

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 BRYN NORMAN	~	ORDER
TO PRACTICE AS A	~	
REGISTERED NURSE	~	CASE No: DOPL-OSC-2009-340
IN THE STATE OF UTAH	~	

BY THE DIVISION:

The attached Findings of Fact, Conclusions of Law and Recommended Order are hereby adopted by the Division of Occupational and Professional Licensing of the State of Utah.

Dated this 25TH day of April 2011.



W. Ray Walker
W. Ray Walker
Regulatory and Compliance Officer
Division of Occupational and
Professional Licensing

Agency review of this Order may be obtained by filing a request for agency review with the Executive Director, Department of Commerce, within thirty (30) days after the date of this Order. The laws and rules governing agency review are found in §63G-4-301 of the Utah Code, and §R151-46b-12 of the Utah Administrative Code.

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

IN THE MATTER OF	~	FINDINGS OF FACT
THE LICENSE OF BRYN NORMAN	~	CONCLUSIONS OF LAW
TO PRACTICE AS A	~	AND RECOMMENDED ORDER
REGISTERED NURSE	~	
IN THE STATE OF UTAH	~	CASE No. DOPL-OSC-2009-340

APPEARANCES:

L. Mitchell Jones for the Division of Occupational and Professional Licensing
Bryn Norman for Respondent

BY THE BOARD:

A February 10, 2011 hearing was conducted in this proceeding before J. Steven Eklund, Administrative Law Judge, Department of Commerce, and the Board of Nursing. Members of the Board present were John R. Killpack, Mary Williams, M. Peggy Brown, K. Joel Allred, Debra A. Schilleman, Marie Partridge, Susan M. Kirby and Diana L. Parrish. Another Board member (Alisa Bangerter) was present. However, Ms. Bangerter did not participate in the hearing. The remaining two Board members (Pamela L. Rice and Barbara Jeffries) were absent.

Mark B. Steinagel, Director of the Division of Occupational and Professional Licensing, was not able to attend the hearing. However, Mr. Steinagel had designated

W. Ray Walker (Division Regulatory and Compliance Officer) as a substitute presiding officer in this proceeding. Mr. Walker thus attended the February 10, 2011 hearing.

Evidence was then offered and received, and the hearing concluded on that date. The Board took the matter under advisement and conducted initial deliberations on February 10, 2011. The Board, having concluded its deliberations, now enters its Findings of Fact, Conclusions of Law and submits the following Recommended Order to the Division for its review and action:

FINDINGS OF FACT

1. Pursuant to a November 2, 2009 Order, Respondent was licensed to practice as a registered nurse in this state. That Order was based on a stipulation between the Division and Respondent. The Order required Respondent to comply with various probationary terms and conditions, which included Respondent to abstain from the use or possession of alcohol in any form. Respondent was to also provide samples for drug urinalysis as requested by the Division.

2. Further, Respondent was to submit self-assessment reports to the Board by the first day of each month during the initial six (6) months of probation. If Respondent failed to do so, ongoing reports were to also be submitted on a monthly basis. Respondent was also required to participate in all required therapy and ensure that her therapist submits monthly evaluations to the Board which address Respondent's progress in treatment and her prognosis.

3. The September 13, 2010 Order to Show Cause filed by the Division sets forth the allegations made as to Respondent in this proceeding. Paragraph 4(a) recites Respondent admitted to Division staff on or about May 23, 2010 that she consumed beer in January or February 2010. Respondent filed a December 2, 2010 response, which recites she has always tested negative for alcohol. Respondent admits she had a beer at a wake and that she participates in Communion with the Catholic Church.

4. No testimony was presented during the February 10, 2011 hearing that Respondent has admitted when she consumed beer or other alcohol after the entry of the November 2, 2009 Order. Based on the lack of sufficient evidence, there is no proper basis to find Respondent consumed alcohol after entry of the November 2, 2009 Order.

5. Respondent did not provide samples for drug urinalysis as scheduled on six (6) occasions between January 16, 2010 and July 19, 2010. Specifically, Respondent did not report for such testing on January 16, 2010; February 15, 2010; March 5, 2010; June 19, 2010; July 6, 2010; and July 19, 2010.

6. A report from the drug testing company designated by the Division to conduct drug urinalysis was received in evidence during the February 10, 2011 hearing. Based on that report, Respondent did not provide samples for drug urinalysis as scheduled on six (6) other occasions between August 2, 2010 and October 8, 2010.

Specifically, Respondent did not report for such testing on August 2, 2010; September 8, 2010; September 13, 2010; October 5, 2010; October 26, 2010; and November 8, 2010.

7. Respondent failed to timely submit the self-assessment reports to the Board from May 2010 through August 2010. Specifically, Respondent did not submit those reports until September 10, 2010. Respondent also failed to submit the September 2010 report until that date.

8. Respondent failed to ensure that her therapist timely submitted therapy evaluations to the Board for May 2010; February 2010; April 2010; June 2010; July 2010; August 2010; and September 2010. None of those reports were submitted to the Board until the Board meeting which was conducted on September 10, 2010.

