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**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING**

**OF THE DEPARTMENT OF COMMERCE**

**OF THE STATE OF UTAH**

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| IN THE MATTER OF THE LICENSES OF<br>**MARK SCOTT HUFF** TO PRACTICE<br>AS A PHYSICIAN/SURGEON<br>AND TO ADMINISTER AND PRESCRIBE<br>CONTROLLED SUBSTANCES<br>IN THE STATE OF UTAH | )<br>)<br>)<br>)<br>)<br>) | **STIPULATION AND ORDER**<br><br>CASE NO. DOPL 2013- 231 |

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**MARK SCOTT HUFF** ("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 Physician Licensing Board ("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 knowingly and intelligently waives the right to 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 any and all rights set forth in Utah Code Ann. § 58-1-404(14) regarding the right to an order show cause hearing. Respondent waives any and all rights set forth in Utah Code Ann. § 58-1-404(14)(c) which provides that Respondent's license shall be suspended, and the suspension stayed, in favor of the sanctions set forth below providing that Respondent's license shall be revoked and the revocation stayed, along with all other sanctions contained herein. Respondent further waives any and all rights set forth in Utah Code Ann. § 58-1-404(14)(h) providing Respondent with the right to a further formal adjudicative proceeding to

contest the lifting of the suspension of Respondent's license that Respondent waived in the prior sentence, in favor of the sanction set forth below providing that Respondent's license shall be revoked and the revocation stayed, along with all other sanctions contained herein. Respondent waives all other procedural and substantive rights contained in Utah Code Ann. § 58-1-404. 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 December 2, 2005 Respondent was first licensed to practice as a physician and to administer and prescribe controlled substances in the State of Utah.

b. On or about March 2, 2011 Respondent voluntarily signed a diversion agreement and entered into the Division's Utah Recovery Assistance Program ("URAP"), wherein Respondent admitted that he took Fentanyl from his place of work without authorization while working as an anesthesiologist.

c. Respondent has violated the terms and conditions of his diversion agreement.

d. On or about March 27, 2013 Respondent was cited for reckless driving by a Utah Highway Patrol trooper. Respondent has since entered a guilty plea to one count of careless driving, a Class C misdemeanor. The UHP trooper found quantifies of Propofol, a syringe with blood in it, and a bloody tissue, in Respondent's vehicle.

e. On or about April 10, 2013 Respondent's practice partner was informed by an employee that she found empty vials of Propofol, needles, and a bloody towel in a garbage can. The practice partner and Respondent discussed the matter and Respondent admitted that he had been using Propofol.

f. On or about April 18, 2013 Respondent admitted that he had a drug addiction problem and used Propofol three to four times per week in March and April 2013.

g. Respondent has engaged in conduct, including the use of Propofol, to the extent that the conduct might reasonably be considered to impair the ability of Respondent to practice safely as a physician.

h. Respondent states that he denies ever using any drug, including Propfol, while caring for any patient or while working.

8. Respondent agrees that the conduct described above constitutes unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a) and (e). Respondent agrees that 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 participation in the diversion program and Respondent's diversion agreement are herby terminated. Respondent's licenses shall be revoked and the revocations immediately stayed. Respondent's controlled substance license shall be suspended until: (1) the requirements set forth in paragraph 8(1)(b)(i) below are successfully completed; and (2) the Pine Grove evaluators described below issue a fitness for duty letter stating that Respondent can safely administer and prescribe controlled substances. If the Pine Grove evaluators determine that Respondent cannot safely practice as a physician, both of Respondent's licenses shall be suspended until an evaluator pre-approved by the Division finds that Respondent can safely practice as a physician. Respondent's licenses shall be subject to a term of probation for a period of five years. The period of probation shall commence on the date the Division Director signs the attached Order. During the period of probation Respondent's licenses shall be subject to all of the following terms and conditions. If the Division and Board later deem 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 Board at the next scheduled 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 or with the Division, as directed by the Division and Board, annually or at such other greater or lesser frequency as the Division and Board may direct.

