

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

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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 LICENSE OF :  
**WENDI REES** : **NOTICE OF AGENCY ACTION**  
TO PRACTICE AS A :  
REGISTERED NURSE :  
IN THE STATE OF UTAH : Case No. DOPL-2009-181

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THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING TO  
Wendi Rees ("Respondent"), Salt Lake City UT 84103.

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 Irene Woodford, 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. Your written response should be mailed to the following address Division of Occupational and Professional Licensing, Attn Disciplinary Files, 160 East 300 South, PO Box 146741, Salt Lake City UT 84114-6741.

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 Board of Nursing will serve as fact finder in the evidentiary hearing. You will be notified by separate notice of the date, 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 L Mitchell Jones, 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 Jones 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. Jones.

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. Also, an administrative penalty may be assessed.

Please conduct yourself accordingly.

Dated this 22<sup>ND</sup> day of June, 2009.

W. Ray Walker  
W. Ray Walker  
Regulatory & Compliance  
Officer

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BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
STATE OF UTAH

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IN THE MATTER OF THE LICENSE  
OF **WENDI REES**  
TO PRACTICE AS A  
REGISTERED NURSE  
IN THE STATE OF UTAH

VERIFIED PETITION

Case No DOPL-2009- 181

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**PRELIMINARY STATEMENT**

These allegations were investigated by the Utah Division of Occupational and Professional Licensing (“Division”) upon complaints that **WENDI REES** (“Respondent”), a licensee of the Division, has engaged in acts and practices that constitute violations of the Division of Occupational and Professional Licensing Act, Utah Code Ann §§ 58-1-101 through 58-1-504, the Nurse Practice Act, Utah Code Ann §§ 58-31b-101 through 58-31b-801, the Nurse Licensure Compact, Utah Code Ann §§

58-31c-101 through 58-31c-105, and the Utah Controlled Substances Act, Utah Code Ann §§ 58-37-1 through 58-37-21. These allegations are based upon information provided by Division investigators and other government investigators based upon information and belief they obtained during their investigations. Each paragraph in this Verified Petition incorporates every other paragraph contained herein.

### **PARTIES**

1 The Division is a division of the Department of Commerce of the State of Utah as established by Utah Code Ann § 13-1-2.

2 At all times material to the allegations contained herein, Respondent was licensed to practice as a registered nurse in the State of Utah pursuant to the Nurse Practice Act, Utah Code Ann §§ 58-31b-101 through 58-69-801 and possessed a multistate licensure privilege pursuant to the Nurse Licensure Compact, Utah Code Ann §§ 58-31c-101 through 58-31c-105.

### **STATEMENT OF ALLEGATIONS**

3 Respondent was first licensed to practice as a registered nurse in the State of Utah on or about July 5, 1995 and was so licensed at all time periods relevant to this Verified Petition. Respondent possessed a multistate licensure privilege pursuant to the Nurse Licensure Compact at all time periods relevant to this Verified Petition.

4 While licensed as a registered nurse in the State of Utah, Respondent practiced

as a registered nurse in the State of Colorado in 2008 pursuant to the Nurse Licensure Compact Respondent was not licensed as a registered nurse by the State of Colorado in 2008 Respondent was employed at Boulder Community Hospital (hereinafter "hospital") in Boulder, Colorado in April 2008 Respondent was assigned to the hospital's Intensive Care Unit

5 On or about April 17, 2008 Respondent removed twelve tablets of Percocet 5 mg, a Schedule II controlled substance, from an automated medication dispensing machine at the hospital The twelve tablets of Percocet were removed by Respondent for two patients that were not under Respondent's care The primary nurses taking care of the two patients had neither requested that Respondent remove the twelve Percocet tablets nor administer the twelve Percocet tablets The two patients were intubated and not able to take medication orally at the time Respondent removed the twelve Percocet tablets

6 Respondent diverted the twelve Percocet tablets described above for her own personal use

7 On or about May 11, 2009, Respondent entered into a "Stipulation and Final Agency Order," which is incorporated by reference into this Verified Petition and attached hereto as Exhibit 1, with the Colorado State Board of Nursing In Exhibit 1, Respondent stipulated to and admitted the facts contained in paragraphs 3, 4, 5, and 6 above

8 In Exhibit 1, Respondent admitted that Respondent was subject to the discipline of the Colorado Board of Nursing and that the Colorado Nursing Board was

authorized to suspend, revoke, or otherwise discipline Respondent's multistate licensure privilege

9 The "Grounds for Discipline" listed in Exhibit 1 included the following

(1) "Has negligently or willfully practiced nursing in a manner which fails to meet generally accepted standards for such nursing practice,"

(2) "Has falsified or in a negligent manner made incorrect entries or failed to make essential entries on patient records," and

