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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) **STIPULATION AND ORDER**
OF DALE HEATH, D.C., TO PRACTICE)
AS A CHIROPRACTIC PHYSICIAN)
IN THE STATE OF UTAH) CASE No. DOPL 2014-524

Dale Heath (“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. The Respondent admits the jurisdiction of the Division over himself and over the subject matter of this action.
2. The Respondent acknowledges that he enters into this Stipulation and Order (“Stipulation”) knowingly and voluntarily.
3. The Respondent understands that he has the right to be represented by counsel in this matter, and his signature below signifies that he has been represented by Harold Reiser in this matter.
4. The Respondent understands that he is entitled to a hearing before the State of Utah’s

Chiropractic Physician Licensing Board (“Board”), or other Division Presiding Officer, at which time he may present evidence on his own behalf, call witnesses, and confront adverse witnesses. The Respondent understand that by signing this Stipulation he hereby knowingly and intelligently waives the right to a hearing, the right to call witnesses on his own behalf, the right to confront adverse witnesses, and any other rights to which he may be entitled to in connection with said hearing. The Respondent understands that by signing this Stipulation he 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. The Respondent and the Division hereby express their intent that this matter be resolved expeditiously through a stipulation as contemplated in Utah Code Ann. § 63G-4-102(4).

5. The Respondent waives the right to the issuance of a Petition and a Notice of Agency Action in this matter and/or agrees that this Stipulation acts a de facto Petition and Notice of Agency Action.

6. The Respondent understand that this Stipulation, if adopted by the Division Director, will be classified as a public document. The Division may release this Stipulation and other information about this disciplinary action against the Respondent’s license to other persons and entities.

7. The Respondent admits that the following facts are true:

- a. The Respondent was licensed as a chiropractic physician in the State of Utah on or about May 22, 1995, license number 293544-1202.
- b. The Respondent admits that two female patients have alleged inappropriate treatment in or about June 2011 and about December 2012. The Respondent denies the allegations but admits that during treatments he incidentally touched areas which caused the patients to be concerned.

8. The Respondent admits that his conduct described above is unprofessional conduct as

defined in Utah Code Annotated § 58-1-501(2)(b) and a violation of Tenet VI of the American Chiropractic Association's Code of Ethics. He further admits that said conduct justifies disciplinary action against the Respondent's professional license pursuant to Utah Code Ann. § 58-1-401(2)(a). The Respondent, therefore, agrees that an Order may be entered in this matter imposing the following sanctions and restrictions on his licenses:

a. The Respondent's professional licenses to practice as a chiropractic physician in the State of Utah will be revoked. The revocation will be immediately stayed, and the Respondent's professional license, number 293544-1202, will be placed on probation for a period of five (5) years from the date this Stipulation is signed by the Division Director ("effective date of the Stipulation"). The terms and conditions of the Respondent's probation will be detailed in subsection (f) of provision 8 of this Stipulation.

b. The Respondent will only treat female patients with a DOPL-approved chaperone in the treatment room for the entire treatment session. If the chaperone were to leave the treatment room prior to the end of the treatment session, the Respondent would be in violation of this Stipulation. If a female patient has a relative or friend or escort who is in the treatment room for the entire treatment session, then the Respondent does not have to use a chaperone during that treatment session. Each chaperone, whether he or she is employed by the Respondent or a friend/relative of the patient, has to sign a chaperone log which indicates the date and time of the treatment session, what was being treated and whether or not the patient was given informed consent of what was going to be treated. These chaperones must be used with all female patients from the effective date of the Stipulation. A patient may not waive the right to have a chaperone present until the Respondent has finished his probationary period and the Division is comfortable with the Respondent treating females without chaperones.

c. Within seven (7) days of the effective date of this Stipulation, the Respondent will submit an evaluator's name and professional credentials for Division approval. This evaluator will perform a comprehensive psycho-sexual evaluation on the Respondent to determine whether or not the Respondent is safe and fit to practice chiropractic medicine. This evaluator can have no personal or professional ties to the Respondent that may create some bias either for or against the Respondent. If the Division does not approve the Respondent's choice for an evaluator, the Respondent must submit the name and credentials of a new

evaluator within five (5) days of the Division's decision to reject the Respondent's first choice. If the Division rejects the Respondent's second choice of an evaluator, the Respondent must choose one of three Division choices of an evaluator within five (5) days of the Division's decision to reject the Respondent's second choice. Some or all of the three Division choices may be out-of-state providers. The Division's decisions to either approve or deny an evaluator are not appealable, and the Respondent understands that he must comply with the requirement to be evaluated by a DOPL-approved psycho-sexual evaluator.

