

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  
TEL: (801) 366-0310

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**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

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IN THE MATTER OF THE LICENSES OF	)	
<b>JOHN V. McARTHUR</b>	)	<b>STIPULATION AND ORDER</b>
TO PRACTICE AS A DENTIST AND TO	)	
ADMINISTER AND PRESCRIBE	)	CASE NO. DOPL 2010-275
CONTROLLED SUBSTANCES	)	
IN THE STATE OF UTAH	)	

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**JOHN V. McARTHUR** (“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.
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 Dentist and Dental Hygienist Board ("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 waives all rights to any 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 contemplated 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, to other persons and entities.

6. Respondent admits the following facts are true:

- a. Respondent was first licensed to practice as dentist and to administer and prescribe controlled substances in the State of Utah on or about June 11, 1985.

On or about May 31, 2010 Respondent's license to administer and prescribe controlled substances expired.

- b. Between February 2005 and April 2009, Respondent ordered over three thousand units of Lortab, a Schedule III controlled substance, from a drug supply company for use in his dental practice in St. George, Utah.
- c. In April 2009 a Division investigator and an investigator from the Drug Enforcement Administration ("DEA") conducted an inspection of Respondent's dental practice located in Utah.
- d. Respondent admitted to the two investigators that Respondent had kept no records of controlled substances received or administered by Respondent between February 2005 and April 2009.
- e. Respondent admitted to the two investigators that Respondent had ingested some of the Lortab himself for an ongoing orthopedic injury. Respondent did not possess a valid prescription for Lortab, nor did he receive the Lortab from a prescribing practitioner.
- f. Respondent admitted to the two investigators that Respondent had administered some of the Lortab to his wife for a non-dental related condition; and had administered some of the Lortab to an adult child of Respondent's for a non-dental related condition. Respondent did not maintain any records of the Lortab he administered to his wife and child.
- g. Respondent voluntarily surrendered his DEA Registration certificate on or about April 30, 2009.
- h. On or about November 18, 2009 Respondent pleaded "no contest" to one count of possession of a controlled substance, a 3<sup>rd</sup> degree felony, in Fifth District Court, Washington County, Utah. The plea was held in abeyance for a period of one year.

7. Respondent admits that the conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a), (c), and (h), and Utah Administrative Code R156-37-502(2) and R156-37-602(1); and unlawful conduct as defined in Utah Code Ann. § 58-37-6(4)(a)(ii), (iv), and (vi), § 58-37-6(5)(a) and (b). Respondent agrees by engaging in such conduct the Division is justified in taking 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 Respondent's license by the Division pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann. § 58-1-401(2), may be issued in this matter providing for the following action against Respondent's license:

- (1) Respondent shall not be issued a license to administer and prescribe controlled substances in the State of Utah until the DEA informs the Division that DEA is willing to grant Respondent a DEA registration certificate. If and when Respondent is issued a license to administer and prescribe controlled substance in the future, that license shall be immediately revoked, the revocation stayed, and shall be subject to a term of probation for period of three years. The period of probation shall begin when the license is issued. After 18 months Respondent may submit a request to the Division and Board that Respondent's probation be terminated at that time. There is not guarantee provided by the Division that any such request shall be granted. During the period of probation Respondent's license 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 and Board.
- (2) Respondent's license to practice as a dentist shall be revoked, the revocation immediately stayed, and shall be subject to a term of probation for a period of three years. After 18 months Respondent may submit a request to the Division and Board that Respondent's probation be terminated at that time. There is not guarantee provided by the Division that any such request shall be granted. The period of probation shall commence on the date the Division Director signs the accompanying Order. During the period of probation Respondent's license 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 and Board.
  - a. Respondent shall meet with the Board within thirty (30) days of the signing of the accompanying Order. Respondent shall meet with a Division staff person prior to Respondent's first meeting with the Board to review this agreement. For the remainder of the duration of probation, Respondent shall meet with the Board or with the Division, as directed by the Division or Board, annually or at such

other greater or lesser frequency as the Division or Board may direct.

