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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 LICENSE OF )  
**DAMION T. SMUIN** ) **STIPULATION AND ORDER**  
TO PRACTICE AS A )  
LICENSED PRACTICAL NURSE ) CASE NO DOPL 2011-  
IN THE STATE OF UTAH )

**DAMION T. SMUIN** ("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 Board of Nursing ("the 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 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 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 licensed practical nurse in the State of Utah on or about July 31, 1995
- b On or about December 10, 2003 Respondent pleaded guilty to one count of attempted theft, a 3<sup>rd</sup> degree felony, amended to a Class A misdemeanor, in Eighth District Court, Uintah County, Utah
- c In about 2009 Respondent was working as a licensed practical nurse at the Uintah Care Center (hereinafter "care center"). in Vernal, Utah
- d In about May 2009 one ring was stolen from a care center resident hereinafter referred to as Jane Doe #1 In about 2009 two rings were stolen from a care center employee hereinafter referred to as Jane Doe #2 In about 2009 a scrap book was stolen from a care center resident hereinafter referred to as Jane Doe #3
- e On or about November 18, 2009 Respondent admitted to a Vernal police officer that Respondent knew that his roommate, who was also an employee at the care center, had stolen the items described above, and Respondent knew that the roommate stored the items at Respondent's residence Respondent gave the Vernal police officer a box containing the stolen items described above
- f On or about June 30, 2010 Respondent pleaded guilty to two counts of theft by receiving stolen property, each a Class A misdemeanor, and a violation of Utah Code Ann § 76-6-408, in Eighth District Court, Vernal, Uintah County, Utah The pleas were held abeyance

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 (h) 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 license shall be suspended. That suspension shall be immediately stayed, and Respondent's license shall be subject to a term of probation for a period of thirty (30) months. The period of probation shall commence on the date the Division Director signs the accompanying Order. 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.
- a Respondent shall meet with the Board at the next scheduled Board meeting following the signing of the accompanying Order. 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, annually or at such other greater or lesser frequency as the Division 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.
  - 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 Board on a monthly basis, on the first day of each month, 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.

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- e Respondent shall complete and submit to the Board a self-assessment report at the frequency described in subparagraph (d) above. The self-assessment report shall be completed on a form prescribed by the Division.
  - f Respondent shall notify any employer of the terms of this agreement. Respondent shall further cause Respondent's Director of Nursing to submit performance evaluations to the Board at the frequency described in subparagraph (d) above. The receipt of an unfavorable report may be considered to be a violation of probation. If Respondent is not employed as a nurse, Respondent shall submit the employer report form on the date it is due and indicate on that form that Respondent's current employment is not in nursing or that Respondent is not currently working.
  - g Respondent shall provide to Respondent's employer(s) and/or school of nursing a copy of this Stipulation and Order and cause each employer or school of nursing to acknowledge to the Board in writing, that a copy of this Stipulation and Order has been provided to the employer and/or school of nursing.
  - h Respondent shall not work as a director of nursing during the term of this agreement. Respondent shall not work for a nursing registry, traveling nurse agency, nursing float pool, home health agency, temporary employment agency, school of nursing, or any other practice setting in which nursing supervision is unavailable, during the term of this agreement.
  - i Respondent shall practice only under the on-site supervision of a registered nurse in good standing with the Division, or a licensed physician in good standing with the Division during the term of this agreement. The supervising nurse or supervising physician shall be primarily one (1) person who may periodically delegate his or her supervisory responsibilities over Respondent to other qualified personnel. The supervising nurse or physician shall submit reports to the Division and Board at a frequency set forth in subparagraph (d) above.
  - j During the term of probation, in the event Respondent does not practice as a nurse for a period of sixty (60) days or longer, Respondent shall notify the 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 Board to modify this requirement if Respondent satisfactorily explains to the 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. This requirement shall not apply during periods when Respondent is employed and on vacation for periods of no longer than four weeks.

- k During the term of probation, Respondent shall notify the Board in writing within two (2) weeks 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 During the term of probation, if Respondent leaves the State of Utah for a period longer than sixty (60) days, Respondent shall notify the Division and Board in writing of the dates of Respondent's departure and return. The licensing authorities of the jurisdiction to which Respondent moves shall be notified by Respondent in writing of the provisions of this Stipulation and Order. 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, other than minor traffic violations, 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, other than minor traffic violations, 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 notify the Division in writing of any change in Respondent's residential or business address within two weeks of any such change.
- 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.
- q Respondent shall submit an essay to the Division and Board at the first meeting with the Board describing the effect of Respondent's conduct on himself, the patients at the care center, and his profession.
- r Respondent shall successfully complete a continuing professional education course, pre-approved by the Division and Board, focusing on ethics. The course shall be completed within one year of the effective date 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 Division and/or 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

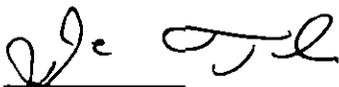
13 If Respondent violates any term or condition of this Stipulation and Order, the Division may take action against Respondent, including imposing appropriate sanction, in the manner provided by law. Such sanction may include revocation or suspension of Respondent's license, or other appropriate sanction.

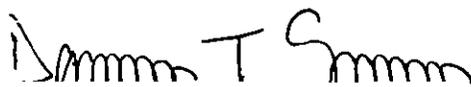
14 Respondent understands that the disciplinary action taken by the Division in this Stipulation and Order may adversely affect any license that Respondent may possess in another state or any application for licensure Respondent may submit in another state.

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

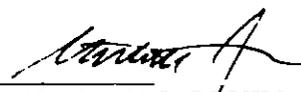
BY   
**DAVE TAYLOR**  
Bureau Manager

BY   
**DAMIÓN T. SMUIN**  
Respondent

DATE 5/16/11

DATE 5.11.11

MARK L SHURTLEFF  
ATTORNEY GENERAL

BY   
**L. MITCHELL JONES**  
Counsel for the Division

DATE 16 May 2011

**ORDER**

THE ABOVE STIPULATION, in the matter of **DAMION T. SMUIN**, 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 18 day of May, 2011

DIVISION OF OCCUPATIONAL AND  
PROFESSIONAL LICENSING

  
**MARK B. STEINAGEL**  
Director

Investigator John Sims