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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)
JANICE MARIE AUBUCHON TO PRACTICE)
AS A CERTIFIED SUBSTANCE ABUSE)
COUNSELOR INTERN IN THE STATE OF)
UTAH)
)
)
)

MEMORANDUM OF
UNDERSTANDING AND ORDER

CASE NO. DOPL 2010-69

JANICE MARIE AUBUCHON ("Respondent") submitted an application for initial licensure to practice as a Certified Substance Abuse Counselor (CSAC) Intern in the State of Utah on or about February 8, 2010. In the applicant questionnaire, Respondent answered "yes" to questions 21, 23, and 24. Documentation was received by the Division of Occupational and Professional Licensing of the Utah Department of Commerce ("Division") showing that Respondent had a criminal history including the following convictions:

- (1) On or about June 26, 2002 Respondent was convicted of one count of driving under the influence of alcohol, a misdemeanor, and one count of driving while having alcohol level of .06% or higher, a misdemeanor, in the Superior Court of California, County of San Joaquin.
- (2) On or about April 3, 2007 Respondent pleaded guilty to one count of driving under the influence of alcohol, a Class A misdemeanor, in Fifth District Court, Washington County, St. George, Utah. Respondent was sentenced to 24 months court probation. Probation

was terminated successfully on or about August 7, 2008.

Based upon Respondent's conduct described above, Respondent and 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 Certified Substance Abuse Counselor Intern in the State of Utah. If Respondent is later licensed as a Certified Substance Abuse Counselor or a Licensed Substance Abuse Counselor in the State of Utah, all the terms of this Order shall apply to Respondent's license to practice as a Certified Substance Abuse Counselor or a Licensed Substance Abuse Counselor in the State of Utah. The license shall be subject to the following terms and conditions, which shall be in effect for a period of **two 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 Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a) and (c). Respondent understands the issuance of the Order in this matter is disciplinary action against Respondent's license by the Division pursuant to Utah Administrative Code R156-1-102(7) and Utah Code Ann. § 58-1-401(2)(a).
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 Division Director, 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) **Meeting with Compliance Specialist.** Respondent shall contact Division Compliance Specialist Susan Higgs within three weeks of the effective date of this Order to schedule a meeting for the purpose of discussing the terms and conditions of the Order. An appointment with Ms. Higgs can be scheduled by contacting her by phone at (801) 530-6428 or by email at shiggs@utah.gov.

- (b) **Meetings with Board and Written Plan.** Respondent shall meet with the Board and Division at the first scheduled Board meeting after the effective date of the Order. Prior to the first scheduled Board meeting, Respondent shall submit to the Division a written plan that summarizes how Respondent will comply with the terms of the probation. Respondent shall meet with the Board and Division on a quarterly basis or at other greater or lesser frequency as determined by the Board and Division.
- (c) **Supervised Practice.** Respondent shall practice only under the supervision of a Division and Board pre-approved supervisor during the term of Respondent's probation. Supervisor shall be licensed as a mental health therapist in Utah. Any changes in supervision may be made only with the consent of the Division and Board. Respondent shall deliver a copy of this Order to Respondent's supervisor (within ten days of the establishment of the supervisory relationship) and cause Respondent's supervisor to notify the Division in writing that a copy has been received. Supervisor shall also write the Division to confirm his or her understanding of the terms of the Order.
- (d) **Meetings with Supervisor.** Respondent shall meet on a weekly basis with Respondent's supervisor unless otherwise approved by the Board and Division. Supervision goals shall include concurrent case management and oversight of substance abuse treatment services, professional relationships and practices. The supervisor shall oversee Respondent's clinical interventions and review clinical records.
- (e) **Supervisor Reports.** Respondent shall cause Respondent's supervisor to submit reports to the Board and Division assessing Respondent's compliance with the terms of Respondent's probation and professional ethics. The reports shall be submitted monthly for the first six months and quarterly thereafter, or at such frequency as directed by the Board and Division. The receipt of an unfavorable report may be considered to be a violation of probation.
- (f) **Non-Employment in Substance Abuse Profession.** If Respondent is not currently employed in Respondent's licensed profession, Respondent shall submit the supervisor report form on the date it is due and indicate on the form that Respondent is not currently employed in Respondent's licensed profession, or that Respondent is not currently working.
- (g) **Notification of Employer of Terms of Probation.** Respondent shall notify any employer of Respondent's restricted status and the terms of this Order. Respondent shall provide a copy of this Order to Respondent's employer and cause Respondent's employer to acknowledge to the Division and Board in writing that a copy of the Order has been provided to the

employer.

