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BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING

DEPARTMENT OF COMMERCE

STATE OF UTAH

IN THE MATTER OF THE LICENSES OF
KYLE BERTRAND ROOTSAERT
TO PRACTICE AS A PHARMACIST AND
TO DISPENSE CONTROLLED SUBSTANCES
IN THE STATE OF UTAH

STIPULATION AND ORDER

CASE NO DOPL 2009-219

Kyle Bertrand Rootsart (hereafter, "Respondent") and the Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah (hereafter, "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 he enters into this Stipulation knowingly and voluntarily

3 Respondent understands that he has the right to be represented by counsel in this matter and that his signature below signifies that he has either consulted with an attorney or he

has knowingly waived his right to counsel in this matter

4 Respondent understands that he is entitled to a hearing before the State of Utah's Board of Pharmacy ("Board"), and/or the Division Presiding Officer, at which time he may present evidence in his own behalf, call witnesses, and confront adverse witnesses. Respondent understands that by signing this document, he knowingly and voluntarily waives his right to a hearing, the right to present evidence in his own behalf, the right to call witnesses, the right to confront adverse witnesses, and any other rights to which Respondent may be entitled in connection with said hearing. Further, by signing this Stipulation, Respondent understands and acknowledges that he is waiving any and all rights he might have with respect to administrative and judicial review as set forth in Utah Code Ann. §§ 63G-4-301 through 63G-4-405, and Utah Administrative Code R151-46b-12 through R151-46b-15. Respondent and the Division hereby express their intent that this matter be resolved expeditiously through Stipulation as set forth in Utah Code Ann. § 63G-4-102(4).

5 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 will release other information about this disciplinary action against Respondent's licenses, to other persons and entities.

6 Accordingly, Respondent admits that the following facts are true and correct:

a On or about September 22, 2005, Respondent submitted an application to the Division for Roots Pharmaceuticals, Inc. ("RPI") to do business as a class "A" retail pharmacy. Respondent subsequently withdrew this application.

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

application listed Respondent as the pharmacist-in-charge and listed Respondent as an owner of RPI

c On or about December 13, 2005, RPI was issued a license as a class "A" retail pharmacy. The Division inspected the pharmacy on the second floor of an office building and issued a class "A" retail pharmacy license. However, Respondent should have applied for and been issued a license as a class "B" closed door pharmacy license because RPI has not and does not operate as a retail pharmacy open for the public to enter.

d As part of Respondent's application for RPI submitted to the Division, Respondent, 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.

e 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.

f 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 RPI. 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 Respondent as the dispensing pharmacist and RPI as the dispensing pharmacy. The prescription medication further identified Alan Saltzman as the prescribing practitioner. Alan Saltzman is not licensed as a medical practitioner within the State of Utah and is not licensed to prescribe medicine within the State of Utah.

g. On or about March 7, 2007, the Division Investigator interviewed Respondent at RPI. During this interview, Respondent acknowledged that he had entered into a business relationship with several on-line internet facilitator companies ("IFC"). These IFCs included Secure Medical L L C , Real Medical, JRB Health Solutions, and Rx Partners/Rx Limited. Respondent acknowledged that these IFCs contracted with various prescribing practitioners who reviewed each patient's on-line questionnaires and then issued prescriptions for requested medications. A list of the IFCs and a list of the prescribing practitioners who Respondent had worked with was subsequently provided by Respondent to the Division Investigator. Respondent 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 RPI received a prescription from an IFC.

h. Respondent, as an owner and operator of RPI entered into written agreements with two of the above listed IFCs. One of those agreements stated that RPI would dispense prescriptions for customers who had visited internet

based sites that market medications and have obtained a prescription for a Medication from a licensed physician who has reviewed the customer's medical history." These prescriptions were issued by a physician based upon an internet interaction. One agreement 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.

