

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
MARK STEINAGEL, DIRECTOR
DEPARTMENT OF COMMERCE
P.O. BOX 146741
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6711
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
CARRIE NAN FRAMPTON TO
PRACTICE AS A REGISTERED NURSE
IN THE STATE OF UTAH

ORDER

CASE NO. DOPL-OSC-2-2009-406

BY THE DIRECTOR:

Mark B. Steinagel, Director of the Division of Occupational and Professional Licensing, has reviewed the December 31, 2012 findings of fact, conclusions of law, and recommended order of the Utah Board of Nursing in this matter and hereby adopts the recommendation in its entirety.

ORDER

Respondent's license is revoked. Respondent is prohibited from reapplying for licensure in the nursing profession for a period of five years from the date of this order.

This order shall be effective on the signature date below.

DATED this 2nd day of January, 2013.

UTAH DEPARTMENT OF COMMERCE



Mark B. Steinagel
Director, Division of Occupational and Professional
Licensing

Notice of Right to Administrative Review

Review of this order may be sought by filing a written request for administrative review with the Executive Director of the Department of Commerce within thirty (30) days after the issuance of this order. Any such request must comply with the requirements of Utah Code Ann. § 63G-4-301 and Utah Admin. Code R151-4-902.

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
MARK STEINAGEL, DIRECTOR
DEPARTMENT OF COMMERCE
P.O. BOX 146741
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6711
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
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-2-2009-406

APPEARANCES:

Darin B. Goff for Respondent Carrie Nan Frampton.
L. Mitchell Jones for the Division of Occupational and Professional Licensing.

BOARD MEMBERS:

Marie Partridge
John R. Killpack
Diana L. Parrish
Barbara Jeffries
M. Peggy Brown
Sheri Patten Palmer
Cescilee Rall

BY THE UTAH BOARD OF NURSING:

On September 20, 2012, the Utah Division of Occupational and Professional Licensing
(Division) brought allegations against Carrie Nan Frampton (Respondent) through a Notice of

Agency Action and Verified Motion for Order to Show Cause. At all relevant times, Respondent has been licensed with the Division and subject to its jurisdiction and regulation.

This matter was heard by seven members of the Utah Board of Nursing (Board) in a hearing held December 13, 2012. In brief, the allegations against Respondent are that she violated certain terms of the probation attached to her license.

The Board has considered and weighed the evidence according to the applicable standard of proof, that being a preponderance of the evidence, and now enters the following findings of fact, conclusions of law, and recommended order.

FINDINGS OF FACT

1. On December 20, 2009, Respondent voluntarily entered into a stipulated agreement with the Division. The stipulated agreement terminated a prior diversion agreement due to Respondent's failure to undergo drug tests on 19 occasions, her use of alcohol or drugs during the diversion period, and her arrest and conviction for felony driving under the influence of alcohol/drugs.
2. The stipulated agreement revoked Respondent's license, but stayed the revocation on condition that Respondent comply with certain terms and conditions. In relevant part, Respondent was obligated to undergo drug testing as scheduled by the Division and to remain free of any controlled substances not prescribed for her.
3. The stipulated agreement was amended on May 11, 2010 and July 13, 2010, but no changes were made to the provisions outlining Respondent's obligations regarding drug testing and use.
4. On June 28, 2011, the Division filed a petition alleging that Respondent had failed to comply with the terms and conditions of her stipulated agreement. Following a hearing,

the Board entered an order finding that Respondent had failed to report for drug testing on 13 occasions and was addicted to alcohol. Therefore, the Board concluded that Respondent had violated her probation. As a sanction, the Board recommended that Respondent's license probation be continued for an additional five-year period. On December 2, 2011, the Division adopted the Board's recommendation.

5. The terms of Respondent's license probation, like the terms of her prior diversion agreement and her prior stipulation, obligated Respondent to submit to drug testing as scheduled by the Division and to remain free of any drugs for which she did not have a current, valid prescription. Respondent's probation also obligated her to meet with the Board on occasion for review of her case and her progress in treatment.
6. On May 22, 2012, Respondent underwent a drug test. Her sample tested positive for oxycodone at a level of 713 ng/mL, well above the 300 ng/mL cutoff for a positive result. Respondent did not have a current, valid prescription for oxycodone at the time she submitted her sample.
7. On July 12, 2012, Respondent met with the Board for a periodic review. The results of the May 22, 2012 drug test were reported to the Board, and Respondent had an opportunity to explain why she had tested positive. Respondent had no explanation, but stated that she had not used any oxycodone. Respondent's mother, Elaine C. Farrer (Mrs. Farrer) was present at the meeting.
8. Following the July 12, 2012 meeting, Mrs. Farrer wrote a letter stating that she had an explanation for Respondent's positive drug test. Mrs. Farrer explained that, on or about May 6, 2012, she removed four pills from Respondent's bottle of hydrocodone and, later, replaced the pills with oxycodone tablets from her own prescription. Mrs. Farrer further

explained that Respondent was staying at her home at this time to help her and her husband unpack and recover from a road trip.

