nursing to acknowledge to the Board in writing, that a copy of this Stipulation and Order has been provided to the employer.
- k. If Respondent has supervised probation Respondent shall successfully complete all the terms and conditions contained in her court imposed Plea in Abeyance Agreement. Respondent shall cause her probation officer to make reports to the Board documenting her progress on that agreement on a quarterly basis. If Respondent does not have supervised probation, Respondent shall submit the reports to the Division herself noting her own progress on the requirements of her criminal probation.
- l. In the event Respondent does not practice in her licensed areas of practice 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. 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.
- m. 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.
- n. 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.

- o. 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.
- p. Respondent shall maintain current licenses at all times during the period of this agreement.
- q. Respondent shall immediately notify the Division in writing of any change in Respondent's residential or business address.
- r. Respondent shall not instruct others in cosmetology, barbering or esthetics during the term of probation unless approval for the instruction is granted by the Division and Board.

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 practice as a cosmetologist/barber, cosmetologist/barber instructor, and master esthetician.

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.

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. 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.

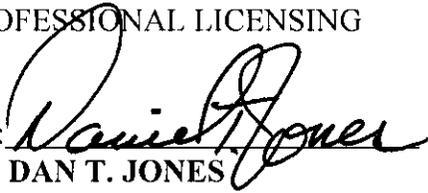
13. If Respondent violates any term or condition of this Stipulation and Order, the Division may take action against Respondent, including imposing appropriate sanction, in the manner provided by law. Such sanction may include revocation or suspension of Respondent's

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:


DAN T. JONES

Bureau Manager

RESPONDENT

BY:


MARCY M. PRUITT

Respondent

DATE: 03-03-08

DATE: 3/3/08

MARK L. SHURTLEFF
ATTORNEY GENERAL

BY:


L. MITCHELL JONES

Counsel for the Division

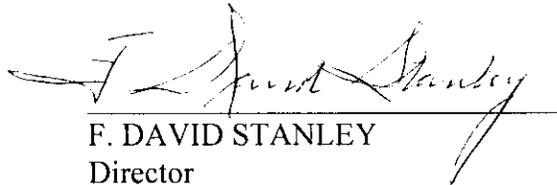
DATE: 03 March 2008

ORDER

THE ABOVE STIPULATION, in the matter of **MARCY M. PRUITT**, 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)(a) and (b). The terms and conditions of the Stipulation are incorporated herein and constitute my final Order in this case.

DATED this 5 day of March, 2008.

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING


F. DAVID STANLEY
Director

Investigator: Lloyd Hansen