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BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING

OF THE DEPARTMENT OF COMMERCE

OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE OF	)	
ROY KEITH BAUER	)	**STIPULATION AND ORDER**
TO PRACTICE AS A	)	
REGISTERED NURSE	)	CASE NO. DOPL 2010- 243
IN THE STATE OF UTAH	)	

ROY KEITH BAUER ("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 Board of Nursing ("the 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 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 license, to other persons and entities.

7. Respondent admits the following facts are true:

   a. Respondent was first licensed to practice as a registered nurse in the State of Utah on or about October 28, 1996.

   b. On or about January 10, 2010 Respondent was hospitalized for a severe medical condition. A hospital pharmacist asked one of Respondent's family members to gather empty prescription bottles from around the house to complete a medical profile. It was then discovered that Respondent had been calling in and filling controlled substance and legend drug prescriptions in the name of two of Respondent's family members without the knowledge or consent of the family members and then using the controlled substances himself.

   c. On or about January 21, 2010 Respondent admitted to a Division investigator that, on multiple occasions in late 2009 and early 2010 Respondent had called in prescriptions to multiple Utah pharmacies in his own name and the name of two of his family members using the DEA number and name of the medical director of the long-term care facility where Respondent worked. Respondent admitted calling in at least 50 (fifty) prescriptions for the controlled substance hydrocodone, and the legend drugs Phenergan and Tramadol, to help treat Respondent's chronic pain.

   d. On or about February 19, 2010 Respondent was terminated from his employment at the long term care facility because Respondent had forged the signature of another nurse on narcotic and patient records and diverted the drugs for his own use.

   e. On or about February 23, 2010 Respondent admitted to a Division investigator that, on multiple occasions in late January 2010 and early February 2010, Respondent had forged the signature of another nurse in order to resolve medication record discrepancies and on at least one occasion ingested "PRN" medication himself.

   f. Respondent has engaged in the use of drugs, narcotics, intoxicants, or similar chemicals to the extent that the conduct might reasonably be considered to impair Respondent's ability to practice safely as a nurse.

8. Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a), (b), and (e), § 58-31b-502(5) and (8), Principles 2.1, 3.6, 4.1, 4.2, and 4.3 of the Code of Ethics of the American Nurses Association.

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). 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's license shall be revoked. That revocation shall be immediately stayed. Respondent's license shall be immediately suspended. The license shall remain suspended until successfully completes all of the requirements set forth in subparagraph 8(1)(b) below. Respondent's license shall be subject to a term of probation for a period of five years. The period of probation shall commence on the date the Division Director signs an Amended Order lifting the suspension. 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.

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, annually or at such other greater or lesser frequency as the Division may direct.

b. Respondent shall submit to the following course of treatment as part of Respondent's rehabilitation and at Respondent's own expense:

i. Respondent shall successfully complete a chemical dependency evaluation provided by a Division-approved licensed provider within ninety (90) days of the effective date of this Stipulation and Order. Respondent shall contact the Division-approved Rehabilitation Center for an initial appointment within 10 days of the effective date of this Stipulation and Order. Respondent shall schedule the initial

appointment to be held within 45 days of the effective date of this Stipulation and Order. Respondent 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. Respondent shall notify the Division immediately after successfully completing the evaluation and inform the Division that Respondent has successfully completed the chemical dependency evaluation. Respondent agrees to cause the evaluation report to be sent to the Division within 90 days of the effective date of this Order.

ii. Respondent shall successfully complete a psychological evaluation provided by a Division-approved licensed provider within ninety (90) days of the effective date of this Stipulation and Order. Respondent shall contact the Division-approved licensed professional for an initial appointment within 10 days of the effective date of this Stipulation and Order. Respondent shall schedule the initial appointment to be held within 45 days of the effective date of this Stipulation and Order. Respondent 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. Respondent shall notify the Division immediately after successfully completing the evaluation and inform the Division that Respondent has successfully completed the psychological evaluation. Respondent agrees to cause the evaluation report to be sent to the Division within 90 days of the effective date of this Order.

iii. Respondent shall successfully complete a physical evaluation provided by a Division-approved licensed provider and pain management specialist within ninety (90) days of the effective date of this Stipulation and Order. Respondent shall contact the Division-approved licensed professional for an initial appointment within 10 days of the effective date of this Stipulation and Order. Respondent shall schedule the initial appointment to be held within 45 days of the effective date of this Stipulation and Order. Respondent 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. Respondent shall notify the Division immediately after successfully completing the evaluation and inform the Division that Respondent has successfully completed the physical evaluation. Respondent agrees to cause the evaluation report to be sent to the Division within 90 days of the effective date of this Order.

iv. 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.

v. Respondent shall successfully complete an intensive drug treatment program and any treatment recommendations as outlined in the evaluations.

vi. In the interest of public safety, the Division may impose additional requirements above and beyond those recommended by the evaluator in the chemical dependency, psychological, and physical evaluations set forth above. Respondent agrees to comply with these additional requirements.

vii. Respondent shall provide a recommendation from a physician, APRN, or psychologist specializing in mental health, psychiatry, or chronic pain management, in which the practitioner provides his or her professional opinion that Respondent is physically, mentally, and emotionally fit to practice as a registered nurse, may safely practice as a registered nurse, and is not a danger to the public.

c. Although the use and possession of alcohol is generally legal for persons age 21 and older, Respondent agrees to abstain from the personal use or possession of alcohol in any form. Respondent 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 Respondent for a current bona fide illness or condition by a licensed practitioner and taken by Respondent in accordance with that practitioner's instructions. Respondent 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. 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.

