

L. MITCHELL JONES (U.S.B. 5979)
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
Telephone: (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)
ZION PHARMACY TO) STIPULATION AND ORDER
OPERATE AS A CLASS A PHARMACY AND)
TO DISPENSE CONTROLLED SUBSTANCES) CASE NO. DOPL 2009-- 230
IN THE STATE OF UTAH)

ZION PHARMACY ("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. Kurtney J. Stirland is the owner and pharmacist in charge of Zion Pharmacy. Hereinafter, the term "Respondent" shall mean both Kurtney J. Stirland and Zion Pharmacy, collectively.

2. Respondent acknowledges that Respondent enters into this Stipulation knowingly and voluntarily.

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 Respondent is entitled to a hearing before the State of Utah's Board of Pharmacy ("Board"), or other Division Presiding Officer, at which time Respondent may present evidence on Respondent's own behalf, call witnesses, and confront adverse witnesses. Respondent understands that by signing this document Respondent hereby waives the right to a hearing, the right to present evidence on Respondent's 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. Respondent understands that by signing this document Respondent hereby waives all administrative and judicial review as set forth in §§ 63G-4-301 through 63G-4-405, and Utah Administrative Code R151-46b-12 through R151-46b-15.

5. Respondent waives the right to the issuance of a Petition and a Notice of Agency Action in this matter.

6. 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.

7. Respondent admits the following facts are true:

- a. On or about February 9, 1984 Zion Pharmacy was first licensed to operate as a Class A pharmacy and to dispense controlled substances in the State of Utah.

- b. On or April 9, 2009 Zion Pharmacy was issued a citation by the Division for dispensing prescription drugs for use on animals without having a valid prescription by a prescribing practitioner.
- c. On or about April 9, 2009 Kurtney J. Stirland left Zion Pharmacy unattended during business hours while he ran an errand. While Kurtney J. Stirland was absent, pharmacy technicians accepted prescriptions, filled prescriptions, and dispensed prescription medication to customers of Zion Pharmacy.
- d. On or about April 29, 2009 a Division investigator conducted a pharmacy inspection of Zion Pharmacy. The Division investigator observed that an unlicensed assisted living employee, while located in the restricted area of the pharmacy, placed non-prescription tablets in patient drug cards which contained prescription medications for patients at the assisted living facility.
- e. On or about April 29, 2009 Kurtney J. Stirland admitted to the Division investigator that during the preceding year, Respondent had knowingly permitted an unlicensed wilderness program employee to enter Zion Pharmacy and use pharmacy equipment located in the restricted area of the pharmacy to re-package client prescription medications.
- f. Zion Pharmacy failed to conduct an annual inventory since 2007.
- g. Zion Pharmacy failed to maintain required controlled substance records and forms, including DEA Form 222, suppliers' invoices, and suppliers' credit memos.
- h. The Division investigator determined during the April 29, 2009 inspection that Zion Pharmacy failed to meet the following standards in USP-NF Chapters 795 and 797:
- (i) failure to develop a master worksheet for preparation of each batch of sterile and nonsterile pharmaceuticals;
 - (ii) failure to prepare and document required information on a worksheet for preparation of each batch of sterile and nonsterile pharmaceuticals;
 - (iii) failure to label each prepared batch of sterile and nonsterile pharmaceuticals with required information;

1

(iv) failure to assign an expiration date to pharmaceuticals and failure to document methods for establishing expiration dates;

(v) failure to maintain required documentation of an ongoing quality control program to monitor and evaluate Zion Pharmacy's compliance with the standards of USP-NF chapters 795 and 797.

8. Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a) and (h), § 58-37-7.5(4), § 58-17b-502(1), (6), and (7), Utah Administrative Code R156-17b-502(6), (11), and (14), R156-17b-603, and R156-37-502(2) and (8); and that said conduct justifies disciplinary action against Respondent's license pursuant to Utah Code Ann. § 58-1-401(2)(a). Respondent agrees that an Order, which constitutes disciplinary action against Respondent's licenses by the Division pursuant to Utah Administrative Code R156-1-102(7) and Utah Code Ann. § 58-1-401(2), shall be entered in this matter as follows:

- (1) Zion Pharmacy's licenses shall be revoked. Those revocations shall be immediately stayed and Zion Pharmacy's licenses shall be subject to term of probation for a period of two years. The period of probation shall commence on the effective date of this Stipulation and Order, which is the date the Division Director signs the Order. During the period of probation, Respondent 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) Kurtney J. Stirland shall meet with the Board and Division within thirty (30) days of signing of the accompanying Order and 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. Kurtney J. Stirland shall meet with the Board and Division at the first scheduled Board meeting after the effective date of the Order with a plan for Respondent's probation. Kurtney J. Stirland shall meet with a Division staff member to review the Stipulation and Order prior to meeting with the Board.
 - (b) The plan submitted by Kurtney J. Stirland shall include, but is not limited

to:

- i. Documentation showing policies and procedures established at Zion Pharmacy for correcting issues cited above, including the duties of pharmacy technicians and clerks, the responsibility of pharmacists to dispense medications to customers, the necessity of dispensing drugs with a prescription, and unauthorized personnel located inside the restricted pharmacy area;
 - ii. Plans for complying with the standards of USP-NF chapters 795 and 797.
- (c) Respondent shall comply with all policies and procedures approved by the Board and Division.
 - (d) Respondent shall notify the Division and Board within one (1) week of any change of employer or employment status. This is required regardless of whether Respondent is employed in Respondent's licensed occupation. The notification shall be in writing.
 - (e) Should other acts of unprofessional conduct come to the attention of the Division or Board which 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.
 - (f) If a petition is filed against Respondent during Respondent's probation, the period of probation shall be extended until the matters alleged in the petition are fully resolved.
 - (h) Respondent shall immediately notify the Division, in writing, of any changes in private or professional address and agrees that written communication by the Division and/or the Board shall be mailed to Respondent at the last address provided to the Division via first class U.S. Mail, and shall constitute notice to Respondent.
 - (i) Respondent shall keep Respondent's Utah licenses current during the period of probation.
 - (j) Kurtney J. Stirland shall successfully complete six (6) hours of Board approved continuing education courses related to law and rule and pharmacy ethics in the practice of pharmacy. These six additional hours

shall not count toward Respondent's regular continuing education requirement.

- (k) Kurtney J. Stirland, within 90 days of the effective date of this Stipulation and Order, shall provide proof to the Division that he has successfully completed all continuing professional education requirements for the two year period ending September 30, 2007.

9. 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 prejudice they might otherwise have with regard to the Director by virtue of her having reviewed this Stipulation, and this waiver shall survive such nullification.

10. Respondent shall abide by and comply with all applicable federal and state laws, regulations, rules and orders related to the Respondent's licensed practice.

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. 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.

12. 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. 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 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.

13. 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.

14. 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: *Laura Poe*
LAURA POE
Bureau Manager

DATE: 7-30-09

MARK L. SHURTLEFF
ATTORNEY GENERAL

BY: *L. Mitchell Jones*
L. MITCHELL JONES
Counsel for the Division

DATE: 30 July 2009

RESPONDENT

BY: *Kurtney J. Stirland*
KURTNEY J. STIRLAND
Owner and Pharmacist in Charge
Zion Pharmacy

DATE: July 23, 2009

ORDER

THE ABOVE STIPULATION, in the matter of **ZION PHARMACY**, 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(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 3 day of August, 2009.

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING



MARK B. STEINAGEL
Director

Investigator: Sandra Hess