

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
Heber M Wells Building
160 East 300 South
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Salt Lake City UT 84114-6741
Telephone. (801) 530-6628

**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 :
ROOTS PHARMACEUTICALS, INC. : **NOTICE OF AGENCY ACTION**
TO PRACTICE AS A PHARMACY AND TO :
DISPENSE CONTROLLED SUBSTANCES :
IN THE STATE OF UTAH : Case No. DOPL-2009-218

THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING TO
Roots Pharmaceuticals, Inc ("Respondent"),
American Fork UT 84003.

The Division of Occupational and Professional Licensing
("the Division") hereby files this Notice of Agency Action. Said
action is based upon the Verified Petition of Jared Memmott,
Investigator, State of Utah, a copy of which is attached hereto
and incorporated herein by reference.

The adjudicative proceeding designated herein is to be
conducted on a formal basis. **Within thirty (30) days of the
mailing date of this Notice, you are required to file a written
response with this Division.** The response you file may be
helpful in clarifying, refining or narrowing the facts and
violations alleged in the Verified Petition. Your written
response should be mailed to the following address: Division of
Occupational and Professional Licensing, Attn Disciplinary Files,
160 East 300 South, PO Box 146741, Salt Lake City UT 84114-6741

You may represent yourself or be represented by legal
counsel, at your own expense, at all times while this action is
pending. Your legal counsel shall file with the Division an
Entry of Appearance and until that Entry of Appearance is filed,
the presiding officer will deal directly with you

You are entitled by law to an evidentiary hearing to
determine whether your licenses to practice as a pharmacy and to
dispense controlled substances in the State of Utah should be

subject to a disciplinary action Unless otherwise specified by the Director of the Division, the State Board of Pharmacy will serve as fact finder in the evidentiary hearing. You will be notified by separate notice of the date, time, and place of that evidentiary hearing and of any other hearings.

During the evidentiary hearing, you will have the opportunity to present evidence, argue, respond, conduct cross-examination and submit rebuttal evidence to the fact finder. After the hearing, unless otherwise specified by the Director of the Division, the fact finder will issue findings of fact, conclusions of law and a recommended order to the Director of the Division of Occupational and Professional Licensing for his review and action.

The presiding officer for purposes of conducting hearings will be J Steven Eklund, Administrative Law Judge, Department of Commerce, who will preside over any evidentiary issues and matters of law or procedure. If you or your attorney have any questions as to the procedures relative to the hearing, Judge Eklund can be contacted at P O Box 146701, Salt Lake City, UT 84114-6701. His telephone number is (801) 530-6648

Counsel for the Division in this case is Karl G. Perry, Assistant Attorney General at (801) 366-0310 or P O Box 140872, Salt Lake City, UT 84114-0872. Within ten (10) days after the filing of your response, Mr. Perry will request the scheduling of a prehearing conference.

You, or if you have an attorney, your attorney, may attempt to negotiate a settlement of the case without proceeding to a hearing by contacting Mr Perry.

Should you fail to timely file a response, as set forth above, or fail to attend or participate in any scheduled hearing in this case, including prehearing conference(s), you may be held in default without further notice to you. If you are held in default, the maximum administrative sanction consistent with the terms of the Verified Petition may be imposed against you. The maximum administrative sanction in this case is revocation of licensure. Also, an administrative fine may be assessed.

Please conduct yourself accordingly

Dated this 16TH day of July, 2009.

W. Ray Walker
W Ray Walker
Regulatory & Compliance
Officer

Karl G Perry (USB # 2570)
Assistant Attorney General
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BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING

OF THE DEPARTMENT OF COMMERCE

STATE OF STATE OF UTAH

IN THE MATTER OF THE LICENSES
OF **ROOTS PHARMACEUTICALS**
TO PRACTICE AS A
PHARMACY AND TO DISPENSE
CONTROLLED SUBSTANCES
IN THE STATE OF UTAH

P E T I T I O N

Case No DOPL-2009-218

The Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah (“Division”), by and through its counsel, Karl G Perry, Assistant Attorney General, submits the following petition against Roots Pharmaceuticals (“Respondent”)