e. Unless otherwise approved by the Division, Respondent shall, except as provided otherwise herein, receive prescriptions from only one prescribing practitioner, and Respondent shall fill prescriptions at only one pharmacy. Respondent may submit the name of a prescribing practitioner specialist to the Division who provides care that the regular prescribing practitioner cannot provide. The Division will review the request by Respondent and determine if Respondent may receive prescriptions from the prescribing specialist. Respondent 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 Respondent's addiction/abuse problems. Respondent shall not undertake, under any circumstance, to obtain prescription drugs in quantities or types that are not legitimately required. Respondent shall submit the names of the prescribing practitioner and pharmacy to the Division and Board for approval. Respondent shall provide the Division with a copy of all Respondent's prescriptions for prescription drugs, controlled substances, or any other mood altering substance, within forty-eight (48) hours after the prescription has been written.

f. Prescriptions from an emergency practitioner or referral practitioner must be submitted to the Division within forty-eight (48) hours of being issued. Respondent shall report to the Division within forty-eight (48) hours any and all medications and controlled substances administered or dispensed to Respondent by any other individual.

g. Respondent shall report to the Division within forty-eight (48) hours any and all medications or controlled substances ingested by Respondent from any source.

h. Respondent shall provide to the primary prescribing practitioner a copy of this Stipulation and Order and cause the practitioner to acknowledge to the Board in writing that a copy of this Stipulation and Order has been provided to the primary prescribing practitioner.

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

j. Failure of Respondent to pay the costs associated with this Stipulation and Order constitutes a violation of the Stipulation and Order.

k. The Division may take appropriate action to impose sanctions if: (i) Respondent 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 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.

l. 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 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.

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

n. Respondent shall participate in all therapy and aftercare that the Division and the Board may require. Respondent shall authorize all approved treatment programs or therapists from whom Respondent has received or will receive treatment to discuss Respondent's diagnosis, treatment, and prognosis with the Division and the Board. The program or therapist must also be directed to submit evaluations to the Board that address Respondent's progress in treatment and Respondent's prognosis at the frequency described in subparagraph (l) above. Respondent may be subject to re-evaluation upon notice and opportunity to be heard.

o. Respondent shall participate in a professional support group to address Respondent's use of controlled substances and shall submit documentation that reflects Respondent's continuing and regular attendance at such support group meetings. Respondent shall submit such documentation to the Division at the frequency described in subparagraph (l) above. Regular attendance for the purpose of this paragraph shall be at least twice a month.

p. Respondent shall attend a 12-step program, have a sponsor, work the 12-step program and submit reports at the frequency described in subparagraph (l) above to the Division documenting Respondent's participation. The frequency of participation shall be approved by the Board. Unless otherwise directed, Respondent shall attend at least two times per month.

q. Respondent shall notify any employer of Respondent's restricted status and the terms of this agreement. Respondent shall further cause Respondent's employer to submit performance evaluations to the Board at the frequency described in subparagraph (l) above. The receipt of an unfavorable report may be considered to be a violation of probation. If Respondent is not employed as a nurse, Respondent shall submit the employer report form on the date it is due and indicate on that form that Respondent's current employment is not in nursing or that Respondent is not currently working.

r. Respondent shall provide to Respondent's employer(s) and/or school of nursing a copy of this Stipulation and Order and cause each employer or school of nursing to acknowledge to the Board in writing, that a copy of this Stipulation and Order has been provided to the employer and/or school of nursing.

s. Respondent shall not work for a nursing registry, traveling nurse agency, nursing float pool, home health agency, temporary employment agency, school of nursing, or any other practice setting in which nursing supervision is unavailable.

t. Respondent shall practice only under the on-site supervision of a registered nurse in good standing with the Division, or a licensed physician in good standing with the Division. The supervising nurse or supervising physician shall be primarily one (1) person who may periodically delegate her supervisory responsibilities over Respondent to other qualified personnel.

u. In the event Respondent does not practice as a nurse for a period of sixty (60) days or longer, Respondent shall notify the 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 Board to modify this requirement if Respondent satisfactorily explains to the 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.

v. Respondent agrees not to practice nursing in any other state that is a party to the Nurse Licensure Compact without prior authorization from such other party state.

w. Respondent shall restrict Respondent's practice to duties and surroundings that do not allow the Respondent access to, or require the Respondent to account for controlled substances.

x. Respondent shall not contact by telephone or other manner, any pharmacy or drug supplier for the purposes of filling a prescription order. This applies both while Respondent is working in the capacity of Respondent's employment or not.

y. Respondent shall notify the 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.

z. 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.

aa. 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 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, 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.

bb. Respondent shall maintain a current license at all times during the period of this agreement.

cc. Respondent shall immediately notify the Division in writing of any change in Respondent's residential or business address.

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 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.

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. If the Division files a Petition alleging that Respondent has engaged in new misconduct or files an Order to Show Cause Petition 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 is unresolved.

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 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.

15. 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
Bureau Manager

DATE: 8-16-10

RESPONDENT

BY: _____
ROY KEITH BAUER
Respondent

DATE: 8-16-10

MARK L. SHURTLEFF
ATTORNEY GENERAL

BY: _____
for **L. MITCHELL JONES**
Counsel for the Division

DATE: 8-16-10

ORDER

THE ABOVE STIPULATION, in the matter of **ROY KEITH BAUER,** 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 19 day of August, 2010.

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING

MARK B. STEINAGEL
Director

Investigator: Brittany Butsch