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APR 2 5 2009

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING

OF THE DEPARTMENT OF COMMERCE

OF THE STATE OF UTAH

IN THE MATTER OF THE ISSUANCE OF A PROBATIONARY LICENSE TO **KENDELIN NEWTON** TO PRACTICE AS AN APPRENTICE PLUMBER IN THE STATE OF UTAH	)))))	**MEMORANDUM OF UNDERSTANDING AND ORDER** CASE NO. DOPL 2009- 106

KENDELIN NEWTON ("Respondent") was licensed as an apprentice plumber in the State of Utah by the Division of Occupational and Professional Licensing ("Division") from on or about September 21, 1998 until on or about November 30, 2008. On or about November 4, 2008, Respondent made application to renew her license. In her application Respondent answered "yes" to questions #1 and #2. These questions asked, in part, if Respondent since the last renewal or issuance of her license had been convicted of any felony or misdemeanor; and if Respondent since the last renewal or issuance of her license had been charge or arrested for any felony or misdemeanor.

Respondent has the following Utah convictions: On or about July 30, 2001 Respondent was convicted in Third District Court, West Jordan, Salt Lake County, Utah of one count of use/possession of drug paraphernalia, a Class B misdemeanor; on or about January 30, 2002 Respondent was convicted in Fourth District Court, Provo, Utah County, Utah of one count of illegal possession/use of a controlled substance, a Class A misdemeanor; on or about June 18, 2007 Respondent was convicted in Third District Court, Salt Lake, Salt Lake County, Utah of one count of illegal possession/use of a controlled substance, a third degree felony; on or about June 21, 2007 Respondent was convicted in Third District Court, West Jordan, Salt Lake County, Utah of one count of possession of forged writing, a third degree felony; on or about September 30, 2008 Respondent was convicted in United States District Court, District of Utah of one count of bank fraud, a felony. Respondent was sentenced by the federal court to four months in federal prison and placed on supervised release for sixty months. Respondent was incarcerated on this fraud charge from on or about November 17, 2008 until on or about March 3, 2009.

Respondent, the Construction Services Commission, and the Division, as evidenced by the signatures on this Memorandum of Understanding and Order, agree that Respondent shall be issued a probationary license to practice as an apprentice plumber and later, if Respondent meets the licensing requirements, as

a journeyman plumber in the State of Utah, in the State of Utah, subject to the terms and conditions below. The Memorandum of Understanding shall become effective upon the date it is approved by the Commission as evidenced by the signature of its authorized representative. The term of probation shall be for a period of four years, beginning on the date the Commission signs the accompanying Order. The terms and conditions of this Memorandum of Understanding and Order shall apply to Respondent's journeyman plumber license if Respondent is so licensed.

1. Respondent admits the jurisdiction of the Division and Commission over Respondent and over the subject matter of this action. Respondent admits the conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(c). Respondent understands that the issuance of the Order in this matter is disciplinary action against Respondent's license pursuant to Utah Administrative Code R156-1-102(7) and Utah Code Ann. § 58-1-401(2).

2. Respondent acknowledges that Respondent enters into this Memorandum of Understanding and Order knowingly and voluntarily, and other than what is contained in this Memorandum of Understanding and Order, no promise or threat whatsoever has been made by the Commission, or any member, officer, agent or representative of the Commission or Division to induce Respondent to enter into this agreement.

3. Respondent understands Respondent has the right to be represented by an attorney in this matter, and Respondent has either sought the advice of counsel or knowingly waives Respondent's right to counsel in this matter.

4. Respondent acknowledges this Memorandum of Understanding and Order will be classified as a public document. The Division may release this Memorandum of Understanding and Order, and will release other information about this disciplinary action against Respondent's license, to other persons and entities.

5. Respondent shall not violate any federal, state or local laws. Respondent shall notify the Division in writing if Respondent is arrested or receives a citation of any kind within two working days, except for parking tickets. Respondent shall immediately notify the Division if Respondent is found guilty of any offense, enters a plea of no contest, or enters into a plea in abeyance or diversion agreement, for any criminal offense. Respondent shall provide the Division with criminal history report(s) from any state and any documentation pertaining to any new arrests or charges when requested by the Division. Respondent shall obtain all reports and requested documentation at her own expense.