PRELIMINARY STATEMENT

These causes of action were investigated by the Utah Division of Occupational and Professional Licensing upon information that Roots Pharmaceuticals, a licensee of the Division, has engaged in acts and practices that constitute violations of the Division of Occupational and Professional Licensing Act, Utah Code Ann §§ 58-1-101 to 58-1-504 (West 2004), the Utah Controlled Substance Act, Utah Code Ann §§ 58-37-1 to 58-37-21 (West 2004), and the

Pharmacy Practice Act, Utah Code Ann §§ 58-17a-101 to 58-17a-619 (West 2004)

PARTIES

1 The Division is a division of the Department of Commerce of the State of Utah as established by Utah Code Ann § 13-1-2 (West 2004)

2 At all times material to the allegations contained herein, Respondent was licensed by the Division to practice as a Pharmacy under the Pharmacy Practice Act, Utah Code Ann § 58-17a-101, et seq

STATEMENT OF ALLEGATIONS

3 On or about September 22, 2005, Respondent submitted an application to the Division to do business as a class "A" retail pharmacy Respondent subsequently withdrew this application

4 On or about October 31, 2005, Respondent submitted a second application for licensure to conduct business as a class "A" retail pharmacy

5 On or about December 13, 2005, Respondent was issued a license as a class "A" retail pharmacy However, Respondent should have applied for and been issued a license as a class "B" closed door pharmacy license because Respondent has not and does not operate as a class "A" retail pharmacy

6 As part of Respondent's application submitted to the Division, Respondent's owner and pharmacist-in-charge, Kyle Rootsart, acknowledged in a "Controlled Substance Database Questionnaire" dated October 27, 2005, that he was the pharmacist-in-charge and that he had read and understood the Utah Controlled Substance Act and that he agreed to submit all required data regarding every prescription for a controlled substance dispensed in accordance

with Section 58-37-7.5 of the Utah Controlled Substance Act

7 On or about March 1, 2007, a Division Investigator completed an on-line medical questionnaire from the internet website www.real-medical.com. The investigator never met with, or talked to, a prescribing practitioner. The order submitted by the investigator requested thirty (30), 50 mg Tramadol tablets. The cost of the medication was \$59.90 and the shipping cost was \$11.90, for a total cost of \$71.80.

8 On or about March 5, 2007, the Division Investigator received a shipment that appeared to be thirty (30), 50 mg Tramadol tablets and the package indicated it had been shipped from the Respondent. The shipment matched the prescription medication that had been ordered through the above mentioned on-line medical questionnaire and website. The prescription medication label received by the investigator identified Kyle Rootsart as the dispensing pharmacist and Respondent as the dispensing pharmacy. The prescription medication further identified Alan Saltman as the prescribing practitioner. Alan Saltman is not licensed as a medical practitioner within the State of Utah and is not licensed to practice medicine within the State of Utah.

9 On or about March 7, 2007, the Division Investigator interviewed Kyle Rootsart at Rootsart's place of business, Roots Pharmaceuticals. During this interview, Rootsart acknowledged that he had entered into a business relationship with several Internet Facilitator Companies ("IFC"). These IFC's included Secure Medical L.L.C., Real Medical, JRB Health Solutions, Rx Partners/Rx Limited, and F.D.D. Mr. Rootsart acknowledged that these IFC's contracted with various prescribing practitioners who reviewed patient's on-line questionnaires and then issued prescriptions for requested medications. A list of the IFC's and a list of the

prescribing practitioners who Respondent had worked with was subsequently provided by Mr Rootsart to the Division Investigator Mr Rootsart acknowledged that his original intent of operation for Respondent's license was to dispense prescriptions for local long term care and assisted living facilities However, when he was unable to obtain any contracts with such facilities, he started entering into business agreements with the IFC's and began filling prescriptions for various on-line prescription processing companies Rootsart acknowledged that Roots Pharmaceuticals was only licensed in Utah as a retail pharmacy, but that Respondent would dispense and ship medications to other states once he received a prescription from an IFC