9. Mrs. Farrer's letter is dated July 17, 2012. It bears no date stamp or other indication as to when it was received by the Division. The letter and the issues it raised were referred to a Division investigator some time in August or September of 2012.
10. Mrs. Farrer testified that it was not until she and Respondent were driving home from the July 12, 2012 Board meeting that she remembered substituting her own medication for Respondent's. She stated that her memory is poor because she suffers from numerous medical conditions. Similarly, Respondent testified that Mrs. Farrer has been diagnosed with early-onset dementia. They provided no objective documentary evidence to support this testimony.
11. Respondent had a valid prescription for hydrocodone during the period of time at issue. Her pills were white in color and oblong in shape.
12. There is a form of oxycodone that closely resembles the hydrocodone pills that were prescribed for Respondent.
13. Respondent presented no documentary evidence to objectively demonstrate that Mrs. Farrer had a valid prescription for oxycodone in any form during the relevant time period.
14. Respondent presented no evidence beyond her own testimony and the testimony of Mrs. Farrer to demonstrate objectively that she was present in the Farrer home during the relevant time period, such that the medications could have been switched.

CONCLUSIONS OF LAW

15. Utah Code Ann. § 58-1-501(2)(a) provides that a registered nurse commits unprofessional conduct if it is determined that she has violated an order regulating the nursing profession. Utah Code Ann. § 58-1-401(2)(b) provides that the Division may take action against a licensee who is found to have engaged in unprofessional conduct. Permissible actions include revoking, suspending, or restricting a license, placing a license on probation, or issuing a public or private reprimand to the licensee.
16. The Board concludes that Respondent's May 22, 2012 positive drug test for oxycodone constitutes a violation of her probationary license; specifically, it is a violation of the requirement that she remain free of any controlled substance for which she does not have been issued a current, valid prescription. Therefore, the Board concludes that Respondent has committed unprofessional conduct pursuant to Section 58-1-501(2)(a).
17. In these circumstances, in order to avoid a sanction, a respondent must demonstrate by a preponderance of the evidence that there are facts to explain and excuse the unprofessional conduct. In the present case, Respondent has provided an explanation. If adequately proved, Respondent's explanation would demonstrate that she mistakenly and unknowingly took oxycodone, and that her mistake in doing so was reasonable. The Board finds that Respondent has failed to provide evidence adequate to substantiate her explanation.
18. Respondent has provided objective documentary evidence to demonstrate that she had a prescription for hydrocodone in a form that resembles one of the several available forms of oxycodone. However, in order to substantiate her explanation, Respondent must also provide evidence to demonstrate that Mrs. Farrer had a prescription for the form of

oxycodone that resembles Respondent's hydrocodone tablets. Both Respondent and Mrs. Farrer testified to this effect, but Respondent provided no objective evidence to support the testimony.¹

19. In addition, Respondent must demonstrate that she was present in Mrs. Farrer's home during a period of time that would have allowed Mrs. Farrer to switch the medications prior to Respondent's May 22, 2012 drug test. Both Respondent and Mrs. Farrer testified to this effect, but Respondent provided no objective evidence to support the testimony.²

20. Respondent's history makes it very difficult for the Board to find her statements and testimony credible absent corroborating evidence. Respondent has failed to appear for drug tests on dozens of occasions. She has used alcohol while subject to a diversion agreement and despite the threat that doing so could result in the revocation of her license. Respondent has also admitted to an alcohol addiction. Given the number of times Respondent has previously violated the terms of her conditional license, and given the fact that she has a problem with addiction, it is reasonable to conclude that she would turn to a controlled substance other than alcohol during a time of stress or depression.

21. In addition, Respondent and her mother both have a strong interest in avoiding a license sanction. As such, their testimony, unsupported by objective or documentary evidence, is not sufficient to overcome by a preponderance of the evidence the conclusion that

¹ Such evidence, if in existence, should be in the possession of Mrs. Farrer or available upon her request. Similarly, if both Respondent and Mrs. Farrer had their prescriptions in their possession following the July 12, 2012 Board meeting, it would have been a simple thing to photograph the two tablets side by side, along their respective prescription labels and packaging, or to bring the medications to hearing so as to allow the Board an opportunity to review the actual, physical evidence.

² A statement from a disinterested neighbor who observed the Farrers return from their trip and witnessed Respondent assisting them with their unpacking would have helped to support the testimony. At the very least, Respondent could have provided her work schedule to demonstrate that she was not on duty and, therefore, was available to her parents for an overnight stay during the time period claimed.

Respondent has violated her probation by using a controlled substance for which she has not been issued a prescription.

