

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

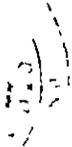
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IN THE MATTER OF THE LICENSE OF	:	
<b>CARRIE NAN FRAMPTON</b>	:	
TO PRACTICE AS A	:	<b>ORDER</b>
REGISTERED NURSE	:	Case No.
IN THE STATE OF UTAH	:	DOPL-OSC-2009-406

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

Dated this 2 day of December, 2011



  
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Mark B. Steinagel  
Director

S E A L

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 Section 63G-4-301 of the Utah Code, and Section R151-4-901 of the Utah Administrative Code.

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IN THE MATTER OF THE LICENSE OF  
**CARRIE NAN FRAMPTON**  
TO PRACTICE AS A  
**REGISTERED NURSE**  
IN THE STATE OF UTAH

**FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER**

**CASE NO: DOPL-OSC-2009-406**

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**APPEARANCES:**

L Mitchell Jones for the Division of Occupational and Professional Licensing  
Carrie Nan Frampton for Respondent

**BY THE BOARD:**

This adjudicative proceeding was initiated pursuant to the issuance of a June 28, 2011 notice of agency action. A September 8, 2011 hearing was to be conducted. However, a July 26, 2011 motion to enter Respondent's default was filed. An August 8, 2011 Order was issued, whereby Respondent's default was entered and her license was revoked due to her failure to have filed a response to the June 23, 2011 Verified Motion to Show Cause.

Given the entry of the August 8, 2011 Default Order, the September 8, 2011 hearing was canceled. The August 8, 2011 Default Order was sent to Respondent's most recent address by certified mail on that date. Sparring extended detail, the Court subsequently conducted a teleconference with L Mitchell Jones, counsel for the Division of Occupational and Professional Licensing, and Respondent.

Respondent acknowledged her failure to have filed a written response in this proceeding. Respondent requested the opportunity to now file the required response. The Division informed the Court and Respondent that, upon receipt of the response, the Division would not object if the August 8, 2011 Default Order were set aside. The Court and the parties then reviewed a date to conduct a rescheduled hearing in this case.

Respondent submitted a written response, dated September 13, 2011. That response was received by the Division on September 15, 2011. Consistent with the foregoing, the Court concluded a sufficient factual and legal basis exists to set aside the August 8, 2011 Default Order. Given the likelihood that the Division would adopt such a recommendation, an October 13, 2011 hearing was conducted before the Board of Nursing and J. Steven Eklund, Administrative Law Judge for the Department of Commerce.

Board members present were John R. Killpack, Mary Williams, Pamela Ann Rice, K. Joel Allied, Debra A. Schilleman, Susan M. Kirby, Marie Partridge, Alisa Bangertel, Diana Parrish and M. Peggy Brown. Mark B. Steinagel, Director of the Division, was also present. Thereafter, evidence was offered and received.

The Board conducted its initial deliberations after the conclusion of the hearing. Having subsequently concluded its deliberations, the Board 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 Respondent is, and at all time relative to this proceeding has been, licensed to practice as a registered nurse in this state. Respondent was initially licensed on September 3, 1999. Respondent's license expired on January 31, 2011 when she did not timely request the renewal of that license.

2 Pursuant to a December 24, 2009 Order, Respondent's participation in the Utah Professional Recovery Assistance Program (Diversion) and her diversion agreement was immediately terminated. Respondent's license was also revoked. However, a stay of enforcement was entered as to that revocation and Respondent's license was placed on probation for five (5) years, subject to various terms and conditions.

3 The just stated disciplinary action was based on Respondent's failure to submit for required drug analysis testing on nineteen (19) occasions between March 19, 2007 and June 2, 2009. Respondent also violated the diversion agreement when she used alcohol or drugs. She was arrested and later convicted of one (1) felony count of driving under the influence of alcohol and/or drugs.