10 Respondent, through its pharmacist-in-charge, Kyle Rootsart, entered into written agreements with the above listed IFC's At least two of those agreements required that Respondent would dispense prescriptions for customers who had visited internet based sites that market medications without a valid prescriber-patient relationship The two agreements also required Respondent to hold all licenses or permits required to dispense medications to residents of the state(s) where medications were being delivered and that Respondent would comply with all state law regulations, including, but not limited to laws and regulations governing the prescribing of prescription drugs based on a questionnaire over the internet and acceptable standards of pharmacy practice

11 Respondent, through its pharmacist-in-charge, Kyle Rootsart, knew or should have known the identifying formularies for all of the above-named IFC's (two of the prescription medications identified within the formulary was Fioricet and Butalbital which are both schedule III controlled substances under the Utah Controlled Substance Act)

12 Respondent, through its pharmacist-in-charge, Kyle Rootsart, knew or should

have known about the eight different contracted prescribing practitioners who issued electronic prescriptions for the respective internet facilitator companies. None of these eight prescribing practitioners were licensed with the Division to practice medicine within the State of Utah.

13 On or about March 7, 2007, the Division Investigator observed an employee of Respondent retrieving electronic prescriptions from an IFC Internet website. This employee logged into a secure portal website of the IFC where she retrieved and printed out prescriptions and prescription labels that had allegedly been approved and transmitted by the contracted physician and the IFC. At this same time, Rootsart's spouse accessed the Respondent's front door by inputting an access code into the electronic door lock. Mrs. Rootsart entered through an open door leading directly into the pharmacy area where she stayed for approximately five to ten minutes while Mr. Rootsart and a Division Investigator talked in a back office of the pharmacy. Mr. Rootsart later stated he had given the code to the electronic door lock to his wife. Both Mrs. Rootsart and the employee who was retrieving the electronic prescriptions were unlicensed.

14 On or about March 7, 2007, Mr. Rootsart informed the Division Investigator that Roots Pharmaceuticals did not have or maintain a patient medication profile system to access prescription numbers, patient names or to generate controlled substance prescriptions dispensed by date.

15 Respondent's pharmacist-in-charge, Kyle Rootsart, acknowledged that Fioricet and Butalbital were dispensed as part of Respondent's internet business and that he was unaware that they were considered to be a controlled substance. Mr. Rootsart did not have any documentation or records of any inventory conducted as part of a controlled substance inventory.

Further, Rootsart stated that no documentation existed within the pharmacy regarding information submitted to the Utah Controlled Substance Database because he did not know he had dispensed controlled substances. Rootsart was also questioned about an order received for Adderall (a schedule II controlled substance). He explained that this medication had been ordered and dispensed for a friend as a favor. A prescription was provided for the medication to Rootsart, however, no information was submitted to the Utah Controlled Substance Database.

16 During the years of 2006, 2007 and 2008, the Division received at least four complaints from other state licensing agencies pertaining to Roots Pharmaceuticals shipping prescription medications into their jurisdictions without having the proper pharmacy license. Further, these other states alleged that it was unlawful to ship prescription drugs into their jurisdictions when the prescription issued for the drug by the prescribing practitioner resulted from an online questionnaire.

17 On or about April 4, 2007, the Division obtained copies of 27 different prescriptions for Utah residents which had been dispensed by Respondent from on or about November 22, 2006 through March 6, 2007. Six of these prescriptions were for the controlled substance Butalbital.

18 The above described prescriptions dispensed by the Respondent were issued by practitioners who were not licensed to practice medicine in the State of Utah. Respondent, through its pharmacist-in-charge, Kyle Rootsart, knew or should have known that the prescribing practitioners were not licensed to practice medicine in the State of Utah.

19 On or about December 10, 2007, Kyle Rootsart, as the pharmacist-in-charge for Respondent, submitted a completed "Pharmacy Self Inspection Report" which had initially been

sent to the Respondent by the Division pursuant to Utah Code Ann § 58-17b-103 In his report, Rootsart declared that on behalf of the Respondent, he had submitted all required information to the Controlled Substance Database with proper documentation kept on site Further, Rootsart answered "Not Applicable" when asked whether "The facility is not affiliated with and does not dispense prescription medications for internet pharmacy sites or third party processors unless authorized to do so "