1 On or about March 7, 2007, the Division Investigator observed an employee of RPI retrieving electronic prescriptions from an IFC. This employee logged into a secure portal website of the IFC where she retrieved and printed out prescriptions and prescription labels that had been reviewed, approved, and transmitted by the contracted physician and further transmitted by the IFC. At this same time, Respondent'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 Respondent and a Division Investigator talked in a back office of the pharmacy. Respondent 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.

2 Respondent, acknowledged that Fioricet¹ was dispensed from RPI and

¹ Fioricet is the brand name for the combination drug product containing acetaminophen, butalbital, and caffeine. There are also generic versions of the same combination. The term "Fioricet" as used in this Stipulation includes generic versions of the same combination containing acetaminophen, butalbital, and caffeine.

that he believed it was not a controlled substance. Respondent did not maintain records of Fioricet 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 regarding Fioricet. Respondent was also questioned about an order received for Adderall (a schedule II controlled substance). He explained that this medication had been ordered and dispensed pursuant to a valid written prescription for a friend. However, no information for this prescription was submitted to the Utah Controlled Substance Database.

k During the years of 2006, 2007, and 2008, the Division received at least four complaints from other state licensing agencies alleging RPI had shipped prescription medications into their jurisdictions without having the proper pharmacy license. Further, someone from 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.

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

m The above described prescriptions dispensed by the RPI were issued by practitioners who were not licensed to practice medicine in the State of Utah.

1

Respondent did not verify whether those prescribing practitioners were licensed in the State of Utah

n On or about December 10, 2007, Respondent, as the pharmacist-in-charge for RPI, 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, Respondent declared that on behalf of RPI he had submitted all required information to the Controlled Substance Database with proper documentation kept on site. Further, Respondent 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."

7 The Division and Respondent are entering into this Stipulation as a compromise of disputed allegations and conclusions. The following facts and legal conclusions are not admitted by the Respondent, but are alleged by the Division and are in dispute between the parties.

a Respondent knew or should have known the identifying formularies for all of the IFCs listed in ¶6 (g) (two of the prescription medications identified within the formulary were for Fioricet, which contained acetaminophen and butalbital which is a schedule III controlled substance under the Utah Controlled Substance Act)

b Respondent knew or should have known about the eight different contracted prescribing practitioners who issued electronic prescriptions for the respective IFCs. None of these eight prescribing practitioners were licensed with

the Division to practice medicine within the State of Utah

c Respondent knew or should have known that the prescribing practitioners were not licensed to practice medicine in the State of Utah

d Respondent as pharmacist-in-charge did not personally maintain a patient medication profile system but instead relied on the IFCs to maintain the patient medication profile system

8 Respondent admits that his conduct as contained in the agreed upon facts and contained in the disputed facts, if the Board or Presiding Officer found in the Division's favor regarding the disputed facts, that Respondent's conduct would constitute unprofessional conduct as defined in Utah Code Ann § 58-1-501(1)(f), (2)(g) & (m) and (4)² and Utah Code Ann § 58-37-8(1)(a)(1), and Utah Administrative Code § R156-1-601(1)³, and R 156-17b-502(11) and that said conduct would justify disciplinary action against Respondent's license pursuant to Utah Code Ann § 58-1-401(2)(a) and (b) Respondent agrees that an Order, which constitutes disciplinary action against his licenses, by the Division pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann § 58-1-401(2), shall be entered in this matter as follows

a Respondent's licenses to practice pharmacy and to dispense controlled substances in the State of Utah shall be suspended The suspensions, however, shall be stayed and his licenses shall be subject to a term of probation of five years The probationary period shall commence on the date the Division Director signs this Order During the period of probation, Respondent shall be subject to

² The reference here to Utah Code Ann § 58-1-501(1)(f), (2)(g) & (m) and (4) is the version of the Utah Code Annotated in effect in 2006 through 2010

³ The reference here to Utah Administrative Code R156-1-601(1) is the version of the Code in effect in 2006 through 2010

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. Further, the Board/Division may reduce the period of probation if it is determined that Respondent has complied with all the terms of probation and additional probation is unnecessary.