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

   i. Respondent shall successfully complete psychological, neuropsychological, and chemical dependency evaluations, and any other evaluation deemed necessary by the evaluators (including any evaluation that must be completed at another evaluation facility) at the Pine Grove facility in Hattiesburg, Mississippi within ninety (90) days of the effective date of this Stipulation and Order. Respondent shall contact the facility 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 evaluators to ensure a fair and complete evaluation. Respondent shall notify the Division and Board immediately after successfully completing the evaluations and inform the Division and Board that Respondent has successfully completed the evaluations. Respondent shall sign a release of information agreement whereby the Division/Board and the evaluators may communicate freely and transmit confidential information to each other in order to facilitate Respondent's evaluations, treatment, and continuing practice. Respondent agrees to cause the evaluation(s) reports to be sent to the Division and Board within 90 days of the effective date of this Order. The Division or Board may require that Respondent successfully complete a follow-up evaluation at any time.

   ii. If Respondent fails to submit the evaluation(s) to the Division and Board within the time stated above, the

Division and Board may take any action necessary pursuant to the Utah Administrative Procedures Act, Utah Code Annotated § 63-46b.

iii. Respondent shall successfully complete any treatment recommendations as outlined in the evaluations.

iv. In the interest of public safety, the Division or Board may impose additional requirements above and beyond those recommended by the evaluators in the evaluations set forth above. Respondent agrees to comply with these additional requirements.

c. Respondent shall successfully complete the prescribing course at the PACE program at the University of San Diego School of Medicine within one year of the effective date of this Stipulation and Order. Respondent shall submit an essay to the Division describing what Respondent learned in the PACE course, and how it will affect the way Respondent practices. The PACE course may count toward Respondent's continuing medical education requirement.

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

e. Prescriptions from an emergency practitioner or referral practitioner must be submitted to the Division and Board within forty-eight (48) hours of being issued. Respondent shall report to the Division and Board within forty-eight (48) hours any and all

medications and controlled substances administered or dispensed to Respondent by any other individual.

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

g. Respondent shall provide to the primary prescribing practitioner a copy of this Stipulation and Order and cause the practitioner to acknowledge to the Division and Board in writing that a copy of this Stipulation and Order has been provided to the primary prescribing practitioner.

h. 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.

i. Respondent shall provide samples (urine, blood, saliva, hair, or any other type of sample requested) for drug and alcohol analysis upon the request of the Division or Board, to be conducted by any company with which the Division has contracted to conduct drug and alcohol testing. The designated company may also request such samples and Respondent shall comply with such requests. The Division or Board shall determine when and where Respondent is to submit for testing. Respondent shall call in every day to a designated telephone number or check-in online to determine whether Respondent is required to provide a sample for drug and alcohol 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 Board 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 and Board. Any report from a drug testing company that indicates that Respondent failed to provide a sample

for drug and alcohol analysis as directed will be considered a positive drug test result for Respondent and will subject Respondent to additional sanctions. Any drug or alcohol 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.

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

k. The Division may take appropriate action to impose sanctions if: (i) Respondent tests positive for 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 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.

l. 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 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, or at such frequency as determined by the Division and Board, 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 or at such frequency as determined by the Division or Board.

m. Respondent shall participate in all therapy and aftercare that the evaluation(s) recommend. Respondent shall authorize all approved treatment programs or therapists from whom Respondent has received or will receive treatment to discuss Respondent's diagnosis, treatment, and prognosis with the Division and Board. The program or therapist must also be directed to submit

evaluations to the Division and Board that address Respondent's progress in treatment and Respondent's prognosis at the frequency described in subparagraph (l) above. Respondent may be subject to re-evaluation at the direction of the Division or Board.

n. If so recommended by an evaluator, Respondent shall participate in a professional support group to address Respondent's use of mood altering substance and controlled substances and shall submit documentation that reflects Respondent's continuing and regular attendance at such support group meetings. Respondent shall submit such documentation to the Division and Board at the frequency described in subparagraph (l) above. Regular attendance for the purpose of this paragraph shall be at least twice a month.

o. If so recommended by an evaluator, Respondent shall attend a 12-step program, have a sponsor, work the 12-step program and submit reports at the frequency described in subparagraph (l) above to the Division and Board documenting Respondent's participation. The frequency of participation shall be approved by the Division and Board. Unless otherwise directed, Respondent shall attend at least two times per month.

