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**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) CALIBER POOLS LLC) TO PRACTICE AS A CONTRACTOR) IN THE STATE OF UTAH))	MEMORANDUM OF UNDERSTANDING AND ORDER CASE NO. DOPL 2009- 335
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CALIBER POOLS LLC ("Respondent") submitted an application on or about August 20, 2009 for licensure to the Division of Occupational and Professional Licensing to act as a contractor in the State of Utah. Darwin Edwin Burch is Respondent's qualifier and Paul Haines is Respondent's owner. For the purposes of this Memorandum and Order the term "Respondent" shall mean Caliber Pools LLC, Paul Haines, and Darwin Burch, collectively.

Darin Edwin Burch has been involved in unlawful conduct which resulted in the following:

In February 2000 Mr. Burch pleaded guilty to one count criminal mischief, a Class B misdemeanor, in a Utah court;

In June 2001 Mr. Burch pleaded guilty to one count of forgery, a 3rd degree felony, and one count of receiving stolen property, a Class B misdemeanor, in a Utah court;

In March 2001 Mr. Burch pleaded guilty to one count of possession of marijuana, a Class B misdemeanor and one count of possession of drug paraphernalia, in a Utah court;

In February 2003 Mr. Burch pleaded guilty to multiple counts of forgery, a 3rd degree felony, in a Utah court;

In June 2003 Mr. Burch pleaded guilty to one count of forgery, a 3rd degree felony and one count of illegal possession or use of a controlled substance, in a Utah court;

In January 2004 Mr. Burch pleaded guilty to one count of making a false report, a Class C misdemeanor in a Utah court; and

In July 2007 Mr. Burch pleaded guilty to one count of driving under the influence in a Utah court.

Based upon the qualifier's conduct as described above, the Construction Services Commission, and the Division, as evidenced by their signatures on this Memorandum of Understanding and Order, agree that Respondent shall be issued a probationary license to practice as a contractor in the State of Utah, subject to the following terms and conditions, which shall be in effect for a period of three years, commencing upon the date this Memorandum of Understanding and Order is approved by the Division Director as evidenced by his signature.

1. Respondent admits the jurisdiction of the Division over Respondent and over the subject matter of this action. Respondent admits that the qualifier's 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 by the Division 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 Division, or any member, officer, agent or representative of the Division to induce Respondent to enter into this agreement.
3. Respondent understands that Respondent has the right to be represented by an attorney in this matter, and the Respondent has either sought the advice of counsel or knowingly waives Respondent's right to counsel in this matter.
4. Respondent acknowledges that this Memorandum of Understanding 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 license, to other persons and entities.
5. Respondents shall successfully complete and satisfy the following terms and conditions:
 - a. Respondent shall meet with the Commission at the first scheduled Commission meeting following the effective date of this Stipulation and Order. Respondent shall then meet with the Commission on a quarterly basis or at such other greater or lesser frequency as determined by the Commission and Division for the duration of the Stipulation and Order. Respondent agrees to meet with an assigned staff member prior to the first Commission meeting.

