

KARL PERRY (U S B 2570)
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
TEL (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)
DAVID J. MORRIS) **STIPULATION AND ORDER**
TO PRACTICE AS A PHYSICIAN/SURGEON)
AND TO ADMINISTER AND PRESCRIBE) CASE NO DOPL 2009- 104
CONTROLLED SUBSTANCES)
IN THE STATE OF UTAH)

DAVID J. MORRIS ("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

APR 16 2009

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 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 may release other information to other persons and entities

5 Respondent admits the following facts are true

- a Respondent was licensed to practice as physician/surgeon and to administer and prescribe controlled substances in the State of Utah during all periods relevant to this Stipulation and Order
- b In April 2004 an emergency administrative proceeding was conducted by the Utah Physician's Licensing Board regarding Respondent's ability to practice safely as a physician. It was determined by the Board that Respondent's alleged actions constituted an immediate danger to the public. Respondent's controlled substance license and license to practice as a physician were immediately suspended, effective April 26, 2004. On April 29, 2004 Respondent requested a hearing to reconsider the matters contained in the emergency order.
- c On May 31, 2005 the Division filed a Petition alleging unprofessional and/or unlawful conduct by Respondent. On July 19, 2005 Respondent filed an answer to the Division's Petition.
- d On or about April 16, 2006 Respondent voluntarily entered into a Stipulation of Facts in DOPL Case No. 2004-109 with the Division. A hearing before the Utah Physician Licensing Board ("Board") on June 14, 2006 to hear the allegations contained in the Division's Petition. Respondent was represented by counsel. The Board recommended, among other things, that Respondent's licenses be suspended, subject to terms and conditions. The Division adopted the Board's recommendations and issued its Order on August 7, 2006.
- e On October 1, 2007, the suspension on Respondent's license to practice as a physician/surgeon was terminated, with the continuing restriction that Respondent practice in an accredited residency program under supervision. Respondent's controlled substance license remained suspended.

- f Respondent desires to enter into an agreement whereby both of his licenses will be placed on probation, subject to the terms and conditions contained in this Stipulation and Order. Respondent understands that the suspension of his controlled substance license will be terminated, and the restriction on his physician/surgeon license that he must practice in an accredited residency program under supervision will also be terminated.

6 The suspension of Respondent's controlled substance license shall be terminated, and the restriction on Respondent's physician/surgeon license requiring that Respondent must practice in an accredited residency program under supervision shall be terminated. Respondent agrees that an Order, which does not constitute a new disciplinary action against Respondent's licenses, will be issued in this matter providing for the following action regarding Respondent's license:

- (1) Respondent's licenses to practice as a physician/surgeon and to administer and prescribe controlled substances shall be subject to a term of probation for a period of three years. Respondent may submit a request to the Division and Board requesting that the probationary period be terminated upon two years of full compliance with the terms and conditions of this Stipulation and Order. There is no guarantee that any such request will be granted. The period of probation shall commence on the date the Division Director signs the accompanying Order. During the period of probation Respondent's license 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 or Board, annually or at such other greater or lesser frequency as the Division or Board may direct.
 - b Respondent shall submit a practice plan for approval to the

Division and Board within 30 days of the effective date of this Stipulation and Order

- c Respondent shall submit reports on the date they are due and shall appear at scheduled meetings with the Division and Board promptly. Failure to do so shall be considered a violation of this Stipulation and Order
- d Failure of Respondent to pay the costs associated with this Stipulation and Order constitutes a violation of the Stipulation and Order
- e All reports and documentation required in this Stipulation and Order shall be submitted to the Division and 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
- f Respondent shall notify any employer or practice associate of Respondent's restricted status and the terms of this agreement. Respondent shall cause his employer to notify the Division in writing that the employer has received a copy of this Stipulation and Order
- g Respondent shall provide a report to the Division and Board every six months from Respondent's personal physician summarizing Respondent's current health status and, specifically, whether Respondent's diabetes condition is being managed and is under control
- h Respondent shall provide documentation to the Division and Board within 90 days of the effective date of this Stipulation and Order that Respondent has successfully completed 40 hours of continuing medical education in satisfaction of the most recent years continuing medical education requirement
- i Respondent shall issue prescriptions for controlled substances 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 at a frequency as set forth in subparagraph (e) above. Respondent shall keep an accurate log of all controlled substance and prescriptions that Respondent administers.