d. The psycho-sexual evaluation of the Respondent can only be started after the Division has provided the evaluator with its complete investigative file. Additionally, the Respondent waives any privacy rights and/or HIPAA rights and agrees to allow the Division to speak to the evaluator before, during and after the evaluation. Further, the Division is entitled to receive a copy of the completed evaluation as soon as it is completed. **The last sentence in the evaluation must specifically state that the Respondent is either safe and fit to practice as a chiropractic physician or he is not.** Lastly, even though the Respondent is responsible for paying the evaluator, both the Respondent and the Division are entitled to inform the evaluator that the primary purpose of this evaluation is to determine whether or not the Respondent is safe and fit for duty as a chiropractic physician.

e. The Respondent will obtain and forward a copy of the completed psycho-sexual/fitness for duty evaluation to the Division within 60 days of the approval of the evaluator by the Division. An untimely submission of the evaluation will result in a failure of the evaluation. If the Respondent receives a fitness for duty certification from the evaluator, he will be comply with the probationary terms of this Stipulation. If the Respondent does not receive a fitness for duty certification from the evaluator, his license to practice as a chiropractic physician will be immediately suspended on the date of the completed evaluation until he receives a fitness for duty certification from Pine Grove Behavioral and Addiction Services in Hattiesburg, Mississippi.

f. During the five (5) year period of probation, the 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.

i. The Respondent shall contact a Division Compliance Specialist within two weeks of the effective date of this Stipulation to schedule a meeting for the purpose of discussing the terms and conditions of this

Stipulation. An appointment with a compliance specialist can be scheduled by contacting the Chiropractic Physician Bureau Manager or her support staff. The Respondent will meet with the Board and Division at the first scheduled Board meeting after the effective date of this Stipulation. The Respondent shall meet with the Board and the Division on a bi-monthly basis for the first six months and then quarterly thereafter, or at such greater or lesser frequency as determined by the Board and the Division.

ii. The 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 the Respondent is employed in his licensed occupation. The notification shall be in writing.

iii. The Respondent shall practice only under the supervision of a Division and Board-approved supervisor during the terms of his probation. The Respondent understands that he is responsible for any and all costs associated with this supervision. Any changes made in supervision may only be made with the consent of the Division and the Board. The Respondent shall deliver a copy of this Stipulation to his supervisor within ten (10) days of the start of the supervisory relationship and cause his supervisor to notify the Division in writing that a copy of this Stipulation has been received. The Respondent is required to submit a name of a potential supervisor when he meets with the Division's Compliance Specialist. He will also discuss the issue of his supervisor with the Board at the first scheduled Board meeting after the effective date of this Stipulation.

The Respondent shall meet with his supervisor monthly or at such frequency as determined by the Board and the Division. Supervision goals shall include discussion of professional ethics, avoiding professional boundary violations, treating patients/clients with respect and dignity, review of 10 percent of the Respondent's files, and oversight of the Respondent's professional relationships and practices. The supervisor shall choose which files should be reviewed, but the majority of these files should involve female patients. The Respondent shall cause his supervisor to submit reports to the Division and the Board on a monthly basis for the first six months and then quarterly thereafter, or at such a frequency as directed by the Board and the Division. These reports should assess the Respondent's compliance with the terms of his probation and his professional ethics. The receipt of an unfavorable report or the failure to

turn in a report may be considered a violation of the Respondent's probation.

iv. The Respondent shall not supervise other licensed chiropractic physicians or students during his probation.

v. The Respondent shall complete 5 additional hours of continuing professional education, pre-approved by the Division and Board, in the areas of professional ethics, professional boundaries, and treating patients with dignity and respect. These 5 additional hours shall be completed within 12 months of the effective date of this Stipulation. Further, these 5 additional hours shall NOT count towards the regular continuing professional education requirements for professional license renewal. The Respondent shall provide proof/documentation to the Board and Division of successful completion of the 5 additional hours of continuing professional education.

vi. If the Respondent leaves the State of Utah for a period longer than sixty (60) days, he shall notify the Division and Board in writing of the dates of his departure and return. The licensing authorities of the jurisdiction to which the Respondent moves shall be notified by him in writing of the provisions of this Stipulation. Periods of residency or practice outside the State of Utah may apply to the reduction of the period this Stipulation is in effect, if the new state of residency places equal or greater conditions upon the Respondent as those contained in this Stipulation.

vii. In the event the Respondent does not practice for a period of sixty (60) days or longer, the Respondent shall notify the Division and Board in writing of the date he ceased practicing. The period of time in which the Respondent does not practice shall not be counted toward the probationary time period of this Stipulation. It shall be within the discretion of the Division and Board to modify this requirement if the Respondent satisfactorily explains to the Division and Board that compliance in his case was impractical or unduly burdensome. If the Respondent works less than full-time as a chiropractic physician, the reduction of any remaining probationary time shall occur on a pro-rata basis, in relation to a full-time position of 40 hours worked a week.

viii. Should other acts of unprofessional conduct come to the attention

of the Division or Board which have occurred prior to the entry of the Stipulation in this case, or should the Respondent violate his probation in any respect, the Division may, in addition to taking action as provided for herein, after giving the Respondent notice and the opportunity to be heard, revoke the Respondent's probation or impose sanctions in accordance with applicable law and rules.

ix. If a petition is filed against the Respondent during his probation, the period of probation shall be extended until the matters alleged in this petition are fully resolved

x. The Respondent shall notify any employer of his restricted status and the terms of this Stipulation. The Respondent shall provide a copy of this Stipulation to any employer and cause his employer to acknowledge to the Division and Board in writing that a copy of the Order has been provided to the employer. This provision shall take effect if the Respondent chooses to work for another chiropractor or another chiropractic facility.

