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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	)	
KEVIN DURHAM	)	**STIPULATION AND ORDER**
TO OPERATE AS AN	)	
APPRENTICE ELECTRICIAN	)	CASE NO DOPL 2012- 478
IN THE STATE OF UTAH	)	

KEVIN DURHAM ("Respondent") and the Construction Services Commission ("Commission") of the Department of Commerce of the State of Utah stipulate and agree as follows:

1 Respondent admits the jurisdiction of the Commission and the Division of Occupational and Professional Licensing ("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 the 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 their Respondent's right to counsel in this matter

4. Respondent understands that the Respondent is entitled to a hearing before the Commission, or other Presiding Officer, at which time Respondent may present evidence on the Respondent's own behalf, call witnesses, and confront adverse witnesses. Respondent acknowledges that by executing this document Respondent hereby waives the right to a hearing and any other rights to which Respondent may be entitled in connection with said hearing. Respondent understands that by signing this document Respondent waive 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 § 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 Commission and Division, will be classified as a public document. The Commission and 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 as an apprentice electrician in the State of Utah on or about November 1, 2000.

b. On or about September 13, 2006, in West Valley Justice Court, Utah, case number 061705956, Respondent pleaded guilty to possession of drug paraphernalia, a class B misdemeanor

c. On or about August 28, 2007, in West Jordan Justice Court, Utah, case number 061301191, Respondent pleaded guilty to use or possession of drug paraphernalia, a class B misdemeanor

d. On or about October 27, 2008, in Third District Court Salt Lake, Utah, case number 071907070, Respondent pleaded guilty to two counts of theft by receiving stolen property, possession of another's identifying documents, and one count of criminal mischief, each a 3rd degree felony

e. On or about November 6, 2008, in Third District Court Salt Lake, Utah, case number 081401319, Respondent pleaded guilty to burglary of a vehicle, a class A misdemeanor

f. On or about February 14, 2011, in West Valley City Justice Court, Utah, case number 091703905, Respondent pleaded guilty to lewdness, a misdemeanor

g On or about September 21, 2011, in Third District Court Salt Lake, Utah, case number 111905513, Respondent pleaded guilty to theft by deception, a 3rd degree felony

h. Respondent has a long history of alcohol or substance abuse.

i. Respondent has engaged in the conduct that resulted in a conviction with respect to a crime of moral turpitude and/or a crime that, when considered with the functions and duties of Respondent's license classification, bears a reasonable relationship to Respondent's ability to safely or competently practice as a licensee

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 (e); and that said conduct justifies disciplinary action against Respondent pursuant to Utah Code Ann. § 58-1-401(2) Respondent understands that the issuance of the Order in this matter is disciplinary action by the Division against Respondent's license pursuant to Utah Administrative Code R156-1-102(6) and

Utah Code Ann § 58-1-401(2) Respondent agrees that an Order shall be entered in this matter as follows

(1) Respondent's license shall be revoked and the revocation immediately stayed Respondent's license shall be subject to a term of probation for a period of four years Respondent's license shall be subject to a term of probation commencing on the effective date of this Stipulation and Order, which is the date the Division Director signs the Order Respondent's license shall be subject to all of the following terms and conditions. If the Commission or Division later deems any of the conditions unnecessary such deletions may be made by an amended order issued unilaterally by the Commission or Division.

a. Respondent shall meet with the Commission or a Division representative on a quarterly basis or at such other greater or lesser frequency as determined by the Commission and Division for the duration of the Stipulation and Order

b All reports or documentation required in this Stipulation and Order shall be submitted to the Commission on a monthly basis for the first six months of probation. If Respondent is in compliance with all the terms and conditions of the Order at the end of that time, all reports and documentation shall be submitted on a quarterly basis or such other greater of lesser frequency as determined by the Division for the remainder of probation

c. 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 Commission to be notified immediately If Respondent at any time during the period of this agreement is convicted of a criminal offense of any kind, 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.

d. Respondent shall provide a copy of this Stipulation and Order to his employer Respondent's employer shall, initially within thirty days and quarterly thereafter, provide the Division with progress reports that summarize Respondent's work attendance, behavior, quality of work product, ability to get along with others and if Respondent leaves the company or is terminated, the reason for his leaving or termination

e Respondent shall maintain an active license at all times during the period of this agreement.

