

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
Heber M. Wells Building
160 East 300 South
P O Box 146741
Salt Lake City UT 84114-6741
Telephone (801) 530-6628

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF THE LICENSE OF .
DUSTI JO HALL . **NOTICE OF AGENCY ACTION**
TO PRACTICE AS A .
REGISTERED NURSE .
IN THE STATE OF UTAH : Case No. DOPL-2007-207

THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING TO
Dusti Jo Hall ("Respondent"),
Herriman UT 84065.

The Division of Occupational and Professional Licensing ("the Division") hereby files this Notice of Agency Action. Said action is based upon the Verified Petition of Jay Thornton, Investigator, State of Utah, a copy of which is attached hereto and incorporated herein by reference.

The adjudicative proceeding designated herein is to be conducted on a formal basis. **Within thirty (30) days of the mailing date of this Notice, you are required to file a written response with this Division.** The response you file may be helpful in clarifying, refining or narrowing the facts and violations alleged in the Verified Petition

You may represent yourself or be represented by legal counsel, at your own expense, at all times while this action is pending. Your legal counsel shall file with the Division an Entry of Appearance and until that Entry of Appearance is filed, the presiding officer will deal directly with you

You are entitled by law to an evidentiary hearing to determine whether your license to practice as a registered nurse in the State of Utah should be subject to a disciplinary action. Unless otherwise specified by the Director of the Division, the Nursing Board will serve as fact finder in the evidentiary hearing. You will be notified by separate notice of the date,

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time, and place of that evidentiary hearing and of any other hearings.

During the evidentiary hearing, you will have the opportunity to present evidence, argue, respond, conduct cross-examination and submit rebuttal evidence to the fact finder. After the hearing, unless otherwise specified by the Director of the Division, the fact finder will issue findings of fact, conclusions of law and a recommended order to the Director of the Division of Occupational and Professional Licensing for his review and action

The presiding officer for purposes of conducting hearings will be J Steven Eklund, Administrative Law Judge, Department of Commerce, who will preside over any evidentiary issues and matters of law or procedure. If you or your attorney have any questions as to the procedures relative to the hearing, Judge Eklund can be contacted at P O Box 146701, Salt Lake City, UT 84114-6701. His telephone number is (801) 530-6648.

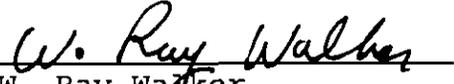
Counsel for the Division in this case is K. Daniel Lau, Assistant Attorney General at (801) 366-0310 or P O Box 140872, Salt Lake City, UT 84114-0872. Within ten (10) days after the filing of your response, Mr Lau will request the scheduling of a prehearing conference.

You, or if you have an attorney, your attorney, may attempt to negotiate a settlement of the case without proceeding to a hearing by contacting Mr Lau

Should you fail to timely file a response, as set forth above, or fail to attend or participate in any scheduled hearing in this case, including prehearing conference(s), you may be held in default without further notice to you. If you are held in default, the maximum administrative sanction consistent with the terms of the Verified Petition may be imposed against you. The maximum administrative sanction in this case is revocation of licensure and an administrative fine.

Please conduct yourself accordingly.

Dated this 28TH day of September, 2007.


W. Ray Walker
Regulatory & Compliance
Officer

Dan Lau (USB No 8233)
Assistant Attorney General
MARK L SHURTLEFF (USB No 4666)
Attorney General
Commercial Enforcement Division
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Salt Lake City, UT 84114-6741
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**BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL
LICENSING OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF THE LICENSE OF) DUSTI JO HALL, RN,) TO PRACTICE AS A) REGISTERED NURSE) IN THE STATE OF UTAH)	P E T I T I O N DOPL CASE No 2007- 207
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PRELIMINARY STATEMENT

These claims were investigated by the Division of Occupational and Professional Licensing ("the Division") upon complaint that Dusti Jo Hall, RN ("Respondent"), has engaged in acts and practices which constitute violations of the Division of Occupational and Professional Licensing Act, Utah Code Ann §§ 58-1-101 to 58-1-504 (2006) and the Nurse Practice Act, Utah Code Ann §§ 58-31b-101 to 58-31b-801 (2006)

PARTIES

1 The Division is a Division of the Department of Commerce of the State of Utah and is established by virtue of Utah Code Ann § 13-1-2 (2005)

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2 At all times material to the allegations contained herein, the Respondent was licensed by the Division to practice as a Registered Nurse under the Nurse Practice Act, Utah Code Ann §§ 58-31b-101 to 58-31b-801. The Respondent's RN license expired on January 31, 2007, when she failed to renew it. The Respondent subsequently applied to the Division for a conditional renewal of her RN license on July 3, 2007. On or about February 26, 2007, the Division agreed to waive the \$500 fine for the Respondent's failure to properly renew her RN license in return for her application for a conditional renewal of the license.

