JUDITH A JENSEN (4603)
Assistant Attorney General
MARK L SHURTLEFF (4666)
Utah Attorney General
Counsel for Agency
Commercial Enforcement Division
Heber M Wells Building
Box 146741
Salt Lake City, UT 84114-6741
Telephone (801) 366-0310
Facsimile (801) 366-0315

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 **GREGORY J. GULSO** TO PRACTICE AS A PODIATRIC PHYSICIAN AND TO ADMINISTER AND PRESCRIBE CONTROLLED SUBSTANCES IN THE STATE OF UTAH	**STIPULATION AND ORDER** Case No DOPL 2012-497

Gregory J Gulso ("Respondent") and the Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah (the "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 is represented in the above-entitled matter by attorney Erik Strindberg and signs this Stipulation and Order ("Stipulation") with the advice of counsel

4 Respondent understands that Respondent is entitled to a hearing before the State of Utah's Podiatric Physician Licensing Board (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 R151-4-901 through R151-4-907 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 A Petition and Notice of Agency Action have been filed and served upon Respondent in the above-entitled case

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 In May 2005, Respondent was granted a license to practice as a podiatric physician and a license to administer and prescribe controlled substances in the State of Utah

b In and between 2007 and 2010, Respondent provided services as a podiatric physician for Patients M, L, and G (names withheld to protect confidentiality) to treat conditions affecting the foot and/or ankle and to treat pain associated with these conditions Respondent, in the course of treating said patients, prescribed controlled substance pain medications including methadone, methadose, opioids, and medications containing

acetaminophen in combination with opioids Patients M, L, and G were at high risk for medication misuse, abuse, and diversion.

c. In the course of providing said podiatric services to Patients M, L, and G, Respondent engaged in the following acts, practices, and omissions

(1) Respondent repeatedly issued early and duplicate prescriptions for controlled substance pain medications Respondent, through said prescribing practices, engaged in the following

(a) Respondent repeatedly provided Patients M, L, and G with access to controlled substance pain medications in quantities that exceed the amount required for the patients to comply with Respondent's dosage directions,

(b) Respondent repeatedly provided Patients M and G access to prescription acetaminophen in quantities that exceeded the maximum daily dose recommended by the U S Federal Drug Administration (F D A) and exceeded the dosing guidelines of the Utah Clinical Guidelines on Prescribing Opioids for Treatment of Pain for acetaminophen treatment continuing for ten days or more; and

(c) Respondent, by engaging in said conduct, violated UTAH CODE ANN § 58-37-6(7)(i) and engaged in "Unprofessional Conduct" as defined by UTAH CODE ANN § 58-1-501(2)(a).

(2) Respondent issued prescriptions for controlled substances without first obtaining information in the usual course of business sufficient to identify contraindications to the proposed treatment and engaged in "Unprofessional Conduct' as defined by UTAH CODE ANN. § 58-1-501(2)(m)(i). Respondent's conduct included the following

(a) Respondent prescribed acetaminophen for Patients M and G in quantities greatly exceeding the maximum dose recommended by the F D A , and Respondent failed to consider the contraindications of treating patients with such quantities of acetaminophen including risk of overdose, severe liver injury, acute liver failure, and death,

(b) Respondent prescribed controlled substance pain medications for Patient M when the patient was also being treated with Suboxone, and Respondent failed to consider the contraindications of said simultaneous treatment including the diminished effectiveness of the opioid analgesics in pain management and risk of precipitating withdrawal symptoms,

(c) Respondent prescribed ciprofoxacin for Patient L when the patient was being treated with methadone and methadose, and Respondent failed to consider the contraindications of said simultaneous treatment including the inhibitory effect of ciprofloxacin on the rate of methadone/methadose metabolism and the heightened risk of respiratory depression and death, and

(d) Respondent prescribed Lortab and Percocet for Patient M for use during the same periods of treatment, and Respondent failed to consider the contraindications of said simultaneous treatment including heightened risk of tolerance