- b. If 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 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, Respondent agrees to cause the Division and Commission to be notified immediately. If Respondent at any time during the period of this agreement is convicted of a criminal offense of any kind, or enters a plea in abeyance to a criminal offense of any kind, including a pending criminal charge, the Division may take appropriate action against Respondent, including imposing appropriate sanctions, after notice and opportunity for hearing. Such sanctions may include revocation or suspension of Respondent's license, or other appropriate sanctions.
- c. Although the use and possession of alcohol is generally legal for persons age 21 and older, Darwin Edwin Burch agrees to abstain from the personal use or possession of alcohol in any form. Mr. Burch agrees to abstain from the personal use or possession of controlled substances and prescription drugs, unless such controlled substance or prescription drug is lawfully prescribed to Mr. Burch for a current bona fide illness or condition by a licensed practitioner and taken by Mr. Burch in accordance with that practitioner's instructions. Mr. Burch shall abstain from the use of any and all other mood altering substances or use of mood altering substances for any other purpose than the purpose for which the substance is intended.
- d. Darwin Edwin Burch, shall submit to the following course of treatment as part of Mr. Burch's rehabilitation and at Respondent's own expense:
- i. Mr. Burch shall successfully complete an alcohol/chemical dependency evaluation provided by a Division-approved licensed provider within ninety (90) days of the effective date of this Stipulation and Order. Mr. Burch shall contact the Division-approved Rehabilitation Center for an initial appointment within 10 days of the effective date of this Stipulation and Order. Mr. Burch shall schedule the initial appointment to be held within 45 days of the effective date of this Stipulation and Order. Mr. Burch shall attend all appointments and follow-up appointments in a timely manner. Respondent shall cooperate fully with the evaluator to ensure a fair and complete evaluation. Mr. Burch shall notify the Division immediately after successfully completing the evaluation and inform the Division that Mr. Burch has successfully completed the chemical dependency evaluation. Mr. Burch agrees to cause the evaluation report to be sent to the Division within 90 days of the effective date of this Order. If an adequate evaluation has already been completed as the result of previous court orders, the Division may agree to accept the previous evaluation rather than requiring a new evaluation provided prior evaluation is provided within 45 days of the effective date of this Stipulation and Order.

- ii. Respondent acknowledges receiving a current list of the Division-approved licensed providers.
- iii. If Respondent fails to submit the evaluation(s) to the Division within the time stated above, the Division may take any action necessary pursuant to the Utah Administrative Procedures Act, Utah Code Annotated § 63-46b.
- iv. Mr. Burch shall successfully complete all treatment programs and treatment recommendations as outlined in the evaluations. Mr. Burch shall sign any releases required to allow Mr. Burch's therapist or counselor to provide the Division with ongoing reports of diagnosis, prognosis, compliance, etc., regarding Mr. Burch's treatment.
- v. Unless otherwise approved by the Division, Mr. Burch shall, except as provided otherwise herein, receive prescriptions from only one prescribing practitioner, and Mr. Burch shall fill prescriptions at only one pharmacy. Mr. Burch shall not obtain the same or equivalent prescription drug or controlled substance from more than one practitioner. All prescribing practitioners must be informed of any and all of Mr. Burch's addiction/abuse problems. Mr. Burch shall not undertake, under any circumstance, to obtain prescription drugs in quantities or types that are not legitimately required. Mr. Burch shall submit the names of the prescribing practitioner and pharmacy to the Division and Commission for approval. Mr. Burch shall provide the Division with a copy of all Mr. Burch prescriptions for prescription drugs, controlled substances, or any other mood altering substance, within forty-eight (48) hours after the prescription has been written.
- vi. Prescriptions from an emergency practitioner or referral practitioner must be submitted to the Division within forty-eight (48) hours of being issued. Mr. Burch shall report to the Division within forty-eight (48) hours any and all medications and controlled substances administered or dispensed to Mr. Burch by any other individual.
- vii. Mr. Burch shall report to the Division within forty-eight (48) hours any and all medications or controlled substances ingested by Mr. Burch from any source.
- viii. Mr. Burch shall provide to the primary prescribing practitioner a copy of this Stipulation and Order.
- ix. Mr. Burch 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 Mr. Burch shall comply with such requests. The

Division shall determine when and where Mr. Burch is to submit for testing. Mr. Burch shall pay for 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 that Mr. Burch failed to provide a sample for drug analysis as directed will be considered a positive drug test result for Mr. Burch and will subject Respondent to additional sanctions. Any drug test result or pattern of results that indicates that the sample provided by Mr. Burch for drug analysis is diluted to an extent that it cannot be analyzed, will be considered a positive drug test result for Mr. Burch and will subject Respondent to additional sanctions.