STATEMENT OF ALLEGATIONS

3 The Respondent is not now nor has she ever been licensed by the Division to practice as an Advanced Practice Registered Nurse ("APRN").

4 Since about April 2001, the Respondent has been employed by P P, M D, in his private practice. P P's clinic, known as The Practice of Medicine, has been at its current location in West Jordan since about July 2004. In or about August 2006, the Respondent advertised her services or allowed an advertisement to remain on the clinic's street billboard as a FNP-C, a designation used by Advanced Practice Registered Nurses. During this same period, the Respondent also used business cards with her name and the initials FNP printed afterwards.

5 From October through December of 2006, the Respondent diagnosed a patient, T.D., with borderline personality disorder and prescribed this patient Wellbutrin, an antidepressant medication. When the Respondent was diagnosing T.D., she was alone with the patient in the examination room. P P was not present with either the Respondent or T.D. when the Respondent diagnosed T.D. with borderline personality

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disorder When the Respondent prescribed Wellbutrin for T D , she took T D off her Zoloft prescription In or around December 2006, T D informed the Respondent that the Wellbutrin did not seem to be working for her, and the Respondent switched T D 's prescription back to Zoloft, another antidepressant medication

6 In late August/early September of 2006, while P P was on vacation and out of the office, the Respondent diagnosed 10 patients with no supervision from an M D and prescribed medicines for six of these patients The billing specialist in P P 's office was concerned about the Respondent seeing 10 patients while P P was away on vacation She was also concerned about the billing for the services provided to these 10 patients because the billing gave the insurance companies the impression that P P had diagnosed these patients The Respondent informed the billing specialist that the Respondent's school advisors had reviewed the situation and approved of the Respondent's conduct

APPLICABLE LAW

7 Subsections a and b of Utah Code Ann § 58-1-401(2) (1996) state

The Division may refuse to issue a license to an applicant and may refuse to renew or may revoke, suspend, restrict, place on probation, assess an administrative penalty, issue a public or private reprimand to, or otherwise act upon the license of any licensee in any of the following cases (a) the applicant or licensee has engaged in unprofessional conduct, as defined by statute or rule under this title, (b) the applicant or licensee has engaged in unlawful conduct as defined by statute under this title[]

8 Utah Code Ann § 58-1-401(4) (1996) provides as follows

The division may issue cease and desist orders (a) to a licensee or applicant who may be disciplined under Subsection (1) or (2), (b) to any person who engages in or represents himself to be

engaged in an occupation or profession regulated under this title, and [c] to any person who otherwise violates this title or any rules adopted under this title

9 Subsections a and h of Utah Code Ann § 58-1-501(2) (2004) state that “unprofessional conduct” includes but is not limited to

(a) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title, and (h) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent[]

10 Subsection (a)(i) of Utah Code Ann § 58-1-501(1) (2004) states that unlawful conduct means

(1) conduct, by any person, that is defined as unlawful under this title and includes (a) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title if the person is (i) not licensed to do so or not exempted from licensure under this title[]

11 Utah Code Ann § 58-31b-402(1) (2002) describes the Division’s authority to assess fines as follows “After proceeding pursuant to Title 63, Chapter 46b, Administrative Procedures Act, and Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, the division may impose administrative penalties of up to \$10,000 for unprofessional conduct or unlawful conduct under this chapter ”

12 Utah Admin Code R156-31b-502(1)(b) states that unprofessional conduct includes “a RN issuing a prescription for a prescription drug to a patient except in accordance with the provisions of Section 58-17b-620, or as may be otherwise provided by law ”

13 Utah Code Ann § 58-31b-102(18) (2004) defines the practice of a registered

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nurse and lists the acts a registered nurse can perform. This statute does not authorize a registered nurse to diagnose and treat health problems, or to prescribe or administer prescription medicines to patients.

14. Utah Code Ann. § 58-31b-102(19) (2004) defines the practice of an advanced practice registered nurse. Included in the list of advanced practice registered nursing conduct are the diagnosis and treatment of common health problems, and the prescription or administration of prescription drugs to patients.

COUNT I

UNPROFESSIONAL CONDUCT: FALSE ADVERTISING

15. Paragraphs 1 through 14 are incorporated herein and by this reference made a part hereof.

16. The Respondent held herself out to the public as an Advanced Practice Registered Nurse when she was not licensed as such, as described in Paragraphs 3 and 4. Therefore, the Respondent's actions constitute unprofessional conduct because she was practicing or attempting to practice nursing in a manner or form of communication which was false, misleading, deceptive, or fraudulent, in violation of Utah Code Ann. § 58-1-501(2)(h) (2004). That being the case, the Respondent's actions constitute grounds for imposing sanctions against her license pursuant to Utah Code Ann. § 58-1-401(2)(a) (1996), for issuing a fine pursuant to Utah Code Ann. § 58-31b-402(1) (2002), and for issuing a cease and desist order under Utah Code Ann. § 58-1-401(4) (1996).

