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Assistant Attorney General  
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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 LICENSES OF	)	
MARK AKAGI, RPH, TO PRACTICE AS A	)	<b>STIPULATION AND ORDER</b>
PHARMACIST AND TO DISPENSE	)	
CONTROLLED SUBSTANCES IN THE	)	CASE NO. DOPL 2009-18
STATE OF UTAH	)	

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Mark Akagi ("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 he enters into this Stipulation knowingly and voluntarily.
3. The Respondent is represented by Harold Reiser of the law firm Parsons Kinghorn Harris.
4. The Respondent understands that he is entitled to a hearing before the Utah State Board of Pharmacy ("the Board"), or other Division Presiding Officer, at which time he may present evidence on his own behalf, call witnesses, and confront adverse witnesses. The Respondent acknowledges that by executing this document he hereby waives the right to a hearing and any

other rights to which he 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 he 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 April 7, 1970, the Respondent obtained licensure as a pharmacist and to dispense controlled substances within the State of Utah. He is currently retired, but he wants to maintain his professional licenses and keep open the possibility of returning to work.

b. From the winter of 2007 through early 2008, patient J.S. (identity withheld for confidentiality reasons) was taking Oxycontin, a schedule II controlled substance, for pain. The Oxycontin was prescribed for him by practitioners from a local pain clinic. J.S. filled the Oxycontin prescriptions at the Southwood Pharmacy, the pharmacy where the Respondent worked.

c. J.S. started using larger amounts of the Oxycontin, and on at least seven or eight occasions between October 2007 and January 2008, J.S. asked the Respondent for more Oxycontin tablets, even though J.S. did not have a valid prescription for the Oxycontin.

d. The Respondent provided approximately 20 Oxycontin tablets to J.S. without a proper prescription for the schedule II controlled substance on at least seven or eight occasions from October 2007 through January 2008. When the Respondent initially provided J.S. with Oxycontin tablets without a proper prescription, the Respondent told J.S. that he, the Respondent, could "get into trouble for this." On January 7, 2008, J.S. received his last amount of Oxycontin from the Respondent without a prescription, 24 tablets of the schedule II controlled substance. On January 8, 2008, J.S. called the Respondent for more Oxycontin, and the Respondent informed J.S. that the Respondent could not provide J.S. with any more Oxycontin without a proper prescription.

8. The Respondent admits that his conduct described in provision 7 of this Stipulation and Agreement was unlawful conduct pursuant to Utah Code Ann. § 58-17b-501(10); and that the Respondent's unlawful conduct justifies disciplinary action against his licenses pursuant to Utah

Code Ann. § 58-1-401(2)(b). Further, the Respondent agrees that his conduct described above justifies an administrative fine pursuant to Utah Code Ann. § 58-17b-401(6). The Respondent also admits that the above described conduct constitutes unprofessional conduct pursuant to Utah Code Ann. § 58-1-501(2)(a), (b), and (g), and that this unprofessional conduct gives the Division the authority to impose sanctions against the Respondent's license pursuant to Utah Code Ann. § 58-1-401(2)(a) and to issue the Respondent a fine pursuant to Utah Code Ann. § 58-17b-401(6). The Respondent agrees that an Order, which constitutes disciplinary action against the Respondent's license by the Division pursuant to Utah Administrative Code R156-1-102(7) and Utah Code Ann. § 58-1-401(2), may be issued in this matter providing for the following action against the Respondent's licenses:

(1) The Respondent shall pay a fine to the Division in the amount of \$2,500.00 (two-thousand-five-hundred dollars), pursuant to Utah Code Ann. § 58-17b-401(6); due and payable within 90 days of the date the Division's Director has signed this Stipulation and Order ("the effective date"). The Respondent hereby waives his rights to a proceeding pursuant to Utah Code Ann. Title 63, Chapter 46b, and Title 58, Chapter 1 as set forth in Utah Code Ann. § 58-37-7.5(11) and § 58-67-402.

(2) The Respondent's licenses to dispense controlled substances and to practice as a pharmacist will be placed on probation for a period of two (2) years. The period of probation shall commence on the effective date of this Stipulation and 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. The Respondent's licenses will be subject to the following probationary conditions:

- a. The Respondent shall meet with the Board, in person, within thirty (30) days of the effective date. The Respondent shall then meet with the Board telephonically on a quarterly basis or at such other greater or lesser frequency as the Board or Division may direct. Unless the Board deems it necessary for the Respondent to meet with the Board in person after the initial meeting, the

Respondent will communicate with the Board via telephone.