- x. Mr. Burch shall participate in any therapy and/or aftercare that the Division and the Commission may require after completion of Mr. Burch's treatment program. Any treatment program or therapist from whom Mr. Burch has or will receive treatment must be approved by the Division and Commission, and Mr. Burch shall direct and authorize Respondent's therapist to discuss Mr. Burch's diagnosis, treatment, and prognosis with the Division and the Commission. Mr. Burch shall direct Mr. Burch's therapist or aftercare provider to submit quarterly evaluations to the Commission that address Mr. Burch's progress in treatment and Mr. Burch's prognosis. Mr. Burch may be subject to reevaluation upon notice and opportunity to be heard.
- xi. The Division may take appropriate action to impose sanctions if: (i) Mr. Burch tests positive for alcohol, a prescription drug, a controlled substance, or any mood altering substance which cannot be accounted for by an administration or prescription by a lawful practitioner for a current medical condition; or (ii) Respondent violates any federal, state or local law relating to Respondent's area of licensed practice, the Controlled Substance Act; or a term or condition of this Stipulation and Order. Sanctions may include revocation or suspension of Respondent's license, or other appropriate sanction, in the manner provided by law.
- d. Mr. Burch, shall provide to the Division a current criminal history report for obtained from the State of Utah, Department Public Safety or any other state requested by the Division on an annual basis or whenever directed by the Division.
- e. Failure of Respondent to pay the costs associated with this Stipulation and Order constitutes a violation of the Stipulation and Order.
- f. Respondents shall provide copies of their income tax returns to the Division on a annual basis, for the duration of the Stipulation and Order.

- g. If Respondent becomes involved in any litigation, the Respondent shall provide a copy of the pleading to the Division within 10 days.
 - h. Respondent shall immediately notify the Division in writing of any change in Respondent's residential or business address.
 - i. Respondent shall maintain a current license at all times during the period of this agreement.
 - j. Respondent shall immediately notify the Division in writing of any change in Respondent's residential or business address.
6. Respondent agrees to abide by all applicable federal and state laws, regulations, rules or orders related to Respondent's licensed field of practice.
 7. 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.
 8. If Respondent successfully completes the terms of this Memorandum of Understanding and Order, the conditions on Respondent's license to practice in Respondent's licensed field will be lifted and Respondent's license will not be subject to further restriction.
 9. If Respondent violates any term or condition of this Memorandum of Understanding, 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.
 10. 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 the Division Director. Respondent must comply with all the terms and conditions of this Memorandum of Understanding and Order immediately after the 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 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 Memorandum of Understanding and Order and may subject Respondent to revocation or other sanctions.
 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. There are no verbal agreements that modify, interpret, construe or affect this Memorandum of Understanding and Order.
 12. 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

RESPONDENT

BY: 
DAN S. JONES
Bureau Manager

BY: 
MICHAEL PAUL HAINES
President
CALIBER POOLS

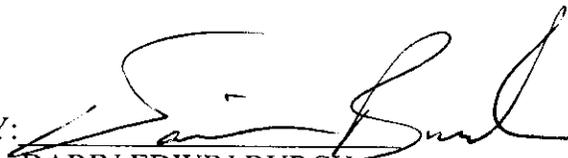
DATE: 10-20-09

DATE: 10/26/09

MARK L. SHURTLEFF
ATTORNEY GENERAL

RESPONDENT

BY: 
L. MITCHELL JONES
Counsel for the Division

BY: 
DARIN EDWIN BURCH
Qualifier

DATE: 22 Oct 2009

DATE: 10/26/09

ORDER

THE ABOVE MEMORANDUM OF UNDERSTANDING, in the matter of **CALIBER POOLS LLC**, is hereby approved by the Construction Services Commission. This issuance of this Order is disciplinary action pursuant to Utah Administrative Code Section 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 28 day of Oct, 2009.



Commission Representative.

I concur with the Construction Services Commission in the matter of **CALIBER POOLS LLC**.

DATED this 28 day of October, 2009.



MARK B. STEINAGEL
Director
Division of Occupational &
Professional Licensing