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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)
BIRCH FAMILY PHARMACY) STIPULATION AND ORDER
TO OPERATE AS A PHARMACY AND)
TO DISPENSE CONTROLLED SUBSTANCES) CASE NO. DOPL 2011-*423*
IN THE STATE OF UTAH)

BIRCH FAMILY PHARMACY ("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. Sheldon Buys Birch is the owner of Birch Family Pharmacy.
2. Respondent acknowledges that Respondent enters into this Stipulation knowingly and voluntarily.

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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 Pharmacy ("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 hereby knowingly and intelligently waives the right to all 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 acknowledges 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.

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7 Respondent admits the following facts are true

- a On or about April 12, 2010 Respondent was first licensed to practice as a pharmacy and to dispense controlled substances in the State of Utah
- b Respondent was formerly licensed as RSP Pharmaceutical Corp d/b/a Birch Family Pharmacy That pharmacy's license became active on or about September 7, 2007 and was voluntarily surrendered on April 5, 2010 when it moved locations and changed names
- c In February 2010 Respondent's staff transferred unauthorized prescriptions from a competitor pharmacy to Birch Pharmacy without the customer's permission The patient had authorized one prescription to be transferred but instead Respondent requested all of the patient's ongoing prescriptions be transferred Respondent had previously been warned by the Division about this behavior in the past
- d A new opening inspection occurred at Birch Family Pharmacy on or about August 10, 2010 It was discovered that Respondent had failed to reconcile shortages of drugs with the closing inventory and did not file any DEA 106 forms for losses of controlled substances
- e Respondent has accepted social security numbers of customers in the past as a form of positive identification for controlled substances Social security numbers may not be used as positive identification
- f Respondent submitted multiple false DEA "dummy numbers" for over fifty prescriptions to the Utah Controlled Substance Database between 2009 and 2010
- g In July 2011 Respondent compounded prescription medications which were then provided to another pharmacy to be held within stock inventory for subsequent dispensing

8 Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann § 58-1-501(2)(a) and (h), § 58-17b-502(13) § 58-371-203(2) and Utah Administrative Code R156-17b-612(5), and R156-37-502(5) and that said conduct justifies 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 licenses by the Division pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann. § 58-1-401(2) shall be entered in this matter as follows:

- (a) Respondent's licenses shall be publicly reprimanded for the conduct described in paragraph 7 above.
- (b) Respondent shall pay an administrative penalty of \$1,000.00 (one thousand dollars) to the Division pursuant to Utah Code Ann. § 58-17b-504(5) and Utah Administrative Code R156-17b-402 within 90 days of the effective date of this Stipulation and Order.
- (c) Respondent shall immediately cease and desist from the conduct described in paragraph 7 above.

9. This Stipulation and Order, upon approval by the Director of the Division, 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 Respondent might have with regard to the Director by virtue of her having reviewed this Stipulation, and this waiver shall survive such nullification.

10. Respondent agrees to abide by and comply with all applicable federal and state laws, regulations, rules and orders related to the Respondent's licensed practice.

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.

12. The terms and conditions of this Stipulation and Order become effective

I immediately upon the approval of this Stipulation and signing of the Order by the Division Director Respondent must 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 complete all the terms and conditions contained in the Stipulation and Order in a timely manner 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 complete a term or condition in a timely manner 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

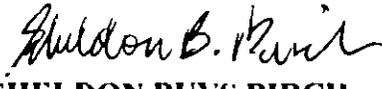
14 Respondent understands that the disciplinary action taken by the Division in this Stipulation and Order may adversely affect any license that Respondent may possess in another state or any application for licensure Respondent may submit in another state

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

RESPONDENT

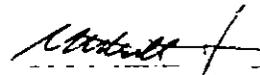
BY 
DEBRA A. HOBBS, DNP, APRN, LSAC
Bureau Manager

BY 
SHELDON BUYS BIRCH
Birch Family Pharmacy

DATE 12/12/11

DATE 121211

MARK I. SHURTEFF
ATTORNEY GENERAL

BY 
L. MITCHEL JONES
Counsel for the Division

DATE 16 Dec 2011

ORDER

THE ABOVE STIPULATION, in the matter of **BIRCH FAMILY PHARMACY**, 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 1st day of December 2011

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING


MARK B. STEINAGEL
Director

Investigator: Jared Memmott