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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	)	
KOHLER FOOD STORES PHARMACY	)	STIPULATION AND ORDER
TO OPERATE AS A CLASS A PHARMACY	)	
AND TO DISPENSE	)	CASE NO. DOPL 2012--L-20
CONTROLLED SUBSTANCES	)	
IN THE STATE OF UTAH	)	

KOHLER FOOD STORES 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 Kevin Johnson is the owner of Respondent pharmacy and is authorized to act as agent for and enter into binding agreements on behalf of Respondent

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 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 waives all administrative and judicial review as set forth in §§ 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 that 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 licenses, to other persons and entities

7. Respondent admits the following facts are true

a On or about May 24, 1994 Respondent was first licensed to operate as a Class A pharmacy and to dispense controlled substances within the State of Utah

b A random inspection was conducted at Kohler Pharmacy on September 26, 2012 The inspectors found the following violations

(i) Documentation of the offer to counsel is possible and has been recorded in the past, however, currently it is not being recorded After pulling multiple prescriptions dispensed on the day of the inspection, none had the offer to counsel documented Pharmacist Greg Halls said the pharmacy has not been recording the offer to counsel lately and needs to improve its practices

(ii) Respondent had mixed food and drugs in all the fridges in the pharmacy area

(iii) Respondent did not have log for the temperature of the facility

(iv) Respondent did not have a log for the temperature of the two fridges

(v) Respondent had many bottles of drugs on stock shelves for dispensing that were not labeled This is due to a practice Respondent has done to save time Respondent purchases a large bottle of medication and pre-count the medication into smaller vials Respondent does not label the smaller vials but group them together on the shelves When a prescription is presented by the patient for the drug the pharmacy grabs a pre-counted vial and puts the patient label on it at that time

(vi) Pharmacy did not have current editions of Utah laws and rules readily retrievable The Division investigator showed Respondent how to add the websites to their browser for easier access

(vii) The majority of the drugs dispensed to patients did not have a beyond us date for the medication

(viii) Respondent does not have an adequate alarm system The alarm is a Radioshack battery powered motion sensor When the alarm goes off it only emits a loud noise No persons are notified of the alarm going off unless they are within a certain vicinity

(ix) Annual inventories of controlled substances were not on site or found for any year

8 Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a), § 58-17b-602(5)(h), and Utah Administrative Code R156-17b-605(1)(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), and (3), R156-17b-610(4), and R156-17b-614a(1)(e) and (f)(2), 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 revoked Those revocations shall be immediately stayed Respondent's licenses shall be subject to a term of probation for a period of two years The period of probation shall commence on the date the Division Director signs the attached 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's pharmacist-in-charge shall meet with the Board at the Board's next scheduled meeting following the signing of the accompanying Order Respondent's pharmacist-in-charge 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's pharmacist-in-charge 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 come into compliance with all statutes and administrative rules governing pharmacies in the State of Utah within 60 days of the date of this Stipulation and Order

c Respondent shall undergo a semi-annual inspection conducted by

Division investigators

d Failure of Respondent to pay the costs associated with this Stipulation and Order constitutes a violation of the Stipulation and Order

e Respondent shall maintain a current active license at all times during the period of this agreement

f Respondent shall immediately notify the Division in writing of any change in Respondent's residential or business address

g Respondent shall pay a fine to the Division in the amount of $5,000 00 (five-thousand dollars), pursuant to Utah Code Ann § 58-17b-401(6), § 58-17b-504(5), and Utah Administrative Code R156-17b-402 One half of the fine, or $2,500 00 (two-thousand five-hundred dollars), shall be stayed If Respondent violates any term or condition of this Stipulation and Order the Division may take action to lift the stayed portion of the fine Respondent shall pay the unstayed $2,500 00 portion of the fine within 90 days of the effective date of this Stipulation and Order

h Respondent's licenses shall be publicly reprimanded for the conduct described in paragraph 7(b) above

i Respondent pharmacy shall cease and desist from the conduct described above

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 prejudgment they might otherwise have with regard to the Director by virtue of her 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 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

BY: [signature]
DEBRA F. HOBBINS, DNP, APRN, LSAC
Bureau Manager

DATE Oct 3, 2012

RESPONDENT

BY: [signature]
KEVIN JOHNSON
Kohler Food Stores Pharmacy

DATE 10-3-2012

MARK L. SHURTLEFF
ATTORNEY GENERAL

BY. [signature]
L. MITCHELL JONES
Counsel for the Division

DATE: 3 Oct 2012

ORDER

THE ABOVE STIPULATION, in the matter of **KOHLER FOOD STORES 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 9th day of October . 2012

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING

MARK B STEINAGEL
Director

Investigator: Jacob Corsi