

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

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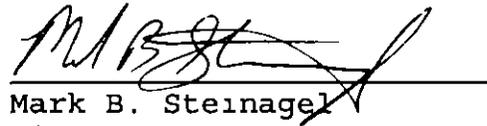
IN THE MATTER OF THE LICENSE OF  
DAWNN MICHELLE BERNARDY  
TO PRACTICE AS A REGISTERED NURSE  
IN THE STATE OF UTAH

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:           **DEFAULT ORDER**  
·           Case No. D-613  
·           Case No DOPL-2010-201  
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The attached Notice of Entry of Default and Recommended Order is hereby adopted by the Director of the Division of Occupational and Professional Licensing of the State of Utah.

Dated this 6 day of July, 2010

  
Mark B. Steinagel  
Director



Pursuant to Subsection 63G-4-209(3), Respondent may seek to  
aside the above-stated default order by filing such a request  
with the Division consistent with the procedures outlined in the  
Utah Rules of Civil Procedure

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	:	<b>NOTICE OF ENTRY</b>
OF <b>DAWN MICHELLE BERNARDY</b>	:	<b>OF DEFAULT AND</b>
TO PRACTICE AS A REGISTERED	:	<b>RECOMMENDED ORDER</b>
NURSE IN THE STATE OF UTAH	:	Case No. D-613

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**APPEARANCES:**

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

No appearance by or on behalf of Respondent

**BY THE ADMINISTRATIVE LAW JUDGE:**

This adjudicative proceeding was initiated pursuant to the issuance of a May 10, 2010 Notice of Agency Action and Order to Show Cause. That notice recites a June 14, 2010 hearing would be conducted to determine whether Respondent failed to comply with the terms and conditions of a January 29, 2009 Diversion Agreement.

The May 10, 2010 notice was sent to Respondent's last known address of \_\_\_\_\_ Ogden, Utah 84404 by certified mail and was thus received at that address. The notice recites Respondent may return an attached stipulation and waiver to the Division within fifteen (15) days of the date of the notice or may file a written response in advance of the hearing.

Respondent did not return the stipulation and waiver to the Division nor did she file any response prior to the hearing.

The June 14, 2010 hearing was conducted before J. Steven Eklund, Administrative Law Judge for the Department of Commerce. Respondent did not appear for that hearing. The Division thus requested the entry of Respondent's default due to her failure to appear for the hearing.

§63G-4-209(1)(a) provides an order of default may enter if a respondent in an informal adjudicative proceeding fails to participate in that proceeding. Given Respondent's failure to have appeared for the June 14, 2010 hearing, the Court concluded a proper basis exists to enter Respondent's default and her default was so entered.

After the issuance of a default order, §63G-4-209(4)(a) provides the presiding officer shall conduct further proceedings as necessary to complete the adjudicative proceeding without the participation of the party in default. §63G-4-209(4)(a) also provides a determination shall be made of all issues in the adjudicative proceeding, including those affecting the defaulting party.

Based on the proffer made by the Division, the Court 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. The January 29, 2009 Diversion Agreement required Respondent to completely abstain from the personal use and possession of all mood-altering substances, alcohol, controlled substances, illicit drugs and prescription drugs unless duly authorized by a lawfully obtained prescription.

2. Respondent was also required to submit to random drug analysis upon the request of the Division, to be conducted by any company with which the Division has contracted to conduct drug testing.

3. The January 29, 2009 Diversion Agreement required Respondent to meet with the Utah Recovery Assistance Program Advisory Committee for the first three (3) months of the agreement, then quarterly or as otherwise directed.

4. Respondent was also required to submit quarterly reports to the Committee from her supervisor, manager or monitor where she is employed or practices. Respondent was further required to submit quarterly reports from any personal counselors and records of support group attendance at each interview with the Committee.

5. Respondent failed to submit a sample for drug analysis as required on thirty-one (31) occasions between July 23, 2009 and March 11, 2010. Respondent thus violated Paragraph 4(g) of

the Diversion Agreement.