(3) " Is addicted to or dependent upon alcohol or habit-forming drugs, is a habitual user of controlled substances, as defined in section 12-22-303(7), or other drugs having similar effects, or is diverting controlled substances, as defined in section 12-22-303(7), or other drugs having similar effects from the licensee's place of employment, except that the board has the discretion not to discipline the licensee if such licensee is parting in good faith in a program approved by the board designed to end such addiction or dependency "

10 In Exhibit 1, Respondent relinquished Respondent's " multistate licensure privilege to practice as a nurse in the State of Colorado "

11 The Division's investigator, Irene Woodford, attempted to contact Respondent on multiple occasions to discuss the matters described in paragraphs 3 through 10 above. The Division's investigator has never been able to speak with Respondent about the allegations

**APPLICABLE LAW**

12 Pursuant to Utah Code Ann § 58-1-401(1), the Division is authorized to  
" revoke, suspend, restrict, place on probation, or otherwise act upon the license of a  
licensee who does not meet the qualifications for licensure under this title "

13 Pursuant to Utah Code Ann § 58-1-401(2), the Division may refuse to  
issue a license to an applicant and may refuse to renew or may revoke, suspend, restrict,  
place on probation, 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,

14 Utah Code Ann § 58-1-501(2)(a), (d), and (h) define "unprofessional  
conduct" to include

- (a) violating, or aiding or abetting any other person to violate, any statute, rule, order regulating an occupation or profession under this title,

\* \* \*

- (d) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401, 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,

15 Utah Code Ann § 58-31b-502(5) defines "unprofessional conduct" to include

unlawfully obtaining, possessing, or using any prescription drug or illicit drug,

16 Utah Code Ann § 58-31c-102, Nurse Licensure Compact, Article V, Adverse Action, provides

- (5) The home state may take adverse action based upon factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action

17 Utah Code Ann § 58-37-8(2)(a)(1) provides that it is "unlawful"

for any person knowingly and intentionally to possess or use a controlled substance analog or a controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of his professional practice, or as otherwise authorized by this chapter,

**COUNT I**

**ENGAGING IN CONDUCT THAT RESULTS IN DISCIPLINARY ACTION BY ANOTHER LICENSING OR REGULATORY AUTHORITY**

18 Paragraphs 1 through 17 are incorporated by reference as though fully stated herein

19 Respondent engaged in conduct that resulted in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over Respondent in the same

occupation or profession if the conduct would, in the State of Utah, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401, as described in paragraphs 3 through 11 above

20 Respondent has therefore engaged in unprofessional and unlawful conduct as defined in Utah Code Ann § 58-1-501(2)(a) and (d), thus establishing grounds for sanctioning Respondent’s licenses pursuant to Utah Code Ann § 58-1-401(1) and (2)

**COUNT II**

**UNLAWFULLY OBTAINING, POSSESSING, OR USING A CONTROLLED  
SUBSTANCE, PRESCRIPTION DRUG, OR ILLICIT DRUG**

21 Paragraphs 1 through 20 are incorporated by reference as though fully stated herein

22 Respondent unlawfully obtained, possessed, or used a controlled substance, prescription drug, or illicit drug, as described in paragraphs 3 through 11 above

23 Respondent has therefore engaged in unprofessional and unlawful conduct as defined in Utah Code Ann § 58-31b-502(5) and § 58-37-8(2)(a)(1), thus establishing grounds for sanctioning Respondent’s licenses pursuant to Utah Code Ann § 58-1-401(1) and (2)

**COUNT III**

**FALSE, MISLEADING, DECEPTIVE, OR FRAUDULENT ACTION OR  
COMMUNICATION RELATED TO PROFESSION**

24 Paragraphs 1 through 23 are incorporated by reference as though fully stated

herein

25 Respondent practiced or attempted to practice nursing by a form of action or communication that was false, misleading, deceptive, or fraudulent, as described in paragraphs 3 through 11 above

26 Respondent has therefore engaged in unprofessional conduct as defined in Utah Code Ann § 58-1-501(2)(a) and (h), thus establishing grounds for sanctioning Respondent’s licenses pursuant to Utah Code Ann § 58-1-401(1) and (2)

WHEREFORE, the Division requests the following relief

1 That Respondent be adjudged and decreed to have engaged in the acts alleged herein.

2 That by engaging in the above acts, Respondent be adjudged and decreed to have violated the provisions of the Division of Occupational and Professional Licensing Act, the Nurse Practice Act, the Nurse Licensure Compact, and the Utah Controlled Substances Act,

3 That Respondent’s license to practice as a registered nurse in the State of Utah be immediately revoked, along with all residual rights pertaining to said license, and any other such sanction that the Board may recommend-- including a fine, administrative penalty, or civil penalty authorized by statute and/or administrative rule-- be imposed against the Respondent’s licenses

DATED this 18<sup>th</sup> day of June, 2009

  
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L MITCHELL JONES  
Assistant Attorney General

