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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 LICENSES OF CYNTHIA ASHER TO PRACTICE PHARMACY AND TO DISPENSE CONTROLLED SUBSTANCES IN THE STATE OF UTAH	:	STIPULATION AND ORDER CASE NO. DOPL-2011 - 292

CYNTHIA ASHER, ("Respondent"), and the Division of Occupational and Professional Licensing of the Department of Commerce ("Division"), by and through their counsel, hereby stipulate and agree as follows:

1. Respondent admits to the jurisdiction of the Division over her and over the subject matter of this action.

2. Respondent acknowledges that Respondent enters into this Stipulation knowingly and voluntarily.

3. Respondent acknowledges she has been advised of her 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 her right to counsel in this matter.

4. The Respondent understands that she is entitled to be served with a Petition and Notice of Agency Action in this matter, and that she is further entitled to a hearing before the State of Utah Pharmacy Licensing Board("the Board"), or other Division Presiding Officer, at which time the Respondent may present evidence on her own behalf, call witnesses, confront adverse witnesses and address adverse evidence. The Respondent acknowledges that by executing this document she is receiving a de facto Petition and Notice of Agency Action, and he is waiving his right to answer the de facto Petition and Notice of Agency Action, to participate in a hearing, to present witnesses and evidence at a hearing, to confront adverse witnesses and adverse evidence at a hearing, and to any other rights to which he may be entitled in connection with said hearing. The respondent further understands that by signing this Stipulation she hereby waives all administrative and judicial review as set forth in Utah code Ann. §§ 63G-4-301 through 63G-4-405 and Utah Admin. Code R151-46b-12 through R151-46b-15. The Respondent and the Division hereby express their intent that this matter be resolved expeditiously through a stipulation as contemplated in Utah Code Ann. § 63G-4-102(4).

5. Respondent acknowledges that she enters into this Stipulation and Order voluntarily, and that no promise, or threat has been made by the Division, or any of its members, officers, agents or representatives, to induce her to enter into this Stipulation and Order.

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 licenses to other persons and entities.

7. Respondent admits the following facts:

(a) On or about August 6, 1985 Respondent became licensed with the Division as a pharmacist and to dispense controlled substances.

(b) On or about August 26, 2009, Respondent renewed her licenses with the Division. In her license renewal application, Respondent answered "NO" to the following questions:

i. "Since the last renewal or issuance of this license has the licensee pled guilty to, pled no contest to, been convicted of, made a plea in abeyance to, or entered into a deferred sentence with respect to any felony or misdemeanor in any jurisdiction?"

ii. "Since the last renewal or issuance of this license has the licensee bee charged with or arrested for any felony or misdemeanor in any jurisdiction?"

(c) On or about September 14, 2007, and January 22, 2009 Respondent was issued a citations for retail theft which resulted in Respondent entering into two different pleas in abeyance which she successfully completed.

(d) Respondent began working as a pharmacist for Ridley's Family Market Pharmacy on April 1, 2010. She was promoted to pharmacist in charge on April 29, 2010 and was terminated from this employment on September 15, 2010.

(e) In August 2010, the Division investigated and substantiated four misbranding complaints that occurred between July 24, 2010 and August 11, 2010. These complaints involved two different patients. One of the patients experienced adverse symptoms as a result of the mistakes. Respondent was the filling pharmacist in at least two of the misbranding mistakes. Respondent admitted to the Division that she failed to abide by the pharmacist-in-charge standards which require that drugs labeled and dispensed accurately and safely as prescribed.

(f) On January 4, 2011, Respondent was interviewed by Division investigators and admitted she has chronic back pain for which she is prescribed medications. Respondent further admitted that she

has consumed prescribed medication during her work shift and it may have interfered with her ability to practice safely.

(g) Respondent admitted to the Division investigators that she has diverted drugs from the pharmacy on more than one occasion. She stated she or a family member possessed a valid prescription for the drugs that she stole. She admits that she did not have in her possession the prescription needing to be filled, but states she intended on paying the pharmacy back when she filled the prescription at a later time.