20 On or about January 24, 2008, Respondent advertised on the internet domain www roots-pharmacy com that Respondent operated under an agreement with the Utah State Department of Occupational and Professional Licensing The Respondent further represented on the website that Respondent was a licensed pharmacy and was the only company specifically licensed to prescribe medications based on an on-line diagnosis Neither advertised statement by Respondent was true

APPLICABLE LAW

21 Utah Code Annotated §§ 58-1-401(2)(a) and (b)(West 2004) state that the division may refuse to issue a license to an applicant and may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public or private reprimand to, or otherwise act upon the license of any licensee in any of the following cases

- (a) the applicant or licensee has engaged in unprofessional conduct, as defined by statute or rule under this title, [or]
- (b) the applicant or licensee has engaged in unlawful conduct as defined by statute under this title

22 Utah Code Annotated § 58-1-501(1)(f)(West 2004) defines "unlawful conduct" to include

- (f)(i) unless Subsection (2)(m) or (4) applies, issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device to a person located in this state
 - (A) without prescriptive authority conferred by an exception under this title or by an exemption to licensure under this title,
 - (B) with prescriptive authority conferred by an exemption under this title or a multi-state practice privilege recognized under this title, if the prescription was issued
 - (I) without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment, or
 - (II) based on a questionnaire completed by the patient on the internet, or toll-free telephone number, when there exists no other bona fide patient-practitioner relationship, or
 - (C) in violation of subsection (2)(m), when the licensed person who issued, or aided and abetted another in the issuance of the prescription has violated (2)(m) on more than 100 prescriptions within a 30 day period of time, ,

23 Utah Code Annotated § 58-1-501(2)(m)(West 2004) defines “unprofessional conduct” to include

- (m) unless subsection (4) applies, issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device
 - (i) without first obtaining information in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to the proposed treatment, or
 - (ii) based on a questionnaire completed by the patient on the internet, or toll free telephone number when there exists no other bona fide patient-practitioner relationship or bonafide referral by a practitioner involved in an existing patient practitioner relationship,

24 Utah Code Annotated § 58-1-501(4)(West 2004) provides in relevant part

- (4) Notwithstanding Subsections (1)(f) and (2)(m), the Division may permit a person licensed to prescribe under this title to prescribe a legend drug to a person located in this state if the Division in collaboration with the appropriate professional board has permitted the specific prescriptive practice of the legend drug by rule

25 Utah Administrative Code R156-1-601(1)(2006) provides in relevant part

- (1) In accordance with Subsection 58-1-501 (4), a person licensed to prescribe under this title may prescribe legend drugs to a person located in this state following an online assessment and diagnosis in accordance with the following conditions
 - (a) the prescribing practitioner is licensed in good standing in this state,
 - (b) an assessment and diagnosis is based upon a comprehensive health history and an assessment tool that requires the patient to provide answers to all the required questions and does not rely upon default answers, such as a branching questionnaire,
 - (c) only includes legend drugs and may not include controlled substances,
 - (d) the practice is authorized by these rules and a written agreement signed by the Division and the practitioner and approved by a panel comprised of three board members from the Physicians Licensing Board or the Osteopathic Physician and Surgeon's Licensing Board and three members from the Utah State Board of Pharmacy The written agreement shall include
 - (i) the specific name of the drug or drugs approved to be prescribed,
 - (ii) the policies and procedures that address patient confidentiality,
 - (iii) a method for electronic communication by the physician and patient,
 - (iv) a mechanism for the Division to be able to conduct audits

of the website and records to ensure an assessment and diagnosis has been made prior to prescribing any medications, and

- (v) a mechanism for the physician to have ready access to all patients' records

26 Utah Code Annotated § 58-67-102(8)(a)(West 2004) defines the practice of medicine to include

- (a) to diagnose, treat, correct, administer anesthesia, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical, or mental, real or imaginary, or to attempt to do so, by any means or instrumentality, and by an individual in Utah or outside the state upon or for any human within the state,

27 Utah Code Annotated § 58-1-501(2)(a)(West 2004) defines "unprofessional conduct" to include

- (a) violating, or aiding or abetting any other person to violate, any statute, rule or order regulating an occupation or profession under this title,