22. The Board also has difficulty accepting Mrs. Farrer as a credible witness. Mrs. Farrer seemed to be confused quite frequently during her testimony before the Board. For example, Mrs. Farrer stated that she had attended Respondent's prior hearing and meetings with the Board, but had no idea what they were about. Shortly thereafter, she stated that the purpose of the July 12, 2012 Board meeting was to determine whether Respondent was in compliance with the terms of her license probation. From this testimony, it appears that Mrs. Farrer did in fact understand the nature and purpose of Respondent's meetings with the Board.
23. Mrs. Farrer also testified that a woman who was present at the July 12, 2012 meeting stated that Respondent was compliant. Yet when asked if Respondent was questioned in the review meeting about the positive drug test, Mrs. Farrer ultimately stated that she did hear the issue come up. Given these circumstances, it is difficult to understand how Mrs. Farrer would consider that Respondent was found to be compliant during the meeting.
24. Later in her testimony, Mrs. Farrer stated that, in discussing the July 12, 2012 meeting with her daughter during the drive home, she asked Respondent what oxycodone is. However, Mrs. Farrer also testified that she checked the label of Respondent's prescription on May 6, 2012—before she determined to remove four tablets for her own use—and that she thought the label said "oxy." If Mrs. Farrer knew on May 6, 2012 that she had a prescription for oxycodone, and if she truly checked on that date to determine whether Respondent's prescription was the same, then it does not logically follow that, on July 12, 2012, she would have no idea what oxycodone is.

24. This type of discrepancy and confusion might be due to dementia. Or it might result from a witness making up the details of a contrived story as she goes along and finding it necessary to recant prior statements when they are questioned and challenged.
25. In addition, Mrs. Farrer's clear and sure memory of substituting her own medication for her daughter's is inconsistent with her claim that she suffers from poor memory in general. Mrs. Farrer was questioned by the Board about this discrepancy, and she had no explanation. It is possible that people in the early stages of dementia exhibit clarity as to some memories while being confused about others.³ It is also possible that Mrs. Farrer's clarity on the critical issue results from rehearsal for the purpose of presenting a contrived explanation to the Board.
26. Similarly, Mrs. Farrer was present at the July 22, 2012 Board meeting where Respondent's positive drug test was presented to the Board. The topic was discussed, yet Mrs. Farrer did not say anything at that time about switching the medications. She testified in this hearing that she did not remember substituting her tablets for Respondent's until after the July 22, 2012 meeting, during the drive back to her home. Again, it is possible that dementia sufferers are known to recover memories previously lost to them, and with striking clarity. It is also possible that people who suffer from dementia-related memory problems are known to create false memories from fractured recollections and newly received information. Without objective evidence to demonstrate that Mrs. Farrer suffers from dementia, without expert assistance to guide the Board in interpreting her testimony in light of such a condition, and without objective evidence to demonstrate that Mrs. Farrer's proffered testimony is reliable despite the obvious

³ Expert testimony on this issue would have helped to establish such circumstances

inconsistencies, the Board has little option but to conclude that her explanation is not credible.

27. Finally, the Board notes that Respondent's prior order of probation states:

...the Board is convinced there should be zero tolerance of any failure to comply with [the ordered terms of license probation]. Significantly, any such noncompliance will likely prompt a substantial enhancement of the disciplinary sanction ... and could result in the effective revocation of Respondent's license.

In these circumstances, the Board concludes that license revocation is the appropriate sanction for Respondent's unprofessional conduct as herein found.⁴

⁴ At the hearing, there was argument that, if Respondent's explanation were true, she would have contacted the Division immediately upon discovering the similarity in the appearance of the two medications and learning that her mother had switched the tablets. It was suggested that her failure to promptly contact the Division indicates guilt. The Board disagrees. There might be any number of reasons for such a delay. In this case, Respondent testified that she attempted to contact the administrative law judge (ALJ) who had served as the presiding officer in her prior hearing. Upon learning that the ALJ had retired, she decided to hire an attorney. Respondent emphasized that any questionable delay was thereafter attributable to the attorney's handling of her case. Where the Division had contact with an attorney subsequent to the July 22, 2012 meeting, the Board finds Respondent's explanation for the delay to be reasonable. Therefore, the Board has not based its recommendation on the fact that several weeks passed between the date Respondent claims she learned that Mrs. Farrer had switched the medications and the date on which the Division became aware of this explanation.

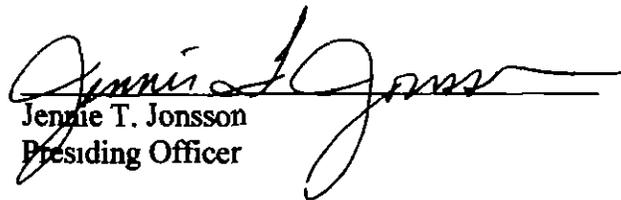
RECOMMENDED ORDER

On the basis of the findings of fact and conclusions of law outlined herein, the Utah Board of Nursing recommends to the Director of the Division that Respondent's license be revoked and that she be prohibited from reapplying for licensure in the nursing profession for a period of five years from the date of the order.

DATED this 31st day of December, 2012.

Signed by the Presiding Officer pursuant to a grant of authority from the Utah Board of Nursing and on its behalf.

UTAH DEPARTMENT OF COMMERCE


Jennie T. Jonsson
Presiding Officer

CERTIFICATE OF DELIVERY

I hereby certify that on the 31st day of December, 2012, the undersigned personally delivered a true and correct copy of the foregoing document to the following.

Mark Steinagel
Director, Division of Occupational and Professional Licensing
Department of Commerce
160 East 300 South, Fourth Floor
Salt Lake City, UT 84114-6711