8. Respondent agrees his conduct described above constitutes unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2) and also constitutes unlawful conduct as defined in Utah Code Ann. § 58-17b-501(6) & (12) ; and that such conduct justifies disciplinary action against Respondent's licenses pursuant tor Utah Code Ann. § 58-1-401(2)(a) & (b). Respondent agrees that an Order, which constitutes disciplinary action against Respondent's licenses by the Division pursuant to Utah Code Ann. § 58-1-401(2) and Utah Administrative Code R156-1-102(6), shall be entered in this matter as follows:

a. Respondent's licenses shall be suspended, Respondent may seek reinstatement of her licenses by providing a letter of fitness for duty provided by an agreed upon psychiatrist, psychologist or clinical director.

b. Respondent shall pay an administrative penalty to the Division in the amount of one thousand dollars ($1,000.00), pursuant to Utah Code Ann. § 58-17b-401(6), § 58-17b-504(5), and Utah Administrative Code R156-17b-402 (7), (45) & (48). Full payment shall be received by the Division within six months of the effective date of this Stipulation and Order with a minimum paid of $100.00 per month for the first three months.

c. Respondent shall be subject to the following terms and conditions:

i. Respondent shall be required to undergo a comprehensive evaluation including: psychological, physical exam, chemical dependency evaluation. The person or agency to perform the

evaluation must be preapproved by the Division and the Division shall be allowed to provide information for the evaluations. Respondent shall sign all releases necessary for the Division to both provide information and receive the written evaluations. Upon completion of these evaluations the suspension of the Respondent's licenses may be lifted by a fitness for duty letter from the psychiatrist or clinical director in charge of the evaluations.

ii. Upon the suspension of Respondent's licenses being lifted, Respondent shall have her licenses subject to a five (5) year period of probation. Terms and conditions for the probation shall be based on recommendations from the evaluation and shall be determined by the Board/Division at the time of reinstatement of Respondent's licenses. Respondent will sign a new stipulation and order containing the terms and conditions from the evaluation.

iii. Respondent shall meet with the Board within 30 days of the reinstatement of her licenses and then at a frequency determined by the Board/Division for the duration of the probationary period. Respondent agrees to meet with a Division staff member to review this agreement prior to her first meeting with the Board.

iv. In the event Respondent should leave the State, Respondent shall notify 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 Stipulation and Order. Periods of residency or practice outside this state may apply to the reduction of the probation period only if the new state of residency places Respondent on probation with equal or greater terms and conditions.

v. Respondent shall notify any employer of the probation status of his pharmacy license and shall share with such employer(s) a copy of this stipulation and order. Respondent shall further cause Respondent's employer to submit performance evaluations to the Board on a monthly basis for six months and quarterly thereafter. The receipt of an unfavorable report from an employer may be considered to be a violation of the terms of this Stipulation and Order. If the Respondent is not employed as a pharmacist, Respondent shall submit the required employer report form to the Board on the date it is due and indicate on that form that Respondent is not currently employed in Respondent's licensed occupation or that Respondent is not currently working.

vi. During his first meeting with the Board, Respondent shall submit a practice plan for approval by the Division/Board. Should this plan change at any time during the probationary period, the Respondent shall resubmit the plan for approval prior to implementing any changes.

vii. Respondent shall immediately notify the division, in writing, of any changes of address.

9. Respondent acknowledges this Stipulation and Order, if adopted by the Director of the Division, will be classified as a public document and shall be the final compromise and settlement of this civil administrative matter. Respondent acknowledges 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 acknowledges this Stipulation and Order upon approval by the Director of the Division, shall be the final compromise and settlement of this matter. Respondent further acknowledges that the Director of the Division is not required to accept the terms of this Stipulation and Order and that if rejected by the Director, is null and void and without any force or effect whatsoever.

11. This Stipulation and Order 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 which modify, interpret, construe or otherwise affect this Stipulation and Order. Respondent understands the terms of this Stipulation and Order.

12. The accompanying Order becomes effective immediately upon the approval and signing of the Order by the Division Director. Respondent shall comply with and timely complete all the terms and conditions of this order and any following probation. If a time period for completion of 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. 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. 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 licenses, or other appropriate sanction.

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.

DATE: 9/8/2011

BY: _____
KARL G. PERRY
Assistant Attorney General

DATE: 5/2/11

BY: Cynthia Asher
CYNTHIA ASHER
Respondent

APPROVED :

DATE: 9/8/11

BY: ~~NOEL TAXIN~~ Dave Taylor
Bureau Manager, DOPL

DATE: 5/4/11

BY:
RANDALL L. SKEEN
Attorney for Respondent

ORDER

The above Stipulation, regarding the licenses of Cynthia Asher, is hereby approved by the Division of Occupational and Professional Licensing, constitutes my Findings of Fact and Conclusions of Law in this matter. The terms and conditions of the Stipulation are incorporated herein and constitute my final Order in this case.

DATED this 13 day of September, 2011.

MARK B. STEINAGEL
Director
Division of Occupational
and Professional Licensing

Investigator: Brittany Butsch