b Respondent shall pay an administrative penalty to the Division in the amount of \$12,000.00 (Twelve Thousand Dollars), pursuant to Utah Code Ann. § 58-17b-401(6), § 58-17b-504(5), and Utah Administrative Code R156-17b-402. \$6,000.00 (Six Thousand Dollars) of the fine will be suspended pending successful completion of this Stipulation and Order. Respondent shall pay \$6,000.00 (Six Thousand Dollars) to the Division within one year of the effective date of this Stipulation and Order.

c Respondent shall meet with the Board and Division within thirty (30) days of the signing and entry of the accompanying Order and thereafter on a quarterly basis, or at other greater or lesser frequency as determined by the Board and Division, for the duration of the probationary period thereafter to assess the progress of Respondent's probation.

d All reports and documentation required in this Stipulation and Order shall be submitted to the Board on a monthly basis, on the first day of each month, 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 thereafter on a quarterly basis for the remainder of his 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

e Respondent shall complete and submit to the Board a self-assessment report at the frequency described in subparagraph (b) above. The self-assessment report shall be completed on a form approved by the Division.

f Respondent shall not work as a pharmacist-in-charge at any pharmacy, shall not have any partial or total ownership of any pharmacy, and shall not work at any pharmacy other than the pharmacy that is Respondent's primary place of employment. Before working at any pharmacy, Respondent shall submit a practice plan to the Division and Board. The practice plan must be pre-approved by the Division before Respondent accepts or begins employment at any pharmacy. Notwithstanding the foregoing, the Division acknowledges Respondent is currently working and may work for his current employer without being in violation of this Stipulation as long as Respondent complies with all requirements of this Stipulation and Order and files all documents required herein in accordance with the time frame set forth in paragraphs 8(c) and (d).

g Respondent shall notify any employer of his restricted status and the terms of this Stipulation and Order. Respondent shall provide a copy of this Stipulation and Order to his employer and cause such employer to acknowledge the receipt of the Stipulation and Order to the Division and Board in writing. The employer shall submit employer reports to the Division and Board on a monthly basis for

the first six months and quarterly thereafter, or at such frequency as directed by the Division or Board. The employer shall write the Division and indicate whether the employer will provide the periodic employer reports.

h Respondent shall work under the general supervision of a pharmacist who is licensed and in good standing with the Division.

i Respondent's supervisor shall submit regular reports as part of the employer's reports to the Division on form approved and provided by the Division at the frequency set forth in subparagraph (d) above.

j Respondent shall notify the Division and Board within one (1) week of any change in his employer or in his employment status. This is required regardless of whether Respondent is employed in his licensed occupation. The notification shall be in writing.

k Respondent shall limit his practice in accordance with the terms of this stipulation, unless the Division and the Board authorize changes.

l In the event Respondent leaves Utah for a period longer than 60 days, he shall notify the Division and the Board in writing of his dates of departure and his return. In the event Respondent attempts to gain employment as a pharmacist in his new location, he shall immediately notify the licensing authorities of the jurisdiction to which Respondent moves of the provisions of this Stipulation and Order. Periods of residency or practice outside Utah may apply to the reduction of the probation period if the new state of residency places Respondent's license on probation with equal or greater terms and conditions.

m Periods of unemployment or employment in other fields of practice shall

be reported by the Respondent to the Division and shall not count toward completion of the probation period in paragraph 8(a). Should Respondent not be employed in his licensed occupation during his probationary period for a period of more than sixty (60) consecutive days, such period shall not apply to the reduction of probation, though the terms of probation shall remain applicable. If the Respondent works less than full-time in his licensed occupation, the reduction of any remaining probationary time shall occur on a pro-rata basis, in relation to a full-time position of 40 hours worked per week. 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.

n Should other act or acts of unprofessional conduct, which is different in nature from the facts and circumstances set forth in the Notice of Agency Action in this matter and in paragraphs 6 and 7 herein, come to the attention of the Division or Board that have occurred prior to the entry of the Order in this case or should Respondent violate probation in any respect, the Division may, in addition to taking action as provided for herein, after giving Respondent notice and the opportunity to be heard, revoke probation or impose sanctions in accordance with applicable law. This shall include any actions currently pending or occurring in another state.