28 Utah Code Annotated § 58-1-501(2)(b)(West 2004) defines "unprofessional conduct" to include

- (b) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title,

29 Utah Code Annotated § 58-1-501(1)(c)(West 2004) defines unlawful conduct to include

- (a) violating, or aiding or abetting any other person to violate, any statute, rule or order regulating an occupation or profession under this title,
- (c) knowingly employing any other person to practice or engage in or attempt to practice or engage in any occupation or profession licensed under this title if the employee is not licensed to do so under this title,

30 Utah Code Annotated § 58-17b-102(55)(a)(West 2004) defines the “practice as a licensed pharmacy technician” to include

- (a) engaging in practice as a pharmacy technician under the general supervision of a licensed pharmacist and in accordance with a scope of practice defined by division rule made in collaboration with the board

31 Utah Administrative Code R156-17b-601(1)(a)(c)(d) and (k) (West 2004) provide in relevant part

- (1) The pharmacy technician may perform any task associated with the physical preparation and processing of prescription and medication orders including
 - (a) receiving written prescriptions,
 - (c) entering and retrieving information into and from a database or patient profile,
 - (d) preparing labels,
 - (k) accepting new prescription drug orders telephonically or electronically submitted for a pharmacist to review,

32 Utah Administrative Code R156-17b-502(11)(2008) defines “unprofessional conduct” to include

- (11) allowing any unauthorized persons in the pharmacy

33 Utah Administrative Code R156-17b-102(36)(2008) defines “unauthorized personnel” as

- (23) any person who is not participating in the operational process of the pharmacy who in some way would interrupt the natural flow of pharmaceutical care

34 Utah Code Annotated § 58-1-501(2)(g)(West 2004) defines “unprofessional conduct” to include

- (g) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence

35 Utah Administrative Code R156-17b-502(6)(2008) defines unprofessional conduct to include

- (6) failing to abide by all applicable federal and state law regarding the practice of pharmacy,

36 Utah Code Annotated § 58-1-501(1)(a)(i)(West 2004) defines “unlawful conduct to include

- (a) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title if the person is
 - (i) not licensed to do so or is not exempted from licensure under this title,

37 Utah Code Annotated § 58-37-6(7)(d)(West 2004) provides in relevant part

- (d) Except for emergency situations designated by the division, a person may not issue, fill, compound, or dispense a prescription for a controlled substance unless the prescription is signed by the prescriber in ink or indelible pencil or is signed with an electronic signature of the prescriber as authorized by division rule _____,

38 Utah Administrative Code R156-17b-613(1)(West 2004) provides in relevant part

- (1) prescription orders for schedule II – V controlled substances received by electronic means of communication shall be handled according to Title 58, Chapter 37, Utah Controlled Substance Act and R156-37, Utah Controlled Substance Act Rules
- (2) Prescription orders for non-controlled substances received by electronic means of communication may be dispensed by a pharmacist or pharmacy intern only if all of the following conditions are satisfied
 - (a) all electronically transmitted prescriptions orders shall include the

following

- (i) all information that is required to be contained in a prescription order pursuant to Section 58-17b-602,
- (ii) the time and date of the transmission, and if a facsimile transmission, the electronically encoded date, time and fax number of the sender, and
- (iii) the name of the pharmacy intended to receive the transmission

39 Utah Code Annotated § 58-37-8(1)(a)(i)(2006) defines unlawful conduct to include

- (a) Except as authorized by this chapter, it is unlawful for any person to knowingly and intentionally
 - (i) produce, manufacture, or dispense, or to possess with intent to produce, manufacture or dispense a controlled or counterfeit substance,

40 Utah Code Annotated § 58-17b-502(7)(West 2004) defines unprofessional conduct to include

- (7) violating Federal Title II, P L 91, Controlled Substance Act or Title, 58, Chapter 37, Utah Controlled Substance Act, or rules or regulations adopted under either act

41 Utah Code Annotated § 58-17b-604(1)(West 2004) provides in relevant part

- (1) Each pharmacy shall establish a medication profile system for pharmacy patients according to the standard established by Division rules made in collaboration with the board. The rules shall indicate the method for recording all prescription information

42 Utah Admin Code R156-17b-609(2006) provides in relevant part

In accordance with Subsections 58-17b-601(1) and 58-17b-604(1), the following operating standards shall apply with respect to medication profile systems

