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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 LICENSES OF)
MARK BRADLEY KABINS) **STIPULATION AND ORDER**
TO PRACTICE AS A PHYSICIAN/SURGEON)
AND TO ADMINISTER AND PRESCRIBE) **CASE NO. DOPL 2011-145**
CONTROLLED SUBSTANCES)
IN THE STATE OF UTAH)

MARK BRADLEY KABINS (“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 Physician Licensing 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 R156-46b-12 through R156-46b-15. Respondent and the Division hereby express their intent that this matter be resolved expeditiously through stipulation as contemplated in Utah Code Ann. § 63G4-102(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 physician/surgeon and to administer and prescribe controlled substances in the State of Utah on or about June 22, 2000.
- b. On or about March 4, 2009 Respondent was indicted by a grand jury of the United States District Court, District of Nevada, on eight criminal counts including conspiracy, mail fraud, and honest services fraud.
- c. On or about November 23, 2009 Respondent pleaded guilty to one count of misprision (concealment) of a felony, a felony in itself, in the United States District Court, District of Nevada. Respondent was sentenced to six months home detention in lieu of imprisonment, five years probation, 250 hours of community service, and was ordered to pay \$3.5 million in restitution to a former patient.
- d. On or about November 23, 2009, in a Memorandum of Plea Agreement, which is incorporated by reference to this Stipulation and Order, and attached as Attachment A, entered into by Respondent, in support of Respondent's guilty plea as described above. Respondent admitted the following:

(i) On August 9, 2000 Respondent evacuated a lumbar epidural hematoma from patient Jane Doe. Jane Doe was ultimately rendered paraplegic. Respondent knew that medical experts could opine that he fell below the standard of care by delaying surgery. Additionally, Respondent believed experts could opine that his failure to timely remove the hematoma contributed to Jane Doe's permanent injury.

(ii) Respondent asked a medical consultant ("HA") to intercede with an attorney ("NG") who had been retained by Jane Doe to represent her in a possible lawsuit. Respondent understood that HA referred personal injury cases to NG and believed that the referral influenced NG's decision not to sue Respondent.

(iii) Respondent drafted a "Letter of Complaint" to help NG bring a lawsuit against other health care providers involved in the treatment of Jane Doe. Respondent intentionally omitted from the "Letter of Complaint" material information about his meeting with NG and AW and about Jane Doe's condition as it related to the timing of the August 9, 2000 surgery. Respondent caused AW to

mail or fax the "Letter of Complaint" from Colorado to NG in Nevada. The "Letter of Complaint" constituted an affirmative act of concealment giving rise to the criminal charge of misprision to which Respondent pleaded guilty.

- e. On or about March 30, 2010 Respondent voluntarily entered into an Order for Letter of Reprimand and Probation and Consent to the Same ("Arizona agreement") with the Arizona Medical Board, a copy of which is incorporated by reference and attached to this Stipulation and Order as Attachment B. In the Arizona agreement Respondent admitted to conduct that would constitute unprofessional conduct in the State of Utah.
- f. On or about December 3, 2010 Respondent voluntarily entered into a Settlement, Waiver, and Consent Agreement ("Nevada agreement") with the Board of Medical Examiners of the State of Nevada. The Nevada agreement is incorporated by reference and attached to this Stipulation and Order as Attachment C. In the Nevada agreement Respondent admitted to conduct that would constitute unprofessional conduct in the State of Utah.

8. Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a), (c), and (d). 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 Utah licenses shall be subject to a term of probation. The period of probation shall continue until Respondent's term of administrative probation in Nevada is terminated. The period of probation shall commence when the Division Director signs the Order in this matter. 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 Division and Board within thirty

(30) days of the signing of the accompanying Order or the next scheduled Board meeting. 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. Respondent shall provide the Division and Board with a copy of Respondent's criminal probation agreement and/or criminal probation termination documents within 30 days of the effective date of this Stipulation and Order.
- 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 agreement. Respondent shall cause Respondent's employer to provide periodic reports summarizing Respondent's compliance with the terms and

conditions of this Stipulation and Order at a frequency described in subparagraph (d) above.

- f. Respondent shall successfully and timely comply with all the terms and conditions set forth in Attachment C. Any violation of any term or condition of Attachment C shall be considered a violation of this Stipulation and Order. Respondent shall submit reports to the Division and Board detailing Respondent's compliance with Attachment C. The compliance report shall be submitted to the Division and Board at the frequency described in subparagraph (d) above.
- g. If, after Respondent's first meeting with the Board, the Board decides that a supervisor requirement is necessary, Respondent shall, if working in Utah, work under the supervision of a supervisor pre-approved by the Division and Board. Respondent shall meet bi-weekly with Respondent's supervisor unless the Board or Division determine a different frequency. Supervision goals shall include concurrent management and professional relationships and practices. The supervisor shall address issues pertaining to the issues arising from Attachment C, and any other issues the supervisor determines are pertinent to professional and ethical practice. Respondent shall cause Respondent's supervisor to meet with the Division and Board, either in person or telephonically, at Respondent's first meeting with the Board or have Respondent's supervisor speak with the Division's bureau manager, to discuss oversight issues the responsibilities of a supervising physician. If the Division, after consultation with the Board, determines that supervision is not necessary, then the requirement that Respondent work under the supervision of a supervisor may be terminated.
- h. If, after Respondent's first meeting with the Board, the Board decides that a supervisor requirement is necessary, and Respondent is self-employed in private practice, Respondent shall hire a supervisor, pre-approved by the Board and Division.
- i. If, after Respondent's first meeting with the Board, the Board decides that a supervisor requirement is necessary, 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 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.

- 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. 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 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, 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 a current license 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.

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 prejudice 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 or Division. 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.

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 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.

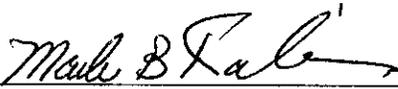
14. Respondent has read each and every paragraph contained in this Stipulation and

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

RESPONDENT

BY: 
NOEL TAXIN
Bureau Manager

BY: 
MARK BRADLEY KABINS
Respondent

DATE: 4/19/11

DATE: 4-14-11

MARK L. SHURTLEFF
ATTORNEY GENERAL

BY: 
L. MITCHELL JONES
Counsel for the Division

DATE: 19 Apr 11

ORDER

THE ABOVE STIPULATION, in the matter of **MARK BRADLEY KABINS**, 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 20th day of April, 2011.

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING

for W. Ray Walker, Acting Director
MARK B. STEINAGEL
Director

Investigator: Sandra Hess