- j Respondent shall practice only under the supervision of a Division and Board pre-approved supervisor during the term of Respondent's probation. Any changes in supervision may be made only with the consent of the Division and Board. Respondent shall deliver a copy of this Order to Respondent's supervisor (within ten days of the establishment of the supervisory relationship) and cause Respondent's supervisor to notify the Division in writing that a copy has been received and provide the Division with a copy of the supervisor's curriculum vitae. The supervisor shall meet the Division and Board either in person or by teleconference by Respondent's second meeting with the Board.
- k Respondent shall meet weekly with Respondent's supervisor until a different frequency is determined by the Division and Board. The supervisor shall review all files of patients prescribe controlled substances by Respondent. The supervisor shall review 20% of patient files where Respondent did not prescribe a controlled substance, until determined otherwise by the Division and Board.
- l Respondent may not engage in private practice unless approved by the Division and Board.
- m Respondent shall cause Respondent's supervisor to submit reports to the Board and Division assessing Respondent's compliance with the terms of Respondent's probation and ethics. The reports shall be submitted monthly for the first six months and quarterly thereafter, or at such frequency as directed by the Board and Division. The reports shall address Respondent's professionalism, prescriptions reviewed, and compliance with state and federal prescribing practices. The receipt of an unfavorable report may be considered to be a violation of probation.
- n If Respondent is not currently employed in Respondent's licensed profession, Respondent shall submit the supervisor report form on the date it is due and indicate on the form that Respondent is not currently employed in Respondent's licensed profession, or that

Respondent is not currently working

- o 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

- p Unless otherwise approved by the Division and Board, Respondent shall, except as provided otherwise herein, receive prescriptions from only one prescribing practitioner, and Respondent shall fill prescriptions at only one pharmacy. 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 Respondent's addiction/abuse problems. Respondent shall not undertake, under any circumstance, to obtain prescription drugs in quantities or types that are not legitimately required. Respondent shall submit the names of the prescribing practitioner and pharmacy to the Division and Board for approval. Respondent shall provide the Division and Board with a copy of all Respondent's prescriptions for prescription drugs, controlled substances, or any other mood altering substance, within forty-eight (48) hours after the prescription has been written

- q Prescriptions from an emergency practitioner or referral practitioner must be submitted to the Division and Board within forty-eight (48) hours of being issued. Respondent shall report to the Division and Board within forty-eight (48) hours any and all medications and controlled substances administered or dispensed to Respondent by any other individual

- r Respondent shall report to the Division and Board within forty-eight (48) hours any and all medications or controlled substances ingested by Respondent from any source

- s Respondent shall provide to the primary prescribing practitioner a copy of this Stipulation and Order and cause the practitioner to acknowledge to the Division and Board in writing that a copy of

this Stipulation and Order has been provided to the primary prescribing practitioner

- t Respondent will submit to drug testing upon request of the Division. Respondent shall fulfill Division's request within the time frame the Division specifies. Respondent shall provide samples (urine, blood, saliva, hair, or any other type of sample requested) for drug analysis upon the request of the Division or Board, 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. The Division or Board shall determine when and where Respondent is to submit for testing. 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 Board 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 and Board. 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, will be considered a positive drug test result for Respondent and will subject Respondent to additional sanctions. It shall be deemed a violation of this stipulation and order if Respondent does not submit to the requested drug testing.
- u In the event Respondent does not 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.
- v If Respondent is accepted in a Residency program, the hours per week worked and case files reviewed by the supervisor may be

adapted if Respondent and Residency director make a request with justification for the change in work schedule and hours

- w 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. Respondent shall immediately notify the Division in writing of any change in Respondent's residential or business address.
- x 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.
- y 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, including an offense based on the conduct described in this Stipulation and Order, 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.
- z Respondent shall maintain current licenses at all times during the period of this agreement.

7 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 his having reviewed this Stipulation, and this waiver shall survive such nullification

8 Respondent shall abide by and comply with all applicable federal and state laws, regulations, rules and orders related to the Respondent's licensed practice If the Division files a Petition alleging that Respondent has violated any of the terms and conditions contained in the Stipulation and Order, the period of probation shall be tolled until the Petition is fully resolved

9 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

10 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

1

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 Division and 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.

11. 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.

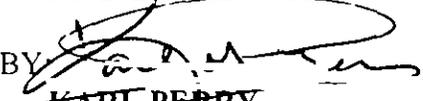
12. Respondent has read each and every paragraph contained in this Stipulation and Order. Respondent understands each and every paragraph contained in this Stipulation and Order. Respondent has no questions about any paragraph or provision contained in this Stipulation and Order.

DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING

BY 
NOEL TAXIN
Bureau Manager

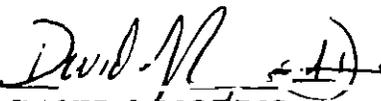
DATE 4 20 09

MARK L SHURTLEFF
ATTORNEY GENERAL

BY 
KARL PERRY
Counsel for the Division

DATE April 20, 2009

RESPONDENT

BY 
DAVID J. MORRIS
Respondent

DATE April 2, 2009

ORDER

THE ABOVE STIPULATION in the matter of **DAVID J. MORRIS**, 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 terms and conditions of the Stipulation are incorporated herein and constitute my final Order in this case.

DATED this 20 day of April, 2009

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING


F. DAVID STANLEY
Director