- (1) Patient profiles, once established, shall be maintained by a pharmacist in a

pharmacy dispensing to patients on a recurring basis for a minimum of one year from the date of the most recent prescription filled or refilled, except that a hospital pharmacy may delete the patient profile for an inpatient upon discharge if a record of prescriptions is maintained as a part of the hospital record

- (2) Information to be included in the profile shall be determined by a responsible pharmacist at the pharmaceutical facility but shall include as a minimum
 - (a) full name of the patient, address, telephone number, date of birth or age and gender,
 - (b) patient history where significant, including known allergies and drug reactions, and a list of prescription drugs obtained by the patient at the pharmacy including
 - (i) name of prescription drug,
 - (ii) strength of prescription drug,
 - (iii) quantity dispensed,
 - (iv) date of filling or refilling,
 - (v) charge for the prescription drug as dispensed to the patient, and
 - (c) any additional comments relevant to the patient's drug use
- (3) Patient medication profile information shall be recorded by a pharmacist, pharmacy intern or pharmacy technician

43 Utah Code Annotated § 58-17b-609(5)(West 2004) provides in relevant part

- (5) A prescription for a legend drug written by a licensed prescribing practitioner in another state may be filled or refilled by a pharmacist or pharmacy intern in this state if the pharmacist or pharmacy intern verifies that the prescription is valid

44 Utah Administrative Code R156-37-602(4)(2006) provides in relevant part

- (4) Prescription records may be maintained electronically so long as
 - (a) the original of each prescription, including telephone prescriptions, is maintained in a physical file, and contains all of the information required by federal and state law

45 Utah Code Annotated § 58-37-7 5 (4) (West 2004), provides in relevant part

- (1) The pharmacist in charge shall, regarding each controlled substance dispensed by a pharmacist under the pharmacist's supervision other than those dispensed for an inpatient at a health care facility, submit to the manager of the database the following information, by a procedure and in a format established by the division
 - (a) name of the prescribing practitioner,
 - (b) date of the prescription,
 - (c) date the prescription was filled,
 - (d) name of the person for whom the prescription was written,
 - (e) *positive identification of the person receiving the prescription, including the type of identification and any identifying numbers on the identification,*
 - (f) name of the controlled substance,
 - (g) quantity of controlled substance prescribed,
 - (h) strength of controlled substance,
 - (i) quantity of controlled substance dispensed,
 - (j) dosage quantity and frequency as prescribed,
 - (k) name of drug outlet dispensing the controlled substance
 - (l) name of pharmacist dispensing the controlled substance, and
 - (m) other relevant information as required by division rule

FIRST CAUSE OF ACTION

AIDING IN THE ISSUANCE OF A PRESCRIPTION DRUG BASED UPON AN ONLINE QUESTIONNAIRE

46 As described in paragraphs six through 20, Respondent dispensed prescriptions to Utah residents that were based solely on an on-line medical questionnaire or toll-free telephone number Respondent's owner and pharmacist-in-charge readily acknowledged that the sole business operation of Respondent was to dispense prescriptions on behalf of On-Line Processor Companies ("IFC") Neither Respondent nor any of the named IFC entities or their contracted physicians have an agreement with the Division to exempt Therefore, Respondent has engaged in "unlawful conduct" as defined under Utah Code Ann § 58-1-501(1)(f)(West 2004), and "unprofessional conduct as described in Utah Code Ann § 58-1-501(2)(m), establishing grounds

for sanctioning Respondent's licenses as provided under Utah Code Ann § 58-1-401(2)(a) and (b)(West 2004)

SECOND CAUSE OF ACTION

AIDING IN THE UNLICENSED PRACTICE OF MEDICINE

47 As described in paragraph six through 20, Respondent knew, or should have known, that the prescriptions Respondent dispensed to Utah residents were written by contracted prescribing practitioners who were not licensed with the Division to practice medicine and were based on an on-line medical questionnaire and not on a bona fide patient-physician relationship. Further, that the issuance of a prescription by a practitioner not licensed with the Division which is based on an on-line medical questionnaire constitutes the practice of medicine. Therefore, Respondent has engaged in "unprofessional conduct" as defined under Utah Code Ann § 58-1-501(2)(a)(West 2004) establishing grounds for sanctioning Respondent's licenses as provided under Utah Code Ann § 58-1-401(2)(a)(West 2004)