9. Based on Division licensing records, Respondent was initially licensed on March 22, 1982 to practice as a registered nurse in this state. Pursuant to a March 12, 2003 Order (Case No. 2003-55), Respondent's license was revoked. A stay of enforcement was also entered as to that revocation and the license was placed on probation for five (5) years, subject to various terms and conditions. The March 12, 2003 Order was premised on a stipulation between the Division and Respondent.

10. The March 12, 2003 Order recites Respondent engaged in unprofessional conduct involving the care which she had provided to a patient, her inappropriate verbal interactions with that patient and that she appeared to be disoriented and slurring her speech. Respondent was required to abstain from the unauthorized personal use or

possession of alcohol, controlled substances or prescription drugs. She was to submit to random drug testing and participate in any required therapy based on a psychiatric evaluation to be conducted.

11. Pursuant to a December 12, 2003 Motion for Order to Show Cause, the Division sought further action as to Respondent's license based on allegations that she failed to submit to scheduled drug testing on eight (8) occasions between May 2, 2003 and October 4, 2003. The Division also alleged Respondent failed to attend scheduled Board meetings on June 27, 2003; October 24, 2003; and November 21, 2003. The Division further alleged Respondent failed to submit required therapy reports and she did not submit employer reports which were due on July 12, 2003 and October 24, 2003.

12. Pursuant to a February 10, 2004 Default Order (Case. No. DOPL-OSC-2003-55), Respondent's Utah registered nursing license was revoked, effective the date of that Order. Respondent appears to have relocated to California some time in December 2003. Respondent's California registered nursing license was revoked on June 11, 2007 based on the above stated February 10, 2004 Default Order.

13. Respondent submitted an application to the Division on January 12, 2009, seeking relicensure as a registered nurse in this state. That application recites Respondent had been convicted of Possession of a Controlled Substance, a Class B misdemeanor, on August 31, 2006. The application also recites Respondent had entered a guilty plea - which was held in abeyance- to one count of Forgery, a Class A

misdemeanor, on August 31, 2006. It appears those criminal proceedings were conducted in St. George, Utah. The Division granted Respondent's license application pursuant to the November 2, 2009 Order set forth herein.

CONCLUSIONS OF LAW

The Division contends Respondent has again engaged in unprofessional conduct as defined in Utah Code Ann. §58-1-501(2)(a), which provides such conduct includes violating "an order regulating an occupation or profession under this title." The Division asserts Respondent has repeatedly failed to comply with the two Orders which have governed her license.

Moreover, the Division argues Respondent has engaged in a repetitive pattern of noncompliance with those Orders. Thus, the Division contends no process exists to effectively monitor Respondent in any nursing employment and her license should be revoked as the only option to adequately protect the public.

Respondent contends none of the drug analysis tests for which she has provided a sample establishes any unauthorized use of alcohol, controlled substances or prescription drugs. Respondent has offered various explanations and/or described what she considers to be extenuating circumstances as to those occasions when she did not provide a sample for testing.

Respondent asserts she timely submitted all self assessment reports. Respondent also contends any failure to submit all therapist reports was due to either the lack of

time and diligence of her first therapist or Respondent's inability to locate her second therapist after that therapist left her position. Respondent thus requests she be allowed to remain licensed to practice the profession she loves and she has proven to be very capable of performing as a nurse over the years.

The Board initially notes this is an unfortunate case beset by sad circumstances. The Board has carefully reviewed the evidence presented and has considered whether justice in this case can be tempered with some mercy. Respondent has practiced as a registered nurse for a lengthy time and she has likely acquired substantial experience to develop her advanced skills and abilities.

However, Respondent has repeatedly engaged in unprofessional conduct due to her various failures to comply with the Orders governing her nursing license. Such noncompliance is no trifling matter which should be minimized. Respondent has engaged in substance abuse and she has been convicted of illegal possession of a controlled substance.

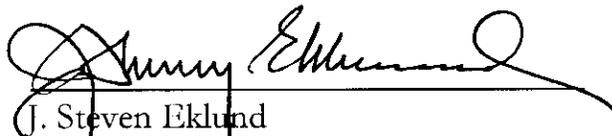
The probationary terms and conditions which were entered in prior Orders were necessary to properly protect the public and provide the Board and the Division with the adequate means to monitor Respondent's conduct. Respondents' noncompliance with numerous critical aspects of those Orders has substantially hindered the just stated reasons for those Orders.

Despite any of Respondent's efforts, her ongoing failure to comply with all probationary requirements compels the conclusion that she poses an intolerable risk to the safety of the public when practicing as a registered nurse. The Board thus readily finds and concludes the Recommended Order set forth below is warranted. Further, it is a very troublesome question whether - and under what circumstances - Respondent might regain a nursing license in the future.

RECOMMENDED ORDER

WHEREFORE, IT IS ORDERED Respondent's license to practice as a registered nurse in this state shall be revoked, effective the date this recommendation may be adopted by the Division.

On behalf of the Board of Nursing, I hereby certify the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER** was submitted to W. Ray Walker, Division Regulatory and Compliance Officer, on the 22ND day of April 2011 for his review and action.


J. Steven Eklund
Administrative Law Judge
Department of Commerce