f Respondent shall provide the Commission with a plan for Respondent's treatment including the name(s) of the evaluators, prescribing practitioner, and dispensing pharmacy.

g Although the use and possession of alcohol is generally legal for persons age 21 and older, Respondent agrees to abstain from the personal use or possession of alcohol in any form Respondent agrees to abstain from the personal use or possession of controlled substances and prescription drugs, unless such controlled substance or prescription drug is lawfully prescribed to Respondent for a current bona fide illness or condition by a licensed practitioner and taken by Respondent in accordance with that practitioner's instructions. Respondent shall abstain from the use of any and all other mood altering substances or use of mood altering substances for any other purpose than the purpose for which the substance is intended

h. Respondent shall submit to the following course of treatment as part of Respondent rehabilitation and at Respondent's own expense:

i Respondent shall successfully complete an alcohol/chemical dependency evaluation provided by a Division-approved licensed provider within ninety (90) days of the effective date of this Stipulation and Order Respondent shall contact the Division-approved Rehabilitation Center for an initial appointment within 10 days of the effective date of this Stipulation and Order Respondent shall schedule the initial appointment to be held within 45 days of the effective date of this Stipulation and Order Respondent shall attend all appointments and follow-up appointments in a timely manner. Respondent shall cooperate fully with the evaluator to ensure a fair and complete evaluation Respondent shall

notify the Division immediately after successfully completing the evaluation and inform the Division that Respondent has successfully completed the chemical dependency evaluation Respondent agrees to cause the evaluation report to be sent to the Division within 90 days of the effective date of this Order If an adequate evaluation has already been completed as the result of previous court orders, the Division may agree to accept the previous evaluation rather than requiring a new evaluation provided prior evaluation is provided within 45 days of the effective date of this Stipulation and Order

ii If Respondent fails to submit the evaluation(s) to the Division within the time stated above, the Division may take any action necessary pursuant to the Utah Administrative Procedures Act, Utah Code Annotated § 63-46b

iii. Respondent shall successfully complete all treatment programs and treatment recommendations as outlined in the evaluations. Respondent shall sign any releases required to allow Respondent's therapist or counselor to provide the Division with ongoing reports of diagnosis, prognosis, compliance, etc., regarding Respondent's treatment

iv In the interest of public safety, the Division may impose additional requirements above and beyond those recommended by the evaluator in the chemical dependency evaluation set forth above. Respondent agrees to comply with these additional requirements.

1 Unless otherwise approved by the Division, Respondent shall, except as provided otherwise herein, receive prescriptions from only one prescribing practitioner, and Respondent shall fill prescriptions at only one pharmacy Respondent shall not obtain the same or equivalent prescription drug or controlled substance from more than one practitioner All prescribing practitioners must be informed of any and all of Respondent's addiction/abuse problems Respondent shall not undertake, under any circumstance, to obtain prescription drugs in quantities or types that are not legitimately required Respondent shall submit the names of the prescribing practitioner and pharmacy to the Division

and Commission for approval Respondent shall provide the Division with a copy of all Respondent prescriptions for prescription drugs, controlled substances, or any other mood altering substance, within forty-eight (48) hours after the prescription has been written.

j. Prescriptions from an emergency practitioner or referral practitioner must be submitted to the Division within forty-eight (48) hours of being issued. Respondent shall report to the Division within forty-eight (48) hours any and all medications and controlled substances administered or dispensed to Respondent by any other individual.

k Respondent shall report to the Division within forty-eight (48) hours any and all medications or controlled substances ingested by Respondent from any source

l Respondent shall provide to the primary prescribing practitioner a copy of this Stipulation and Order

m Respondent shall provide samples (urine, blood, saliva, hair, or any other type of sample requested) for drug analysis upon the request of the Division, to be conducted by any company with which the Division has contracted to conduct drug testing The designated company may also request such samples and Respondent shall comply with such requests. The Division shall determine when and where Respondent is to submit for testing Respondent shall call in to a designated phone number every day to determine if Respondent is required to provide a sample for drug analysis Respondent shall pay for the cost of drug testing and shall accurately complete and sign any and all release forms requested by the Division or the drug testing company with respect to drug testing, including but not limited to, forms authorizing the company to send the drug test results to the Division. Any report from a drug testing company that indicates that Respondent failed to provide a sample for drug analysis as directed will be considered a positive drug test result for Respondent and will subject Respondent to additional sanctions Any drug test result or pattern of results that indicates that the sample provided by Respondent for drug analysis is diluted to an extent that it cannot be analyzed, will be considered a positive drug test result for Respondent and will subject Respondent to additional sanctions.

