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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)
CHARLES EDWARD HERBERT) **MEMORANDUM OF**
TO PRACTICE AS A MASTER PLUMBER) **UNDERSTANDING AND**
IN THE STATE OF UTAH) **ORDER**
CASE NO. DOPL 2010- 423

CHARLES EDWARD HERBERT ("Respondent") submitted an application for renewal of licensure on October 26, 2010 to the Division of Occupational and Professional License of the State of Utah ("Division") to act as a master plumber. Respondent admits he has the following criminal history.

- a. On or about January 15, 2002, in Third District Court, Salt Lake City, Utah, case number 011910148, Respondent was convicted of one count of attempted illegal possession/use of controlled substance, a Class C misdemeanor.
- b. On or about November 8, 2007, in the Justice Court of West Jordan City, Utah, case number 071301655, Respondent was convicted of one count of assault (domestic violence), a Class B misdemeanor; one count of child abuse injury/reckless, a Class B misdemeanor; and one count of domestic violence in the presence of a child, a Class B misdemeanor.
- c. On or about July 13, 2010, in the Justice Court of West Jordan City, Utah, case number 101300580, Respondent plead guilty to one count of assault, a Class B misdemeanor, and was convicted of one count of intoxication, a Class C misdemeanor.

- d. Respondent admits he has a history of alcohol or substance abuse.

Respondent agrees that the conduct describe above has resulted in convictions with respect to a crime of moral turpitude and/or a crime that, when considered with the functions and duties of a master plumber, bear a reasonable relationship to Respondent's ability to safely and/or competently practice as a master plumber.

Respondent, the Construction Services Commission, and the Division, as evidenced by the signatures on this Memorandum of Understanding and Order, agrees that Respondent shall be issued a probationary license to practice as a master plumber in the State of Utah, subject to the terms and conditions below. The Memorandum of Understanding shall become effective upon the date it is approved by the Commission as evidenced by the signature of its authorized representative. The term of probation shall be for a period of four years, beginning on the date the Commission signs the accompanying Order.

1. Respondent admits the jurisdiction of the Division over Respondent and over the subject matter of this action. Respondent admits that Respondents conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a) and (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(6) 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 Memorandum of Understanding and Order, and will release other information about this disciplinary action against Respondent's license, to other persons and entities.
5. Respondent shall successfully complete and satisfy the following terms and conditions:
 - a. Respondent shall meet with the Commission or a Division representative on a quarterly basis or at such other greater or lesser frequency as determined by the Commission and Division for the duration of the Memorandum of Understanding and Order.

- b. All reports or documentation required in this Memorandum of Understanding and Order shall be submitted to the Commission on a monthly basis for the first six months of probation. If Respondent is in compliance with all the terms and conditions of the Order at the end of that time, all reports and documentation shall be submitted on a quarterly basis or such other greater or lesser frequency as determined by the Division for the remainder of probation.
- c. 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.
- d. Respondent shall maintain a current license at all times during the period of this agreement.
- e. Respondent shall provide the Commission with a plan for Respondent's treatment including the name(s) of the evaluators, prescribing practitioner, and dispensing pharmacy.
- f. 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.
- g. Respondent shall submit to the following course of treatment as part of Respondent rehabilitation and at Respondent's own expense:
 - i. Respondent has already completed an chemical dependency evaluation and provided it to the Division.

- ii. Respondent shall successfully complete all treatment programs and treatment recommendations as outlined in the evaluations. Respondent shall sign any releases required to allow Respondent's therapist or counselor to provide the Division with ongoing reports of diagnosis, prognosis, compliance, etc., regarding Respondent's treatment.
- iii. In the interest of public safety, the Division may impose additional requirements above and beyond those recommended by the evaluator in the chemical dependency evaluation set forth above. Respondent agrees to comply with these additional requirements.
- h. 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 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 Commission for approval. Respondent shall provide the Division with a copy of all Respondent prescriptions for prescription drugs, controlled substances, or any other mood altering substance, within forty-eight (48) hours after the prescription has been written.
- i. 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.
- j. Respondent shall report to the Division within forty-eight (48) hours any and all medications or controlled substances ingested by Respondent from any source.
- k. Respondent shall provide to the primary prescribing practitioner a copy of this Memorandum of Understanding and Order.
- l. 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 call in to a designated phone number every day to determine if Respondent is required to provide a sample for drug analysis. Respondent shall pay for the cost of drug testing and shall accurately complete and sign any and all release forms requested

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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.

- m. Failure of Respondent to pay the costs associated with this Memorandum of Understanding and Order constitutes a violation of the Memorandum of Understanding and Order.
- n. Respondent shall participate in any therapy and/or aftercare that the Division and the Commission may require after completion of Respondent's treatment program. Any treatment program or therapist from whom Respondent has or will receive treatment must be approved by the Division and Commission, and Respondent shall direct and authorize Respondent's therapist to discuss Respondent's diagnosis, treatment, and prognosis with the Division and the Commission. Respondent shall direct Respondent's therapist or aftercare provider to submit quarterly evaluations to the Commission that address Respondent's progress in treatment and Respondent's prognosis. Respondent may be subject to reevaluation upon notice and opportunity to be heard.
- o. Respondent shall participate in any therapy, counseling or aftercare that the Division or Commission may require, even if no therapy, counseling or aftercare was recommended by an evaluator.
- p. Respondent shall attend a 12-step program, obtain a 12-step program sponsor, comply with the requirements of the the 12-step program, and submit quarterly reports to the Division documenting Respondent's participation. The frequency of Respondent's participation in the 12-step program shall be monitored and approved by the Commission. Unless otherwise directed, Respondent shall attend at least two times per month.
- q. 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 area of licensed practice, the Controlled Substance Act; or a term or condition of this Memorandum of Understanding and Order. Sanctions may include revocation or suspension of Respondent's license, or other appropriate sanction, in the manner provided by law.

- r. Respondent shall provide to the Division a current criminal history report 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.
- s. 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 understands that the disciplinary action taken by the Division in this Memorandum of Understanding and Order may adversely affect any license that Respondent may possess in another state or any application for licensure Respondent may

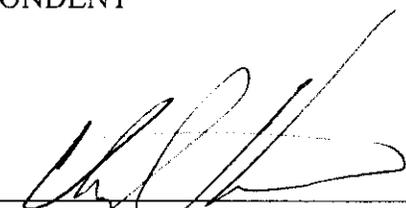
submit in another state.

13. 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 Memorandum of Understanding 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.
14. 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

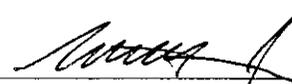
BY: 
DAN S. JONES
Bureau Manager

BY: 
CHARLES EDWARD HERBERT

DATE: 12-1-10

DATE: 12/1/10

MARK L. SHURTLEFF
ATTORNEY GENERAL

BY: 
L. MITCHELL JONES
COUNSEL FOR THE DIVISION

DATE: 30 Nov 2010

ORDER

THE ABOVE MEMORANDUM OF UNDERSTANDING, in the matter of **CHARLES EDWARD HERBERT**, is hereby approved by the Construction Services Commission. 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 Memorandum of Understanding are incorporated herein and constitute the Commission's final Order in this case.

DATED this 29 day of Dec, 2010.


COMMISSION REPRESENTATIVE

I concur with the above Memorandum of Understanding, which the Construction Services Commission has approved.

DATED this 29TH day of December, 2010

W. Ruf Walker, Acting Director
for MARK B. STEINAGEL
Director
Division of Occupational
& Professional Licensing