- b. Respondent shall complete all terms and conditions of any criminal sanctions, incurred before or during the period of this agreement, including probation or parole. If Respondent has not successfully completed all the terms and conditions of Respondent's criminal probation at the time Respondent's administrative probationary period ends, the period of Respondent's administrative probation shall be extended until all the conditions of Respondent's criminal probation have been successfully completed.
- c. Failure of Respondent to pay the costs associated with this Stipulation and Order constitutes a violation of the Stipulation and Order.
- d. All reports and documentation required in this Stipulation and Order shall be submitted to the Division and Board on a monthly basis 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 on a quarterly basis for the remainder of 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 notify any employer or practice associate of Respondent's restricted status and the terms of this Stipulation and Order. Respondent shall cause Respondent's employer to notify the Division that the employer has received a copy of this Stipulation and Order and understands the requirements of the Stipulation and Order. If Respondent is self-employed, Respondent shall immediately notify the Division that he is self-employed.
- f. Respondent shall write an action plan for prescribing and accounting for controlled substances and other drugs used in his practice. Respondent shall submit the action plan to the Division and Board within 30 days of Respondent being issued a license to administer and prescribe controlled substances.

- g. Respondent shall successfully complete continuing professional education courses focusing on the subjects of prescribing and record-keeping. The continuing professional education courses shall be pre-approved by the Division and Board. The continuing professional education courses shall be successfully completed within one year of the effective date of this Stipulation and Order. The continuing professional education courses shall not count toward Respondent's regular continuing education requirement.
- h. Respondent shall issue prescriptions for controlled substances only on sequentially numbered triplicate scripts. One copy of the prescription shall remain in the patient chart and one copy of the prescription shall be sent by Respondent to the Division and Board within one month of issuance.
- i. Respondent shall record all controlled substance that Respondent administers directly to patients or that are administered to patients during a procedure involving Respondent in a log. The log shall be submitted to the Division and Board on a monthly basis.
- j. In the event Respondent does not practice for a period of sixty (60) days or longer, Respondent shall notify the Division and Board in writing of the date Respondent ceased practicing. The period of time in which Respondent does not practice shall not be counted toward the time period of this Stipulation and Order. It shall be within the discretion of the Division and Board to modify this requirement if Respondent satisfactorily explains to the Division and Board that compliance in Respondent's case was impractical or unduly burdensome. 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.
- k. Respondent shall notify the Division and Board in writing within one (1) week of any change of employer, employment status, or practice status. This notification is required regardless of whether Respondent is employed in Respondent's profession.
- l. If Respondent leaves the State of Utah for a period longer than sixty (60) days, Respondent shall notify the Division and Board in writing of the dates of Respondent's departure and return. The licensing authorities of the jurisdiction to which Respondent moves shall be notified by Respondent in writing of the provisions of this Stipulation and Order. Periods of residency or practice outside the

State of Utah may apply to the reduction of the period this Stipulation and Order is in effect, if the new state of residency places equal or greater conditions upon the Respondent as those contained in this Stipulation and Order.

- m. If Respondent is arrested or charged with a criminal offense, other than minor traffic offenses, 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 Board to be notified immediately. If Respondent at any time during the period of this agreement is convicted of a criminal offense of any kind, including an offense based on the conduct described in this Stipulation and Order, other than minor traffic offenses, 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.
- n. Respondent shall maintain current licenses at all times during the period of this agreement.
- o. Respondent shall immediately notify the Division in writing of any change in Respondent's residential or business address.
- p. Respondent shall submit reports on the date they are due and shall appear at scheduled meetings with the Division and Board promptly. Failure to do so shall be considered a violation of this Stipulation and Order.
- q. Respondent shall review all Utah controlled substance laws and administrative rules and federal controlled substance laws contained in the Code of Federal Regulations. Respondent shall submit an essay to the Division and Board that focuses upon how Respondent will adapt his practice to comply with laws and rules. The essay shall be submitted within one year of the effective date of this Stipulation and Order.

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 null and void, except that the Division and the Respondent waive any claim of bias or prejudgment they might otherwise have with regard to the Director by virtue of his 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.

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 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.

11. 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 Division and 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.

12. 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.

13. 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:   
NOEL TAXIN  
Bureau Manager

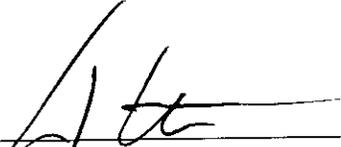
DATE: 8/2/10

MARK L. SHURTLEFF  
ATTORNEY GENERAL

BY:   
L. MITCHELL JONES  
Counsel for the Division

DATE: 2 Aug 2010

RESPONDENT

BY:   
JOHN V. McARTHUR  
Respondent

DATE: 7-28-2010

**ORDER**

THE ABOVE STIPULATION, in the matter of **JOHN V. McARTHUR**, 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<sup>RD</sup> day of August, 2010.



DIVISION OF OCCUPATIONAL AND  
PROFESSIONAL LICENSING

*W. Ray Welton, Acting Director*  
**MARK B. STEINAGEL**  
*for* Director

Investigator: Vince Garcia