(3) Respondent prescribed controlled substance pain medications without taking into account the potential for abuse, the possibility of dependence, the possibility the drugs would be obtained for nontherapeutic use or diversion, and/or the possibility of an illicit market for the drugs, in violation of UTAH ADMIN CODE RULE R156-37-603(2) and engaged in "Unprofessional Conduct" as defined by UTAH CODE ANN § 58-1-501(2)(a)

(4) Respondent failed as a prescribing practitioner to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", 2004, established by the Federation of State Medical Boards, and engaged in "Unprofessional Conduct" as defined by UTAH ADMIN CODE RULE R156-1-501(6) as follows

(a) Respondent failed to screen the patients for history of substance abuse and addiction, discuss the risks and benefits of the use of controlled substance pain medications, and obtain the patients' informed consent to treatment with controlled substance pain medications

(b) Respondent failed to consider, or document having considered, the use of a written agreement outlining patient responsibilities with terms including urine/serum medication levels screening, patient compliance with the physician's dose directions, and termination of treatment on violation of the agreement.

(5) Respondent violated the generally accepted professional standards of the Utah Clinical Guidelines on Prescribing Opioids for Treatment of Pain, promulgated by the Utah Department of Health and published in February 2009, and engaged in "Unprofessional Conduct" as defined by UTAH CODE ANN § 58-1-501(2)(b) as follows

(a) Respondent prescribed methadone and methadose when Respondent was not familiar with the risks and appropriate use of the medications and when Respondent was not prepared to conduct the necessary careful monitoring.

(b) Respondent failed to appropriately monitor, and/or document having monitored, the patients' medication use and compliance with the treatment directions

(c) Respondent failed to periodically review the patients' prescription records through the Utah Controlled Substance Data Base

(d) Respondent failed to terminate treatment with controlled substance pain medications when the patients demonstrated dangerous and/or illegal behavior

(e) Respondent failed to consult with or refer the patients in timely manner to an expert in the management of patients at risk of medication abuse, and/or Respondent did not document such consultation or referral

d Respondent practiced as a podiatric physician beyond the scope of his competency, abilities, and education, and engaged in unprofessional conduct as defined by UTAH CODE ANN § 58-1-501(2)(i)

8 Based upon the foregoing, Respondent agrees that the Division is justified in taking disciplinary action against Respondent's licenses pursuant to Utah Code Ann § 58-1-401(2)(a)

9 Respondent represents on his behalf that he has attempted to effect changes in his podiatric and prescribing practice to address concerns raised by the Division's investigation pertaining to Respondent's treatment of Patients M, L, and G Respondent has attended the two PACE courses recommended by the Division and referenced in paragraph 10(f) herein Respondent represents that he has effected the following changes in his practice, however, the Division has no information available to permit the Division either to confirm or contest said representations

a development and implementation of policies and procedures regarding prescribing pain medication which Respondent considers to be strict,

b development of a pain mediation contract that Respondent states he requires his patients sign and adhere to,

c maintenance of log of all pain medications that Respondent has prescribed,

d maintenance of a copy of pain medication prescriptions in patients' files,

e posting of notice in Respondent's office to advise patients of Respondent's practices in prescribing pain medications, and

f employment of an office manager to handle clerical and administrative matters and to provide Respondent with additional time to complete medical record keeping

10 Based upon the foregoing, 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), may be issued in this matter placing Respondent's licenses to practice as a podiatric physician and to administer and prescribe controlled substances in the State of Utah on probation for a period of three (3) years The period of probation shall commence when the Division Director signs the Order in this matter During the period of probation Respondent's licenses 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 and Board

a Respondent shall meet with the Division and Board within thirty (30) days of the signing of the accompanying Order, or the next Board meeting 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 and the Division as directed by the Board and the Division Said meetings may be monthly or at such lesser frequency as the Division and Board may direct

b Respondent shall submit a practice plan to the Division and Board within 90 days of the effective date of this Stipulation and Order The practice plan shall be submitted in a format prescribed by the Division and Board