- (h) Respondent shall not supervise licensed mental health, social work, substance abuse, or medical professionals or students.
- (i) **Continuing Education.** Respondent shall successfully complete six additional hours of continuing education, pre-approved by the Board and Division, in the area of Respondent's licensed field of practice. The continuing education must have emphasis in the area of ethics in the substance abuse profession. The six hours of continuing education shall be completed within one year of the effective date of this Order. Respondent shall provide documentation to the Division and Board of successful completion of the six additional hours.
- (j) **Essay.** Respondent shall submit an essay of at least 500 words regarding laws, rules, regulations, and ethics that are relevant to the practice of substance abuse in the Utah. Topics covered in the essay shall include those covered in the continuing education course required under paragraph (i). The essay may also address the State of Utah's Mental Health Professional Practice Act, the Substance Abuse Counselor Act, the Substance Abuse Counselor Act Rule, and the NAADAC Code of Ethics. The essay shall be completed within one year of the effective date of this Order.
- (k) **Drug and/or Alcohol Testing.** If after meeting with the Board and Division, the Board and Division determine that drug and/or alcohol testing is necessary, Respondent shall provide samples (urine, blood, saliva, hair, or any other type of sample requested) for alcohol or 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 herself for testing. Respondent shall pay for the cost of drug or alcohol 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. Any report from a drug and alcohol 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 or alcohol test result or pattern of results that indicates that the sample provided by Respondent for drug or alcohol analysis is diluted to an extent that it cannot be analyzed will be considered a positive test result for Respondent and will subject Respondent to additional sanctions.

- (l) **Abstinence from Use and Possession of Alcohol.** Although the use and possession of alcohol is generally legal for individuals ages twenty-one and older, Respondent shall abstain from the personal use and/or possession of alcohol in any form.
- (m) **Participation in Support Group Meetings.** If after meeting with the Board and Division, the Board and Division determine that participation in support group meetings is necessary, Respondent shall participate in an alcohol anonymous or other substance abuse support group. Documentation that confirms Respondent's regular attendance at such support group meetings shall be provided to the Division on a quarterly basis. "Regular attendance" means Respondent shall attend the support group at least two times per month.
- (n) **Notification of Division Upon Employment Changes.** 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.
- (o) **Division's Authority to Make Changes Probation Terms.** Respondent shall limit Respondent's practice in accordance with the terms of probation, unless the Division and the Board authorize changes.
- (p) **Notification of Division if Leaving Utah for More than 60 Days.** In the event that Respondent leaves Utah for a period longer than 60 days, Respondent shall notify the Division and the Board in writing of the dates of departure and return. The licensing authorities of the jurisdiction to which Respondent moves must be promptly notified of the provisions of this Order. Periods of residency or practice outside Utah may apply to the reduction of the probation period if the new state of residency places Respondent's license on probation with equal or greater terms and conditions.
- (q) **Periods of Unemployment.** Periods of unemployment or employment in other fields of practice shall be reported by Respondent to the Division and shall not count toward completion of probation. Should Respondent not be employed in Respondent's licensed occupation during Respondent's probationary period for a consecutive period of more than sixty (60) days, that period shall not apply to the reduction of probation, though the terms of probation shall remain applicable. If the Respondent works less than full-time in Respondent's licensed occupation, the reduction of any remaining probationary time shall occur on a pro-rata basis, in relation to a full-time position of 40 hours worked per week. It shall be within the discretion of

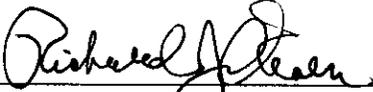
the Board and Division to modify this requirement if Respondent satisfactorily explains to the Board and Division that compliance in Respondent's case is impractical or unduly burdensome.

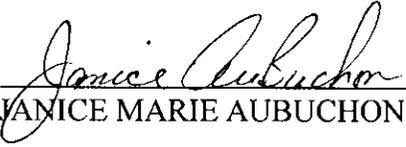
- (r) Should other acts of unprofessional conduct come to the attention of the Division or Board which have occurred prior to the entry of the Order in this case or should Respondent violate probation in any respect, the Division may, in addition to taking action as provided for herein, after giving Respondent notice and the opportunity to be heard, revoke probation or impose sanctions in accordance with applicable law.
- (s) 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.
- (t) 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 terms and conditions or 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 conditions of Respondent's criminal probation have been successfully completed.
- (u) **Notification of Address Changes.** 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.
- (v) **Failure to Cover Costs Associated with Probation.** Failure to pay for any of the costs associated with this probation shall be considered a violation of this Order. Respondent further agrees to complete all conditions of probation in a timely manner. Where a specific time for completion is not stated in this Order, it shall be within the Division and Board's discretion to set a time for completion.
- (w) Respondent shall keep Respondent's Utah license current during the period of probation.
- (x) Respondent shall notify the Division immediately if Respondent is charged or arrested with any criminal conduct and understands that a conviction is a violation of this agreement.

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 and restrictions on Respondent's license as a certified substance abuse counselor intern, certified substance abuse counselor, or licensed substance abuse counselor will be lifted.
9. If Respondent violates any term or condition of this Memorandum of Understanding 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.
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. The 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: 
RICHARD J. OBORN
Bureau Manager

BY: 
JANICE MARIE AUBUCHON

DATE: 2/25/10

DATE: 2/20/10

MARK L. SHURTLEFF
ATTORNEY GENERAL

BY: 
L. MITCHELL JONES
Counsel for the Division

DATE: 16 Feb 2010

ORDER

THE ABOVE MEMORANDUM OF UNDERSTANDING, in the matter of **JANICE MARIE AUBUCHON**, is hereby approved by the Division of Occupational and Professional Licensing. 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)(a). The terms and conditions of the Memorandum of Understanding are incorporated herein and constitute my final Order in this case.

DATED this 1 day of March, 2010.

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING



MARK B. STEINAGEL
Director

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