p. Respondent shall notify any employer or practice associate of Respondent's restricted status and the terms of this Stipulation and Order. Respondent shall further cause Respondent's employer and practice associates to notify the Division and Board in writing that the employer has received a copy of this Stipulation and Order. Respondent shall cause his employer to submit employer reports to the Division and Board at a frequency described in subparagraph (l) above.

q. Respondent shall issue prescriptions 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 sent by Respondent to the Division and Board within one month of issuance. The Division will provide instructions if applicable as to how any electronic medical records will be submitted to the Division and Board.

r. Respondent shall record all prescriptions medication that Respondent administers directly to patients or that are administered to patients during a procedure involving Respondent in a log. The

log shall be submitted to the Division and Board on a monthly basis or at frequency determined by the Division and Board.

s. Respondent shall practice only under the supervision of a Division and Board pre-approved physician supervisor, who is licensed and in good standing with the Division, during the term of Respondent's probation. Respondent's supervisor shall submit reports to the Division and Board on a form pre-approved by the Division and Board at the frequency described in subparagraph (l) above. Any changes in supervision may be made only with the consent of the Division and Board. Respondent shall deliver a copy of this Stipulation and Order to Respondent's supervisor (within ten days of the establishment of the supervisory relationship) and cause Respondent's supervisor to notify the Division and Board in writing that a copy has been received, that the supervisor is willing to accept the responsibilities and obligations of acting as Respondent's supervisor, and submit a copy of the supervisor's curriculum vitae to the Division and Board. The receipt of an unfavorable report may be considered to be a violation of probation.

t. Respondent shall meet weekly, or at a frequency determined by the Division and Board, with Respondent's supervisor. Supervision goals shall include concurrent management, oversight of clinical services, sobriety, and professional relationships and practices. The supervisor shall review 20% of Respondent's current patient files. The supervisor shall review Respondent's prescription administration log. The supervisor shall choose which files shall be reviewed. The supervisor shall oversee clinical interventions. The supervisor shall address issues pertaining to sobriety on the job and ethical documentation and any other issues the supervisor determines are pertinent to professional and ethical practice. Respondent shall cause Respondent's supervisor to meet with the Division and Board, either in person or telephonically, at Respondent's first meeting with the Board, to discuss oversight issues the responsibilities of a supervising physician.

u. 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 16 hours per week and no more than 48 hours per week to be considered "practicing" in Respondent's profession.

v. 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.

w. 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.

x. 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, 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.

y. Respondent shall have no access to controlled substances until the Division and Board so approve.

z. Respondent shall maintain current Utah licenses at all times during the period of this agreement.

aa. Respondent shall immediately notify the Division and Board in writing of any change in Respondent's residential or business address.

bb. 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.

cc. Respondent shall not prescribe any medication to any family member, friend, co-worker, or to himself.

dd. Respondent shall successfully complete the PRIME ethics course provided by the University of Medicine and Dentistry in New Jersey, within two years of the effective date of this Stipulation and Order and provide a certificate of completion to the Division and Board. The PRIME course may count toward Respondent's regular continuing medical education requirement.

ee. Respondent shall submit an essay to the Division and Board describing the effect of Respondent's conduct on himself, his co-workers, his patients, the public, or his profession. Respondent shall submit the essay within one year of the effective date of this Stipulation and Order.

ff. Respondent shall submit a practice plan to the Division within the 30 days of the lifting of the suspension on Respondent's license. The plan must be approved by the Division and Board before Respondent begins practicing as a physician.

9. Upon approval by the Director of the Division the 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.

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.

11. 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 the Stipulation and Order are without a 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. If the Division files a Petition against Respondent alleging violation of this Stipulation and Order by Respondent, the period of probation shall be tolled until the allegations contained in the Petition are fully resolved.

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.

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 Division and 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.

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. 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.

17. 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: _____
**NOEL TAXIN**
Bureau Manager

DATE: 6/3/13

RESPONDENT

BY: _____
**MARK SCOTT HUFF**
Respondent

DATE: 6/3/2013

JOHN E. SWALLOW
ATTORNEY GENERAL

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

DATE: 3 June 2013

## ORDER

THE ABOVE STIPULATION, in the matter of **MARK SCOTT HUFF,** 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 4th day of June, 2013.

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING

**MARK STEINAGEL**
Director

Investigator: Dan Briggs