6. Respondent shall provide a copy of this Memorandum of Understanding and Order to her employer. Respondent's employer shall provide the Division with quarterly progress reports that summarize Respondent's work attendance, behavior, quality of work product, ability to get along with others, and if Respondent leaves the company or is terminated, the reason for her leaving or termination.

7. Renewal of Respondent's license may be denied by the Division if any of the documentation listed above is not provided by Respondent within twenty days after being requested by the Division.

8. Respondent shall remain in compliance with the terms of her supervised criminal release with the United States Probation and Pretrial Services. If Respondent fails to comply with any terms of her federal supervised release or her supervised release is unsuccessfully terminated, Respondent shall be deemed to be in violation of this Memorandum of Understanding and Order.

9. Respondent shall submit to random drug testing for a minimum of two years. 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. The Division shall determine when and where Respondent is to submit for testing. Respondent shall pay 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 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 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.

10. Respondent is currently subject to random drug testing by the United States Probation and Pretrial Services. The Division and Commission may accept drug test results required by the United States Probation and Pretrial Services as long as Respondent is on supervised release and in compliance with the terms of her supervised release.

11. Respondent shall meet, within twenty days or as directed by the Division, with an assigned staff member for the purposes of education and completing any documentation pertaining to probation and/or this Memorandum of Understanding and Order. Respondent shall meet with Division staff the Commission and/or the Plumbing Board whenever requested by Division.

12. Respondent shall remain an apprentice plumber for at least one year and meet with and obtain approval from the Plumbing Board prior to making application to be a journeyman.

13. Respondent shall maintain an active license during the time she is on probation with the Division.

14. Respondent shall immediately notify the Division in writing of any change in address or employer.

15. Respondent understands that the issuance of a license pursuant to this Memorandum of Understanding and Order is a partial denial of licensure, and Respondent hereby waives the right to any administrative review of that partial denial of licensure.

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

17. The terms and conditions of this Memorandum of Understanding and Order become effective immediately upon the approval of this Memorandum of Understanding and signing of the Order by Construction Services Commission and Division Director. Respondent must comply with all the terms and conditions of this Memorandum of Understanding and Order immediately after the Construction Services Commission and Division Director signs the Order page of this Memorandum of Understanding and Order. Respondent shall complete all the terms and conditions contained in the Memorandum of Understanding and Order in a timely manner. If a time period for completion of a term or condition is not specifically set forth in this Memorandum of Understanding and Order, Respondent agrees the Commission shall set the time period for completion of that term or condition. Failure to complete a term or condition in a timely manner shall constitute a violation of the Memorandum of Understanding and Order and may subject Respondent to revocation or other sanctions.

18. 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. There are no verbal agreements that modify, interpret, construe or affect this Memorandum of Understanding and Order.

19. Respondent has read each and every paragraph contained in this Memorandum of Understanding and Order. Respondent understands each and every paragraph contained in this Memorandum of Understanding and Order. Respondent has no questions about any paragraph or provision contained in this Memorandum of Understanding and Order.

DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING

BY: _____
DENNIS MESERVY
BUREAU MANAGER

DATE: 4-21-09

RESPONDENT

BY: _____
KENDELIN NEWTON

DATE: 04-11-09

MARK L. SHURTLEFF
ATTORNEY GENERAL

BY: _____
L. MITCHELL JONES
COUNSEL FOR THE DIVISION

DATE: 2 Apr 09

ORDER

THE ABOVE MEMORANDUM OF UNDERSTANDING, in the matter of **KENDELIN NEWTON** is hereby approved by the Construction Services Commission. 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 Memorandum of Understanding are incorporated herein and constitute the Commission's final Order in this case.

DATED this 29th day of April, 2009.

Bradley F. Stevens
COMMISSION REPRESENTATIVE

I concur with the Construction Services Commission in the matter of **KENDELIN NEWTON**.

DATED this 29 day of April, 2009

F. David Stanley
F. DAVID STANLEY
Director
Division of Occupational
& Professional Licensing