6. Respondent consumed alcohol and she used various controlled substances without a prescription for those substances on at least eight (8) occasions between August 11, 2009 and December 7, 2009. Respondent thus violated Paragraph 4(g) of the Diversion Agreement.

7. Respondent failed to attend a scheduled meeting with the Committee on six (6) occasions between February 24, 2009 and March 3, 2010. Respondent thus violated Paragraph 4(i) of the Diversion Agreement.

8. Respondent failed to submit quarterly reports from her employer to the Committee on December 22, 2009 and March 3, 2010. Respondent thus violated Paragraph 4(k)(I) of the Diversion Agreement.

9. Respondent failed to submit quarterly reports from her personal counselors to the Committee on December 22, 2009 and March 3, 2010. Respondent thus violated Paragraph 4(k)(iii) of the Diversion Agreement.

10. Respondent failed to submit support group attendance records to the Committee on December 22, 2009; January 26, 2010; February 10, 2010; and March 3, 2010. Respondent thus violated Paragraph 4(k)(iv) of the Diversion Agreement.

## CONCLUSIONS OF LAW

§58-1-404(14) provides:

(a) If, during the course of the diversion agreement, information is brought to the attention of the director that the licensee has violated the diversion agreement and if it appears in the best interest of the public to proceed with charges, the director, after consultation with the diversion advisory committee, shall cause to be served upon the licensee an order to show cause specifying the facts relied upon by the director and setting a time and place for hearing to determine whether or not the licensee has violated the diversion agreement and whether the agreement should be terminated.

(c)(1) Upon finding the licensee has violated the diversion agreement and that terminating the agreement is in the best interest of the public, and issuing an order to that effect, the director shall issue an order of license suspension, suspending the licensee's professional license, but shall stay the suspension in favor of an order of probation, consisting of the same terms as those which comprised the diversion agreement.

(11) The period of probation shall be the time period which remained under the diversion agreement, or five years from the date of the order of license suspension and probation, whichever is longer, unless otherwise agreed by the parties.

Respondent has repeatedly violated various terms and conditions of the January 29, 2009 Diversion Agreement. Based on the nature and seriousness of those violations, a proper factual and legal basis exists to terminate that agreement.

Moreover, the termination of that agreement is in the best

interest of the public as nothing would be served by any subsequent attempts to obtain Respondent's compliance with that agreement. Absent any matters offered in defense or mitigation, the Court concludes the following Recommended Order is warranted:

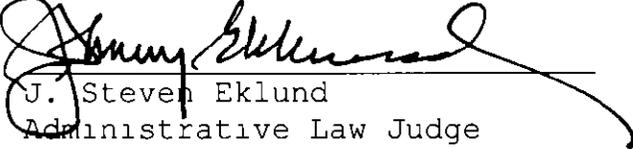
**RECOMMENDED ORDER**

WHEREFORE, IT IS ORDERED that the January 29, 2009 Diversion Agreement is terminated and Respondent's license to practice as a registered nurse in this state shall be suspended.

However, it is further ordered that a stay of enforcement is entered as to that suspension and Respondent's license shall be placed on probation for five (5) years, commencing on the date this Recommended Order is adopted by the Division.

Respondent's license shall thus be subject to the same terms and conditions which governed that license prior to the entry of an Order in this proceeding. However, the Division and the Board of Nursing - rather than the Utah Recovery Assistance Program Advisory Committee - shall be the entities which Respondent shall report to, meet with and provide documentation to during the period of probation.

I hereby certify the foregoing Notice of Entry of Default, Findings of Fact, Conclusions of Law and Recommended Order were submitted to Mark B. Steinagel, Director of the Division of Occupational and Professional Licensing, on the 13<sup>th</sup> day of July 2010 for his review and action.

  
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J. Steven Eklund  
Administrative Law Judge  
Department of Commerce