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

o. Respondent shall participate in any therapy and/or aftercare that the Division and the Commission may require after completion of Respondent's treatment program. Any treatment program or therapist from whom Respondent has or will receive treatment must be approved by the Division and Commission, and Respondent shall direct and authorize Respondent's therapist to discuss Respondent's diagnosis, treatment, and prognosis with the Division and the Commission Respondent shall direct Respondent's therapist or aftercare provider to submit quarterly evaluations to the Commission that address Respondent's progress in treatment and Respondent's prognosis Respondent may be subject to reevaluation upon notice and opportunity to be heard

p. Respondent shall participate in any therapy, counseling or aftercare that the Division or Commission may require, even if no therapy, counseling or aftercare was recommended by an evaluator

q Respondent shall attend a 12-step program, obtain a 12-step program sponsor, comply with the requirements of the the12-step program, and submit quarterly reports to the Division documenting Respondent's participation. The frequency of Respondent's participation in the 12-step program shall be monitored and approved by the Commission Unless otherwise directed, Respondent shall attend at least two times per month

r The Division may take appropriate action to impose sanctions if:

(i) Respondent tests positive for alcohol, a prescription drug, a controlled substance, or any mood altering substance which cannot be accounted for by an administration or prescription by a lawful practitioner for a current medical condition, or

(ii) Respondent violates any federal, state or local law relating to Respondent's area of licensed practice, the Controlled Substance Act; or a term or condition of this Stipulation and Order Sanctions may include revocation or suspension of Respondent's license, or other appropriate sanction, in the manner provided by law

s. Respondent shall provide to the Division a current criminal history report obtained from the State of Utah, Department Public Safety or any other state requested by the Division on an annual basis or whenever directed by the Division

t. Respondent shall immediately notify the Division in writing of any change in Respondent's residential or business address

9. This Stipulation and Order, upon approval by the Commission and Division Director, shall be the final compromise and settlement of this non-criminal administrative matter Respondent acknowledges that the Commission and Director are not required to accept the terms of this Stipulation and Order and that if the Commission does not do so, this Stipulation and the representations contained therein shall be null and void, except that the Commission, Director, and the Respondent waive any claim of bias or prejudgment Respondent might have with regard to the Commission and Director by virtue of his 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 construction activities 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 Commission or Board members during a meeting of the Commission or Board. Any such action or statement shall be considered a violation of this Stipulation and Order.

12. The terms and conditions of this Stipulation and Order become effective immediately upon the approval of this Stipulation and signing of the Order by the Commission and Division Director Respondent must comply with all the terms and conditions of this Stipulation immediately following the Commission and 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 Commission. 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 Commission may take action against Respondent, including imposing appropriate sanction, in the manner provided by law

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: _____
DAN S JONES
Bureau Manager

DATE 11-15-12

RESPONDENT

BY _____
KEVIN DURHAM

DATE 11-15-2012

MARK L SHURTLEFF
ATTORNEY GENERAL

BY. _____
L. MITCHELL JONES
Counsel for the Division

DATE: 16 Nov 12

ORDER

THE ABOVE STIPULATION, in the matter of **KEVIN DURHAM,** is hereby approved by the Construction Services Commission, and constitutes its 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 the Commission's final Order in this case.

DATED this 28 day of Nov, 2012

CONSTRUCTION SERVICES COMMISSION
Representative

I concur with the above Stipulation and Order, which the Construction Services Commission has approved

DATED this 28 day of November, 2012

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING

for W Ray Walker, Acting Director
MARK B STEINAGEL
Director