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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)
4 CARE PHARMACY) **STIPULATION AND ORDER**
TO OPERATE AS A PHARMACY AND TO)
DISPENSE CONTROLLED SUBSTANCES) **CASE NO DOPL 2013-40**
IN THE STATE OF UTAH)

4 CARE 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. Robert Pratt is the manager of Respondent pharmacy and is an agent for and is authorized to enter into binding agreements on Respondent pharmacy's behalf.

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 such a 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, as well as other information about this disciplinary action to other persons and entities.

- 7 Respondent admits the following facts are true
- a. Respondent pharmacy was first licensed to operate as a Class B closed door pharmacy and to dispense controlled substances in the State of Utah on or about June 5, 2006
 - b. On or about May 1, 2008, Respondent entered into a Stipulation and Order in DOPI Case No 2008-83, wherein Respondent agreed to cease and desist from, among others, the following violations which had been noted during an inspection of Respondent's premises that occurred on March 21, 2008
 - i. Numerous Schedule II controlled substance prescriptions had been dispensed by Respondent pharmacy that: (1) were dispensed without a written prescription signed by the prescribing practitioner, or (2) were dispensed with a written prescription signed by the prescribing practitioner that had been transmitted to the Respondent pharmacy via fax. No original written, signed prescriptions were ever presented to Respondent prior to the above referenced Schedule II controlled substance prescriptions being dispensed by Respondent pharmacy
 - ii. Pharmacy technicians were allowed access into the front office area of the facility after regular business hours and while a pharmacist was not present. Pharmacy technicians received prescription orders, accessed patient profiles, and processed prescription orders for subsequent dispensing by a pharmacist at a later time without a pharmacist being present
 - iii. Bubble-packed medications that had already been prepared were stored within in-stock inventory and did not display any labeling information such as a drug name, strength, expiration date, or lot number.
 - c. On or about June 14, 2012, a Division investigator, while investigating a complaint against Respondent, found the following violations
 - i. Respondent had approximately 70 Schedule II controlled substance prescriptions which had been dispensed based upon electronic communications from the prescribing practitioner, which is represented by Respondent to be a secure electronic service, but without having first obtained the prescribing practitioner's physical signature
 - ii. Respondent had stored pharmaceuticals in the front office area of the pharmacy which pharmacy technicians had access to after regular business hours and while a pharmacist was not present.

- iii. Respondent had accepted back bubble pack medications, including controlled substances that had already been dispensed to nursing care facilities or other patient representatives.
- d. Respondent failed to comply with the cease and desist provisions of the Stipulation and Order in DOPL Case No. 2008-83.
- e. The Division has no knowledge of any diversion of any medication or harm or injury caused

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-502(1) and (5), Utah Administrative Code R156-17b-502(11) and R156-37-502(2) as further described in 21 CFR 1306.11(1) Respondent agrees 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 as follows.

- (1) 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 shall meet with the Board at the Board's next scheduled meeting following the signing of the accompanying Order. 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, 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 an 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 of \$60,000.00 (sixty thousand dollars) to the Division, pursuant to Utah Code Ann. § 58-17b-504 and Utah Administrative Code R156-17b-402 \$20,000.00 (twenty thousand dollars) of that fine shall be stayed. If Respondent violates any provision of this Stipulation and Order the Division may move to remove the stayed portion of the fine. The 40,000.00 (forty-thousand dollar) unstayed portion of the fine shall be paid to the Division within 150 days of the effective date of this Stipulation and Order

Fine
paid in
full
6/24/2013

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 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. 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 Division or 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

RESPONDENT

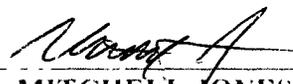
BY 
DEBRA F. HOBBS, DNP, APRN, LSAC
Bureau Manager

BY 
ROBERT PRATT
Manager
4 Care Pharmacy

DATE 1/22/13

DATE 1-17-13

JOHN F. SWALLOW
ATTORNEY GENERAL

BY 
L. MITCHELL JONES
Counsel for the Division

DATE 22 Jan 2013

ORDER

THE ABOVE STIPULATION, in the matter of **4 CARE 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 *25th* day of *January* ~~2012~~ *2013*

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING


MARK B. STEINAGEL
Director

Investigator: Jared Memmott