THIRD CAUSE OF ACTION

EMPLOYING AN UNLICENSED PHARMACY TECHNICIAN & ALLOWING AN UNAUTHORIZED PERSON INTO THE PHARMACY

48 As described in paragraphs six through 20, Respondent allowed unlicensed personnel to engage in practices that constituted practicing as a pharmacy technician. Additionally, Respondent allowed an unauthorized person into the pharmacy who was not participating in the operational process of the pharmacy as defined in paragraph 13 herein. Therefore, Respondent has engaged in "unprofessional conduct" in violation of Utah Admin Code R156-17b-502(11)(2006) and Utah Code Ann § 58-1-501(2)(a)(West 2004) establishing

grounds for sanctioning Respondent's licenses as provided under Utah Code Ann § 58-1-401 (2)(a) (West 2004)

FOURTH CAUSE OF ACTION

GROSS NEGLIGENCE IN THE PRACTICE OF PHARMACY

49 As described in paragraph six through 20, Respondent dispensed prescription drugs, including the schedule III controlled substances Fioricet and Butalbital, to residents throughout the United States Respondent was not licensed in any other state besides the State of Utah and the dispensing of prescription medications to other states is in violation of those respective states' laws, statutes and rules Further, the vast majority of those states that respondent dispensed prescription medications to require a valid bona fide patient-physician relationship in a face-to-face consultation Additionally, Respondent failed to maintain a patient medication profile system as defined in paragraph 14 herein Pharmacy personnel for Respondent failed to obtain verification for all IFC entity prescriptions issued by prescribing practitioners who are not licensed within the State of Utah Therefore, Respondent has engaged in "unprofessional conduct" in violation of Utah Code Ann § 58-17b-502(7)(West 2004) establishing grounds for sanctioning Respondent's licenses as provided under Utah Code Ann § 58-1-401(2)(a)(West 2004)

FIFTH CAUSE OF ACTION

UNLAWFUL DISPENSING OF A CONTROLLED SUBSTANCE

50 As described in paragraph 17 herein, Respondent dispensed and mailed six different prescriptions of Butalbital, a schedule III controlled substance, to Utah residents

Respondent dispensed these prescriptions based on a on-line medical questionnaire and each prescription was issued with an electronic signature Respondent does not have a written agreement with the Division to dispense medications based on an on-line medical questionnaire The Utah Controlled Substance Act allows for the dispensing of a controlled substance prescription only if the prescription is signed in ink or indelible pencil or is signed with an electronic signature of the prescriber as authorized by division rule The Utah Controlled Substance Act Rules do not authorize the issuing or dispensing of controlled substances with an electronic signature Further, the Utah Pharmacy Practice Act Rules provides that prescriptions orders for schedule II-V controlled substances received by electronic means of communication must specify they will be handled in accordance with the Utah Controlled Substance Act and Utah Controlled Substance Act Rules Therefore, Respondent has engaged in “unlawful conduct” in violation of Utah Code Ann § 58-37-8 (1)(a)(1)(West 2004), establishing grounds for sanctioning Respondent’s licenses as provided under Utah Code Ann § 58-1-401(2)(b)(West 2004)

WHEREFORE, the Division requests the following relief

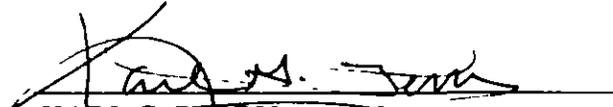
1 That Respondent be adjudged and decreed to have engaged in the acts alleged herein,

2 That by engaging in the above acts, Respondent be adjudged and decreed to have violated the provisions of the Division of Occupational and Professional Licensing Act, the Pharmacy Practice Act, and the Controlled Substance Act,

3 That Respondent’s licenses be revoked to practice as a pharmacy and to dispense controlled substances in the State of Utah

4 That Respondent be assessed a fine of \$10,000 00 for each violation pursuant to Utah Code Ann § 58-17b-504(5)(b)

DATED this 23rd day of June, 2009


KARL G PERRY
Assistant Attorney General