4 During extended detail, Respondent violated her diversion agreement when she failed to attend various meetings with the diversion committee, failed to submit required employer reports to that committee and failed to provide monthly records of attendance at support group meetings to the committee. Respondent also used drugs, narcotics or other

substances to the extent she might reasonably be considered impaired in her ability to safely practice as a nurse

5 Respondent failed to report for scheduled drug analysis testing on thirteen (13) occasions between January 4, 2010 and May 12, 2011. She duly reported for scheduled testing on seven (7) occasions between November 23, 2010 and May 31, 2011. However, Respondent's account with the drug testing company was placed on hold from December 16, 2010 until January 20, 2011 due to her failure to have timely paid for all tests which had been conducted

6 Respondent commenced her consumption of alcohol during December 2005. She acknowledges she later became addicted to alcohol. Respondent was employed as a nurse from February 2007 until April 2007. She was then unemployed for approximately six (6) months.

7 Respondent resumed nursing related employment during October 2007 and she was so employed until October 2009. Respondent's nursing employment ceased when she was dismissed that month. However, she was then employed as a nurse, commencing August 20, 2010, at the Spanish Fork Care Center. Respondent has not been employed as a nurse since her license expired on January 31, 2011.

8 Pursuant to a May 11, 2010 Amended Order, the December 24, 2009 Order was modified to allow Respondent to attend four (4) support group meetings each month,

including that she attend at least one (1) support group meeting each week. The December 24, 2009 Order was again modified -- based on a July 13, 2010 Amended Order -- to allow Respondent to practice under the general supervision of a registered nurse

#### CONCLUSIONS OF LAW

The Division contends Respondent has failed to report for numerous scheduled drug testing. Given Respondent's initial failure to continuously comply with that requirement, as first established by the diversion agreement, the Division asserts Respondent's subsequent failure to comply with the similar probationary requirement reveals her ongoing inability or unwillingness to satisfy a fundamental provision governing her license. Absent Respondent's continuing compliance with required drug testing, the Division asserts no adequate means exists to protect the public and, particularly, those patients who may be entrusted to Respondent's care.

Respondent contends she has maintained her sobriety since December 22, 2008. She asserts she regularly attends 12-Step and professional support group meetings. Respondent also asserts she is making ongoing efforts to continue to get her life together.

Respondent next contends she failed to report for various required drug analysis testing due to her extremely limited income and that certain tests were scheduled within a very brief time after a prior test had been conducted. Respondent thus asserts the frequency of testing was excessive, given the metabolic half life of alcohol for which she was subject to testing.

Respondent's parents have been assisting her with the cost of drug testing. However, they lack the continuing ability to assist Respondent in meeting that expense. Respondent asserts none of the drug tests actually conducted establishes any alcohol consumption or her unauthorized use of other drugs. Respondent thus requests a second chance to practice nursing subject to appropriate terms and conditions.

Utah Code Ann. §58-1-401(2)(a) provides the Division may "revoke, suspend, restrict, place on probation or otherwise act upon the license of a licensee who has engaged in unprofessional or unlawful conduct." U.C.A. §58-1-501(2)(a) provides unprofessional conduct includes the violation of an order governing a license to practice a profession.

The Board readily finds and concludes Respondent engaged in unprofessional conduct when she failed to comply with the drug testing requirements of the December 24, 2009 Order. The remaining issue to be determined is the disciplinary action to be entered in this proceeding.

The nature of Respondent's noncompliance with that Order should be duly considered. Respondent's mental state relating to that noncompliance should also be assessed. Another factor is whether potential or actual injury was caused by Respondent's misconduct and whether any aggravating or mitigating factors exist in this case.

Certain individuals licensed to practice nursing engage in drug or alcohol abuse. Licensees involved in that behavior are also potentially subject to criminal action in that

regard. When disciplinary action is taken under those circumstances, a pre-eminent requirement is that the licensee entirely avoid the unauthorized use of prescriptive drugs and -- if prohibited -- the consumption of any alcohol. Accordingly, it is critical that any such licensee fully participate in required drug testing analysis.

Clearly, drug testing provides a more reliable means to identify unauthorized prescriptive drug use or the consumption of alcohol than any blanket claim of sobriety. Concededly, there is no substantial evidence in this case that Respondent had a positive test result reflecting unauthorized prescriptive drug use or alcohol consumption when she actually provided a sample for analysis.