The Respondent shall immediately notify the Division in writing of any changes in his residential or business addresses. The Respondent further agrees that written communication by the Division and/or the Board shall be mailed to the Respondent at the last address provided to the Division, first-class mail, and this shall constitute notice to the Respondent.

xi. A failure to pay for any of the costs associated with this probation shall be considered a violation of this Stipulation. The Respondent further agrees to complete all conditions of probation in a timely manner. Where a specific time for completion is not stated in this Stipulation, it shall be within the Division's and Board's discretion to set a time period for completion.

xii. The Respondent shall maintain current professional licenses at all times during the period of this Stipulation/probationary period.

xiii. If the 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 the 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, the Respondent agrees to cause the Division and Board to be notified immediately. Minor traffic violations shall not be considered a criminal offense by the Division. If the 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, or enters a plea in abeyance or a diversion agreement to a criminal offense of any kind, including a pending criminal charge, the Division or Board may take appropriate action against the Respondent, including imposing appropriate sanctions, after notice and opportunity for hearing. Such sanctions may include the revocation or suspension of the Respondent's license, or other appropriate sanctions.

xiv. When the Respondent is performing any type of treatment near the vagina or breast area of a female patient, he shall first verbally explain the procedure to the patient, then receive consent from the patient, then have the female patient cover the sensitive areas with their hands (if it is appropriate and possible to do so during the treatment). The Respondent will also explain the procedure to the chaperone in the room.

9. This Stipulation, upon approval by the Director of the Division, shall be the final compromise and settlement of this matter. The Respondent acknowledges that the Director is not required to accept the terms of this Stipulation, 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 the Respondent might have with regard to the Director by virtue of the Director having reviewed this Stipulation, and this waiver shall survive such nullification.

10. The Respondent agrees to abide by and comply with all applicable federal and state laws, regulations, rules and orders related to the Respondent's licensed practice.

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. There are no verbal agreements that modify, interpret, construe or affect this Stipulation.

12. The terms and conditions of this Stipulation become effective immediately upon the signing of the Order page of this Stipulation by the Division Director. The Respondent must comply with all the terms and conditions of this Stipulation immediately following the Division Director's signing of the Order page of this Stipulation.

13. If the Respondent violates any term or condition of this Stipulation, the Division may take action against the Respondent, including imposing appropriate sanctions in the manner provided by law. Such sanctions may include revocation or suspension of the Respondent's license, revocation of the probationary status of the license or other appropriate sanctions.

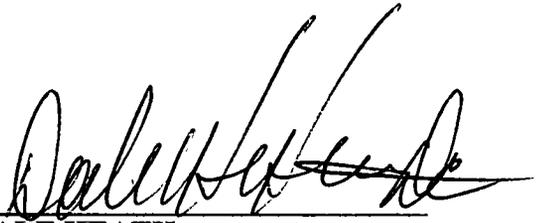
14. The Respondent has read each and every paragraph contained in this Stipulation. He understands each and every paragraph contained in this Stipulation, he has no questions about any paragraph or provision contained in this document, and he agrees with every paragraph and provision contained in this Stipulation.

15. The Respondent admits and states that he was not coerced, unduly influenced, prejudiced, or bullied in any way into entering into this Stipulation.

**DIVISION OF OCCUPATIONAL &
PROFESSIONAL LICENSING**

By: 
SALLY STEWART *Dane Ishihara*
Acting Bureau Manager

DATE: 9/15/14

By: 
DALE HEATH
Respondent

DATE: 9/12/14

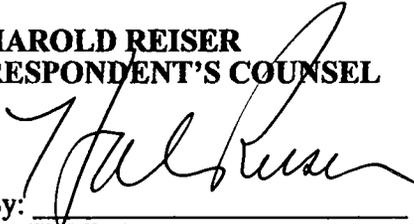
APPROVED AS TO FORM:

SEAN REYES
ATTORNEY GENERAL

By: 
Dan Lau
Counsel for the Division

DATE: 9/15/14

HAROLD REISER
RESPONDENT'S COUNSEL

By: 
Hal Reiser
Counsel for the Respondent

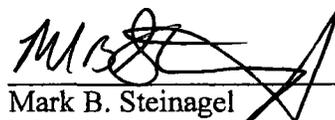
DATE: 9/15/2013

ORDER

THE ABOVE STIPULATION, in the matter of DALE HEATH, 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 a disciplinary action pursuant to Utah Administrative Code R156-1-102(7) 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 16th day of September, 2014.

**DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING**



Mark B. Steinagel
Director