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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)
CLIFFORD E. HOLT TO PRACTICE) STIPULATION AND ORDER
AS A PHARMACIST AND)
TO DISPENSE CONTROLLED SUBSTANCES) CASE NO. DOPL 2013-138
IN THE STATE OF UTAH)

CLIFFORD E. HOLT ("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 Clifford E Holt is the owner of Hurricane Family Pharmacy in Hurricane, Utah and previously owned Market Pharmacy in LaVerkin, Utah.

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 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 licenses, to other persons and entities.

- 7 Respondent admits the following facts are true:
- a. On or about September 12, 1985 Respondent was first licensed to practice as a pharmacist and to dispense controlled substances in the State of Utah.
 - b. On or about February 18, 1999 Respondent's licenses to practice as a pharmacist and to dispense controlled substances in the State of Utah were disciplined by the Division. The licenses were indefinitely suspended due to Respondent's participation in the unlawful importation of prescription drugs across the United States border for stocking pharmacies in Utah.
 - c. On or about July 9, 2001 the suspension of Respondent's pharmacy licenses was lifted and the licenses were placed on probation for five years subject to terms and conditions.
 - d. On or about July 28, 2006 Respondent's probation was terminated and Respondent's licenses were reinstated with full privileges.
 - e. On or about March 1, 2007 Respondent purchased and opened Market Pharmacy in LaVerkin, Utah where Respondent was the pharmacist-in-charge for ten months until approximately January 10, 2010.
 - f. On or about March 9, 2009 Respondent purchased and opened Hurricane Family Pharmacy in Hurricane, Utah where Respondent was the pharmacist-in-charge at all times relevant to the following allegations.
 - g. In January 2010 retail pharmacy inspections were conducted by a Division investigator at Hurricane Family Pharmacy and Market Pharmacy.
 - h. During the inspections it was found from time to time that various controlled substance medications (including Schedule II controlled substances) were transferred between Market Pharmacy and Hurricane Family Pharmacy without required invoices or use of DEA 222 forms.
 - i. Patient refill prescriptions were at times filled and dispensed to customers of Market Pharmacy prior to approval being properly obtained from the prescribing practitioner of each refill prescription. Respondent claims these prescriptions were for patients known to the pharmacist and who had been receiving such medications for chronic conditions.
 - j. The Division investigator discovered expired drugs on Hurricane Family Pharmacy's compounding shelves. Respondent claims that he never used these expired drugs.

- k. On or about October 30, 2009 Hurricane Family Pharmacy entered into an agreement with KRS Global Biotechnology, Inc, a central fill pharmacy located in Boca Raton, Florida. From November 2009 through June 2010 Hurricane Family Pharmacy received quantities of hCG 500 IU sublingual tablets from KRS pharmacy that were organized into individual quantities for specific patients in varying amounts Hurricane Family Pharmacy then re-dispensed the tablets received for specific patients to various other pharmacy patients
- l. The Division investigator determined during the January 13, 2010 inspection that Hurricane Family Pharmacy failed to maintain a worksheet listing the compounding batches and failed to maintain other documentation which would allow monitoring or evaluation of Hurricane Family Pharmacy's compounding
- m. The Respondent stipulates and agrees that the Division maintains that if this matter went to a hearing the Division would provide evidence on the following facts.
 - (i) That requests for various prescriptions were faxed to Market Pharmacy by a youth treatment facility for dispensing.
 - (ii) Respondent dispensed prescription medications to facility residents prior to receiving or obtaining a signed prescription from the prescribing practitioner
 - (iii) Two prescriptions for Adderall XR (a Schedule II controlled substance) for facility residents were reviewed during the inspection. Respondent was unable to locate a hard copy prescription for one of these dispensed drugs.