Respondent was scheduled to submit a drug sample on thirty (30) occasions between January 4, 2010 and May 31, 2011. She actually submitted a scheduled sample on seventeen (17) dates during that time. There were thirteen (13) occasions during that time when Respondent failed to submit the required sample.

The nature and extent of Respondent's noncompliance with the drug testing requirements of the December 24, 2009 Order does not reflect any ongoing indifference or blatant unwillingness to comply with that Order. Respondent's limited income likely contributed to her inability to submit a drug sample whenever she was scheduled to do so.

However, it was not for Respondent to decide when drug testing was warranted. The Board summarily discounts the validity of Respondent's suggestion that she elected to bypass

any scheduled test because her submission to a prior test obviated the need that another test be conducted within what she considered to be an unduly short time

If the evidence presented adequately established Respondent engaged in unauthorized drug use or alcohol consumption and she was employed as a nurse during that time, it would be proper to find and conclude either potential or actual injury existed as to the patients entrusted to Respondent's care. However, the evidence in this case fails to sustain any such finding as it may affect the disciplinary action to now be taken.

There are certain aggravating factors which exist and should be considered in this case. Specifically, R156-1-102(2) provides a "prior record of disciplinary action, unlawful conduct, or unprofessional conduct" may justify an increase in the severity of an action to be imposed on a licensee. Respondent violated the February 28, 2007 Diversion Agreement when she failed to provide a required drug sample on thirteen (13) occasions between March 19, 2007 and June 2, 2009.

Respondent thus engaged in a pattern of similar misconduct as to both the February 28, 2007 Diversion Agreement and the December 24, 2009 Order. Moreover, it appears Respondent tends to minimize the wrongful nature of her failure to regularly report for all drug testing by emphasizing that the tests which were conducted at her election do not reveal unauthorized drug use or alcohol consumption.

The Board reiterates it does not rest with Respondent to choose when drug tests are

warranted Respondent also lacks any unilateral basis to determine, based on her financial circumstances, when she will not report for scheduled testing The Board acknowledges Respondent has not been continuously employed when her license has been on probationary status Further, the Board appreciates that frequent drug testing is costly

Nevertheless, the simple answer is that Respondent's full compliance with required drug testing and a documented history of no unauthorized drug use or alcohol consumption will tend to reduce the frequency of such testing and potentially shorten the time that Respondent's license remains on probation Essentially, the duration of the probation set forth below could be favorably modified were Respondent to demonstrate full compliance with the Order entered herein over a measurable time

However, the Board concludes Respondent's continuous and ongoing compliance with the requirements governing her licensure must be forthcoming Given Respondent's prior failures to comply with both the December 27, 2007 Diversion Agreement and the December 24, 2009 Order, the Board is convinced there should be zero tolerance of any failure to comply with that Order Significantly, any such noncompliance will likely prompt a substantial enhancement of the disciplinary sanction set forth herein and could result in the effective revocation of Respondent's license

#### **RECOMMENDED ORDER**

WHEREFORE, IT IS ORDERED that the August 8, 2011 Default Order be set aside

IT IS FURTHER ORDERED Respondent's license to practice as a registered nurse shall be revoked. However, a stay of enforcement shall enter as to that revocation and the license shall be placed on probation for five (5) years, effective the date this Recommended Order may be adopted by the Division.

During that probation, Respondent shall comply with the terms and conditions set forth in the December 24, 2009 Order, as amended by the May 11, 2010 and July 13, 2010 Orders. If Respondent fails to fully comply with the terms and conditions governing her license, further proceeding shall be conducted to determine whether the stay of enforcement herein should be vacated and the revocation of Respondent's license shall become effective.

On behalf of the Board of Nursing, I hereby certify the foregoing Findings of Fact, Conclusions of Law and Recommended Order was submitted to Mark B. Steinagel, Director of the Division of Occupational and Professional Licensing, on the ~~15~~ day of December 2011 for his review and action.

  
Steven Eklund  
Administrative Law Judge  
Department of Commerce