COUNT II

UNLAWFUL CONDUCT: FALSE ADVERTISING

17 Paragraphs 1 through 14 are incorporated herein and by this reference made a part hereof

18 The Respondent held herself out to the public as an Advanced Practice Registered Nurse when she was not licensed as such, as described in Paragraphs 3 and 4 Therefore, the Respondent's actions constitute unlawful conduct pursuant to Utah Code Ann § 58-1-501(1)(a)(i) (2004) That being the case, the Respondent's conduct constitutes grounds for imposing sanctions against the Respondent's professional license pursuant to Utah Code Ann § 58-1-401(2)(b) (1996), for imposing a fine pursuant to Utah Code Ann § 58-31b-402(1) (2002), and for issuing a cease and desist order pursuant to Utah Code Ann § 58-1-401(4) (1996)

COUNT III

UNLAWFUL CONDUCT: ACTING AS AN APRN FOR 11 PATIENTS

19 Paragraphs 1 through 14 are incorporated herein and by this reference made a part hereof

20 From August through December of 2006, the Respondent treated and diagnosed health problems for 11 patients, and she prescribed medicine for 7 of these patients, as described in Paragraphs 5 and 6 She treated these 11 patients outside the presence of P P , the physician she works with, and even though she has never been licensed as an APRN Therefore, the Respondent's actions constitute unlawful conduct pursuant to Utah Code Ann § 58-1-501(1)(a)(I) (2004) That being the case, the Respondent's

conduct constitutes grounds for imposing sanctions against the Respondent's professional license pursuant to Utah Code Ann § 58-1-401(2)(b) (1996) and for imposing a fine pursuant to Utah Code Ann § 58-31b-402(1) (2002)

COUNT IV

UNPROFESSIONAL CONDUCT: ISSUING PRESCRIPTIONS TO PATIENTS

21 Paragraphs 1 through 14 are incorporated herein and by this reference made a part hereof

22 From August through December of 2006, the Respondent prescribed medicine for 7 patients even though she has never been licensed as an APRN, as described in Paragraphs 5 and 6 Therefore, her actions constitute unprofessional conduct pursuant to Utah Admin Rule R156-31b-502(1)(b) That being the case, the Respondent 's actions constitute grounds for imposing sanctions against her license pursuant to Utah Code Ann § 58-1-401(2)(a) (1996) and for issuing a fine pursuant to Utah Code Ann § 58-31b-402(1) (2002)

WHEREFORE, the Division requests the following relief

1 that the Respondent be adjudged and decreed to have engaged in the acts alleged herein,

2 that by engaging in the above acts, the Respondent be adjudged and decreed to have violated the enumerated provisions of the Division of Occupational and Professional Licensing Act, the Nurse Practice Act, and the Nurse Practice Act Rules,

3 that an Order be issued sanctioning the license of the Respondent to practice nursing in the state of Utah in accordance with the provisions of Utah Code Ann § 58-1-

401(2)(a) and (b) (1996),

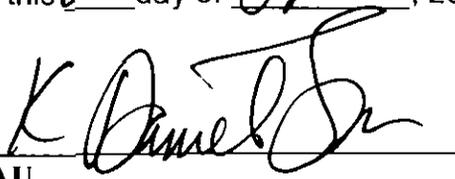
4 that the Respondent be assessed a series of fines under the provisions of Utah Code Ann § 58-31b-402(1) (2002) and Utah Admin Code R156-31b(4),

5 that the Respondent, at a minimum, specifically be fined \$500 for her initial violation of attempting to practice as an APRN without the proper license, and an additional \$9,500 for her 11 subsequent violations of practicing as an APRN without the proper license,

6 that a cease and desist order be issued to the Respondent, ordering her to immediately cease and desist from all untrue and inaccurate advertising and/or representations that she is an APRN, and that she immediately cease and desist from all duties that are limited to properly licensed APRN's,

7 and that the Respondent's license be revoked due to the totality of the unlawful and unprofessional conduct involved in this case, and due to the risk she exposed the public to by continually practicing as an APRN even though she has never been licensed as an Advanced Practice Registered Nurse

DATED this 26th day of Sept., 2007



DAN LAU
Assistant Attorney General

VERIFICATION PAGE

STATE OF UTAH)

ss

COUNTY OF SALT LAKE)

On the 26th day of September, 2007, personally appeared before me Jay Thornton, and after being duly sworn, deposes and says, that he has read the foregoing Petition and knows the contents thereof, and the same is true to the best of his knowledge except as to matters stated on information and belief, and that as to those matters he believes it to be true

Jay Thornton

Jay Thornton
Investigator
Division of Occupational & Professional
Licensing

SWORN AND SUBSCRIBED to before me this 26th day of September, 2007

Jody L Woolf
NOTARY PUBLIC

(Seal)

My Commission Expires 2-15-2010