o Respondent shall immediately notify the Division, in writing, of any changes in his private or professional address and agrees that written communication by the Division and/or the Board to the Respondent shall be mailed to the last address provided to the Division via first class U S Mail, and

shall constitute notice to Respondent

p Failure to pay for any of the costs associated with this Stipulation and Order shall be considered a violation of this Order Respondent further agrees to complete all conditions of probation in a timely manner Where a specific date for completion is not stated in this Order, it shall be within the Division and Board's discretion to set a date for completion in writing

q Respondent shall successfully complete a course of continuing professional education focusing on ethics and pharmacy law The courses shall be pre-approved by the Board and Division The course shall be completed within one year of the effective date of this Stipulation and Order The course shall not count toward the regular continuing professional education requirement for license renewal Respondent shall provide documentation to the Division and Board of successful completion of the course

r Respondent shall keep his Utah licenses current during the period of probation

s Respondent shall notify the Division immediately if he is arrested and/or charged with any criminal conduct and understands that a conviction will constitute a violation of this Stipulation and Order Respondent shall notify the Division if he is hospitalized or enters into a treatment program

t Respondent shall not work in any floating, on-call, PRN ("pro re nata"), "as needed" pools, or temporary staff agencies, unless subsequently permitted by the Board

8 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 void, except that the Division and the Respondent waive any claim of bias or prejudice they might otherwise have with regard to the Director by virtue of him having reviewed this Stipulation, and this waiver shall survive such nullification

9 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 engaged in new misconduct or files an Order to Show Cause alleging that Respondent has violated any of the terms and conditions contained in this Stipulation and Order, the period of Respondent's probation shall be tolled during the period that the Petition or Order to Show Cause Petition has been filed and remains unresolved

10 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 admitted facts set forth in this Stipulation and Order are incorrect or false 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 timely complete, all the terms and conditions of probation 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. Respondent understands that the disciplinary action taken by the Division in this Stipulation and Order may adversely affect any license that Respondent may possess in another state or any application for licensure Respondent may submit in another state

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

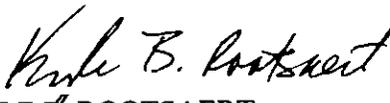
13 Respondent has read each and every paragraph contained in this Stipulation and Order and acknowledges his understanding of each and every paragraph contained in this Stipulation and Order Respondent has no questions about any paragraph or provision contained in this Stipulation and Order

Dated this ____ day of _____, 2012

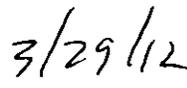
DIVISION OF OCCUPATIONAL &
PROFESSIONAL LICENSING

RESPONDENT

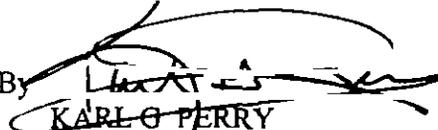
By: 
DEBRA F HOBBS, DNP, APRN, LSAC
Bureau Manager

By: 
KYLE B ROOTSAERT

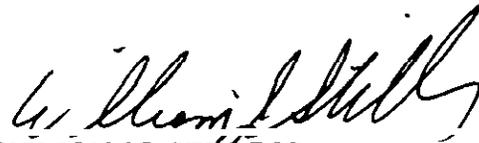
Dated: 

Dated 

Mark L Shurtleff
Utah Attorney General

By 
KARL G PERRY
Assistant Attorney General

Dated 4/9/2012

By 
WILLIAM J STILLING
Attorney for Respondent

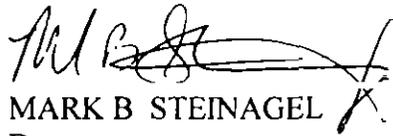
Dated. 3/29/12
Stipulation + order
Case # DORC 2009-219

ORDER

The above Stipulation, in the matter of Kyle Bertrand Rootsart, 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(6) 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 11 day of April, 2012

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING


MARK B STEINAGEL
Director