Respondent further agrees to the inclusion of the facts outlined in paragraph 7(m) in this Stipulation and Order, but does not admit the facts outlined in this paragraph

8 Respondent admits that Respondent's conduct described in paragraphs 7(h) through (m) above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a), Utah Administrative Code R156-17b-301(7), R156-17b-603, R156-17b-605(7), and R156-17b-502(2), and unlawful conduct as defined in Utah Code Ann § 58-17b-501(10), and that said conduct

justifies disciplinary action against Respondent's license pursuant to Utah Code Ann § 58-1-401(2)(a) and (b) 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

- (1) Respondent's licenses shall be revoked. Those revocations shall be immediately stayed. Respondent's licenses shall be subject to term of probation for a period of five years. The period of probation shall commence on the effective date of this Stipulation and Order, which is the date the Division Director signs the Order. During the period of probation, Respondent 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 and Division within thirty (30) days of signing of the accompanying Order and on a quarterly basis, or at other greater or lesser frequency as determined by the Board and Division for the duration of the probationary period thereafter to assess the progress of Respondent's probation. Respondent shall meet with the Board and Division at the first scheduled Board meeting after the effective date of the Order with a practice plan for Respondent's probation. Respondent shall meet with a Division staff member to review the Stipulation and Order prior to meeting with the Board.
 - (b) Respondent shall successfully complete six additional hours of continuing professional education focusing on law and ethics. The six additional hours shall be completed within one year of the effective date of this Stipulation and Order. The courses that comprise the six additional hours shall be pre-approved by the Division and Board. The six additional hours shall not count toward Respondent's regular continuing professional education requirement, if any.
 - (c) Respondent shall notify the Division and Board within one (1) week of any change of employer or employment status. This is required regardless of whether Respondent is employed in Respondent's licensed occupation. The notification shall be in writing.
 - (d) Should other acts of unprofessional conduct come to the attention of the Division or Board which have occurred prior to the entry of the Order in this case or should Respondent violate probation in any respect, the

Division may, in addition to taking action as provided for herein, after giving Respondent notice and the opportunity to be heard, revoke probation or impose sanctions in accordance with applicable law.

- (e) Respondent shall immediately notify the Division, in writing, of any changes in private or professional address and agrees that written communication by the Division and/or the Board shall be mailed to Respondent at the last address provided to the Division via first class U.S. Mail, and shall constitute notice to Respondent.
- (f) Respondent shall keep Respondent's Utah licenses current during the period of probation.
- (g) Respondent shall pay a fine of \$10,000.00 (ten thousand dollars) to the Division, pursuant to Utah Code Ann § 58-17b-504 and Utah Administrative Code R156-17b-402, within 90 days of the effective date of this Stipulation and Order. \$5,000.00 (Five Thousand Dollars) of the fine will be suspended pending successful completion of this Stipulation and Order
- (h) Respondent shall immediately cease and desist from engaging in the unlawful and unprofessional conduct described above, including the procedure known as "fax and fill" 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 prejudice 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 facts admitted by Respondent 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. Respondent understands that failure to comply with this Order may subject Respondent to a civil penalty of up to \$2,000 (two-thousand dollars) for each day the order is violated pursuant to Utah Code Ann § 58-1-503(1)

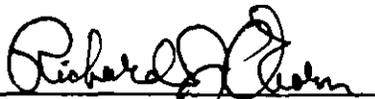
14 Respondent understands that the disciplinary action taken by the Division in this Stipulation and Order may adversely affect any license that Respondent may possess in another state or any application for licensure Respondent may submit in another state

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

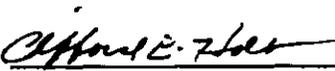
RESPONDENT

BY



~~DEBRA F. HOBBS, DNP, APRN, LSAC~~
Bureau Manager RICHARD J. OBORN

BY



CLIFFORD E. HOLT

DATE

4/10/13

DATE

4-2-13

MARK L. SHURTLEFF
ATTORNEY GENERAL

BY:



KARL G. PERRY
Counsel for the Division

DATE:

4/9/2013

BY:



WILLIAM J. STILLING
Counsel for the Respondent

DATE:

April 5, 2013

ORDER

THE ABOVE STIPULATION, in the matter of **CLIFFORD E. HOLT**, 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 10th day of April, 2013.

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING


MARK B. STEINAGEL
Director

Investigator Sandra Hess