- b. 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 his profession.
- c. If the Respondent leaves the State of Utah for a period longer than sixty (60) days, he shall notify the Division and Board in writing of the dates of his departure and return. The licensing authorities of the jurisdiction to which the Respondent moves shall be notified by the 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.
- d. 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.
- e. The Respondent must maintain current professional licenses at all times during the period of this agreement.

- f. The Respondent shall immediately notify the Division in writing of any changes in his residential or business addresses.
- g. In the event the Respondent does not practice as a pharmacist for a period of sixty (60) days or longer, he shall notify the Board in writing of the date he ceased practicing. The period of time in which he 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 his case was impractical or unduly burdensome. The 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 the Respondent's profession.
- h. 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 before the Respondent can resume practice as a pharmacist. The practice plan shall include a specific plan for dealing with strong minded, demanding, persistent patients who ask for medication even when a prescription does not call for and authorize the distribution of medicine.
- i. The Respondent shall notify any employer of his restricted status and the terms of this agreement by providing each of his 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. He shall further cause his employer to submit performance evaluations to the Board on a monthly basis for six months and quarterly thereafter. The receipt of an unfavorable report may be considered to be a violation of his probation. If the Respondent is not employed as a pharmacist, he shall submit the required employer report form on the date it is due and indicate on that form that his current employment is not in pharmacy or that he is not currently working.
- j. The Respondent shall practice under the general supervision of a pharmacist licensed in good standing in the State of Utah. "General supervision" means that the

Respondent's work must be supervised by a licensed pharmacist, but this supervisor does not have to be physically present in the pharmacy while the Respondent is working.

- k. The Respondent shall meet with the Board at the first scheduled Board Meeting following the effective date of this Stipulation and Order.
- l. The Division may take appropriate action to impose sanctions if 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.

3. The Respondent shall complete, within six months of the effective date of the Stipulation and Order, an additional six (6) hours of continuing professional education in ethics that is approved by the Board and the Division.

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 prejudice 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 his 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.

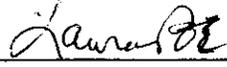
12. The terms and conditions of this Stipulation and Order become effective immediately upon the approval of this Stipulation and signing of the Order by the Division Director. The Respondent must comply with all the terms and conditions of this Stipulation immediately following the Division Director's 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.

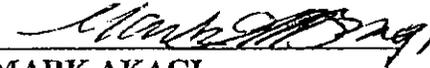
13. If the Respondent violates any term or condition of this Stipulation and Order, the Division may take action against the Respondent, including imposing appropriate sanctions, in the manner provided by law. Such sanctions may include revocation or suspension of the Respondent's licenses, or other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

14. The Respondent has read each and every paragraph contained in this Stipulation and Order. He understands each and every paragraph contained in this Stipulation and Order, and he has no questions about any paragraph or provision contained in this Stipulation and Order. The Respondent admits that he was not bullied, unduly influenced or coerced in any way into signing this Stipulation and Order.

**DIVISION OF OCCUPATIONAL &  
PROFESSIONAL LICENSING**

**RESPONDENT**

BY:   
**LAURA POE**  
Bureau Manager

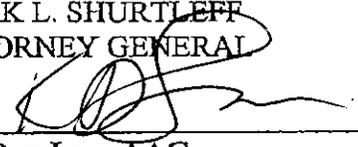
BY:   
**MARK AKAGI**  
Respondent

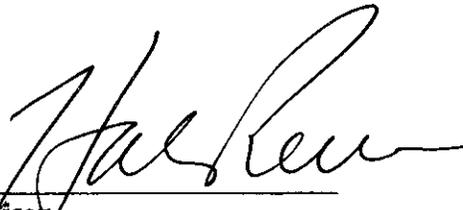
DATE: 10-5-09

DATE: 10/2/09

**APPROVED AS TO FORM:**

MARK L. SHURTLEFF  
ATTORNEY GENERAL

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

BY:   
**Hal Reiser**  
Counsel for the Respondent

DATE: 10/5/09

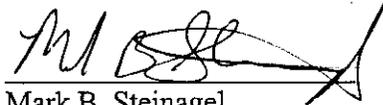
DATE: Oct 5, 2009

**ORDER**

THE ABOVE STIPULATION, in the matter of **Mark Akagi**, 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 6 day of October, 2009.

**DIVISION OF OCCUPATIONAL AND  
PROFESSIONAL LICENSING**



Mark B. Steinagel  
DOPL Director