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 Division and Board on a monthly basis for the first six (6) 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

e If Respondent is employed or practices in the podiatric, medical, or health care profession or in any other licensed profession or occupation, Respondent shall notify any such employer or practice associate of Respondent's restricted status and the terms of this agreement Respondent shall cause Respondent's employer to provide periodic reports summarizing Respondent's compliance with the terms and conditions of this Stipulation and Order at a frequency described in subparagraph (d) above

f Respondent shall successfully complete the prescribing and documentation courses provided by the Physician Assessment and Clinical Education ("PACE") Program at the University of San Diego. On February 16, 2012, Respondent submitted documentation to the Division showing Respondent completed the PACE Physician Prescribing Course on April 4-6, 2011, and the PACE Medical Record Keeping Course on April 7-8, 2011 Said course work shall satisfy the requirement of subsection 10(f) Respondent shall, in his first meeting with the Division and Board, explain what Respondent learned in his PACE prescribing and documentation courses and how Respondent has incorporated what he learned in his podiatry practice.

g Respondent shall work under the supervision of a supervisor who is licensed in good standing in the State of Utah as a podiatric physician and who is pre-approved by the Division and Board Respondent shall meet weekly with Respondent's supervisor unless the Board or Division determine a different frequency Supervision goals shall include concurrent management and professional relationships and practices. The supervisor shall address issues pertaining to podiatric practice, prescribing practice, and documentation The supervisor shall review 20% of Respondent's patient records The supervisor, not Respondent, shall select which patient records shall be reviewed Respondent shall cause Respondent's supervisor to meet with the Division and Board at Respondent's first meeting with the Division and Board to discuss oversight issues and the responsibilities of a supervising podiatric physician Respondent's supervisor must appear before the Division and Board at said meeting unless the Board approves a telephonic meeting Respondent shall bring patient charts selected at random by

Respondent's supervisor to the Division and Board whenever requested by the Division or Board

h If Respondent is self-employed in private practice, Respondent shall hire a supervisor, pre-approved by the Board and Division.

i Respondent shall cause Respondent's supervisor to submit reports to the Board and Division assessing Respondent's compliance with the terms of Respondent's probation and ethics The reports shall be submitted monthly for the first six (6) months and quarterly thereafter, or at such frequency as directed by the Board and Division The receipt of an unfavorable report may be considered to be a violation of probation

j Respondent, in his first meeting with the Division and Board, shall submit a copy of the pain medication contract Respondent proposes to use in his practice Respondent shall incorporate all changes required by the Division and Board in the proposed pain medication contract and shall enter into said pain medication contract with all patients to whom Respondent administers or prescribes a controlled substance for the treatment of pain

k Respondent shall issue prescriptions for controlled substances only on sequentially numbered triplicate scripts One copy of each prescription shall remain in the patient chart and one copy of each prescription shall be reviewed by Respondent's supervisor and sent to the Division and Board at the frequency described in subparagraph (d) above

l Respondent shall keep a log of all controlled substances and other non-controlled medications administered by Respondent The log shall be submitted to the Division monthly or at a frequency determined by the Board and Division

m In the event Respondent does not practice for a period of sixty (60) days or longer, Respondent shall notify the Division and 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 Division and Board to modify this requirement if Respondent satisfactorily explains to the Division and 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

n Respondent shall notify the Division and Board in writing within one (1) week of any change of employer, employment status, or practice status This notification is required regardless of whether Respondent is employed in Respondent's profession.

o 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.

p 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 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, 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

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

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

s 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

11 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 his having reviewed this Stipulation, and this waiver shall survive such nullification

12 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

13 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

14 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 or Division 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 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

15 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

16 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

RESPONDENT

BY _____
GREGORY J. GULSO

DATE 1-7-13

STRINDBERG & SCHOLNICK, LLC

BY _____
ERIK STRINDBERG
Counsel for Respondent

DATE 7 Jan 2013

DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING

BY _____
NOEL TAXIN
Bureau Manager

DATE 1/7/13

MARK L SHURTLEFF
UTAH ATTORNEY GENERAL

BY _____
JUDITH A. JENSEN
Counsel for the Division

DATE January 7, 2013

ORDER

THE ABOVE STIPULATION, in the matter of **GREGORY J. GULSO,** 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 January, 2013

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING

MARK B. STEINAGEL
Director