

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

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
TANIELA FAKALOLO KIVALU : **NOTICE OF AGENCY ACTION**
TO PRACTICE AS A :
LICENSED PRACTICAL NURSE
IN THE STATE OF UTAH Case No DOPL-2010-348

THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING TO
Taniela Fakalolo Kivalu ("Respondent"), , Orem
UT 84097

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 licensed
practical 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

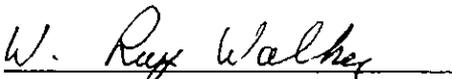
Counsel for the Division in this case is L Mitchell Jones, Assistant Attorney General at (801) 366-0310 or P O Box 140872, Salt Lake City, UT 84114-0872 Within ten (10) days after the filing of your response, Mr Jones will request the scheduling of a prehearing conference

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 and an administrative fine.

Please conduct yourself accordingly

Dated this 18th day of October, 2010


W Ray Walker
Regulatory & Compliance
Officer

L MITCHELL JONES (USB 5979)
Assistant Attorney General
MARK L SHURTLEFF (USB 4666)
Utah Attorney General
Commercial Enforcement Division
Heber M Wells Building
160 East 300 South – P O Box 146741
Salt Lake City, Utah 84114-6741
TEL (801) 366-0310
FAX (801) 366-0315
EMAIL mitchelljones@utah.gov

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

IN THE MATTER OF THE LICENSE
OF **TANIELA FAKALOLO KIVALU**
TO PRACTICE AS A
LICENSED PRACTICAL NURSE
IN THE STATE OF UTAH

VERIFIED PETITION

Case No DOPL-2010- 348

PRELIMINARY STATEMENT

These allegations were investigated by the Utah Division of Occupational and Professional Licensing ('Division') upon complaints that **TANIELA FAKALOLO KIVALU** (' 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 and the Nurse Practice Act, Utah Code Ann §§ 58-31b-101 through 58-31b-801. These allegations are based upon information

provided by witnesses and by a Division investigator and are based upon information and belief the investigator obtained during her investigation. 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 Respondent was licensed to practice as a licensed practical nurse in the State of Utah pursuant to the Nurse Practice Act, Utah Code Ann. §§ 58-31b-101 through 58-31b-801 between on or about January 25, 2007 and on or about January 31, 2010, and again between on or about March 25, 2010 and the date this Petition was filed.

STATEMENT OF ALLEGATIONS

3 Respondent was first licensed to practice as a licensed practical nurse ("LPN") in the State of Utah on or about January 25, 2007. Respondent renewed his Utah LPN license on or about January 28, 2008.

4 On or about August 11, 2009 Respondent was charged with one count of fraudulently obtaining unemployment compensation, a violation of Utah Code Ann. § 76-8-1301, a 2nd degree felony, in Fourth District Court, Utah County, Utah. Respondent was alleged to have received \$5,124.00 in unemployment compensation after filing a fraudulent claim or claims with the Utah Department of Workforce Services. Respondent

was working as a nurse for Maxim Healthcare Services in Utah at the time he submitted the fraudulent claim or claims

5 On or about September 8, 2009 Respondent appeared in Fourth District Court before Judge Steven L. Hansen to make an initial appearance in response to a criminal summons

6 On or about January 19, 2010, Respondent was present at a preliminary hearing before Judge Hansen. Evidence was presented by the Utah County Attorney. A witness from Workforce Services appeared at the hearing and testified

7 On or about January 31, 2010 Respondent's license to practice as a licensed practical nurse in the State of Utah expired because Respondent failed to timely submit an application for renewal of the license

8 On or about February 16, 2010, Respondent appeared before Judge Hansen at an arraignment hearing and entered a plea of "not guilty" to the charge of fraudulently obtaining unemployment compensation. A two-day jury trial was scheduled for March 24th and 25th, 2010

9 On or about March 23, 2010 Respondent submitted an application for renewal of Respondent's license to practice as a licensed practical nurse in the State of Utah to the Division. On the application, Respondent answered "NO" to the following questions

"Since the last renewal or issuance of this license have you been charged with or arrested for any felony or misdemeanor in any jurisdiction?"

and

“Are you currently under investigation or is any disciplinary, administrative, or criminal action pending against you by any agency?”

10 On March 23, 2010 Respondent’s jury trial was rescheduled. On April 7th and April 8, 2010, a two-day jury trial was held before Judge Hansen in Fourth District Court in Provo, Utah. The jury found Respondent “guilty” of fraudulently obtaining unemployment compensation, a 2nd degree felony.

11 On or about May 18, 2010 Respondent was sentenced by Judge Hansen to one term of 1 to 15 years in the Utah State Prison. The prison term was suspended. Respondent was also sentenced to pay restitution to the State of Utah in the amount of \$10,248. Respondent was placed on probation for 36 months to be supervised by Adult Probation and Parole. Respondent was fined \$1,143. Respondent was then ordered to serve 90 days in jail. Respondent entered the Utah County Jail on or about May 18, 2010.

12 While in jail Respondent applied to take part in the GPS Monitoring Program. On or about June 8, 2010 Respondent was released from the Utah County Jail after serving 22 days. Respondent was released from the GPS monitoring program on or about July 17, 2010.

13 Respondent did not file an appeal of his criminal conviction with the Utah Court of Appeals.

14 A Division investigator, Irene Woodford, attempted to contact Respondent by telephone and letter in August 2010 to discuss the allegations contained in this Verified Petition. Respondent never communicated with the Division investigator.

APPLICABLE LAW

15 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 "

16 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,

17 Utah Code Ann § 58-1-501(2)(a), (c), 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,

* * *

- (c) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession,

* * *

- (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,

18 Utah Code Annotated § 58-1-501(1)(e) defines "unlawful conduct"

to include

obtaining a passing score on a licensure examination, applying for or obtaining a license, or otherwise dealing with the division or a licensing board through the use of fraud, forgery, or intentional deception, misrepresentation, misstatement, or omission,

COUNT 1

APPLYING FOR AND OBTAINING LICENSURE AND/OR OTHERWISE DEALING WITH THE DIVISION AND NURSING BOARD THROUGH THE USE OF FRAUD, INTENTIONAL DECEPTION, MISREPRESENTATION, MISSTATEMENT, AND/OR OMISSION

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

20 Respondent applied for and obtained licensure as a licensed practical nurse in the State of Utah and/or otherwise dealt with the Division and Utah Board of Nursing through the use of fraud, intentional deception, misrepresentation, misstatement, or omission, as described in paragraphs 3 through 14 above

21 Respondent has therefore engaged in unprofessional and unlawful conduct as defined in Utah Code Ann § 58-1-501(2)(a) and § 58-1-501(1)(e), thus establishing

grounds for sanctioning Respondent's license pursuant to Utah Code Ann § 58-1-401(1) and (2)

COUNT II

CONVICTION OF CRIMINAL OFFENSE OF MORAL TURPITUDE AND/OR AN OFFENSE REASONABLY RELATED TO THE PRACTICE OF NURSING

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

23 Respondent was convicted of an offense involving moral turpitude and/or an offense reasonably related to Respondent's ability to safely and/or competently practice as a nurse, as described in paragraphs 3 through 14 above

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

COUNT III

FALSE, MISLEADING, DECEPTIVE, OR FRAUDULENT ACTION OR COMMUNICATION RELATED TO NURSING

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

26 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 14 above

27 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 license pursuant to Utah Code Ann § 58-1-401(1) and (2)

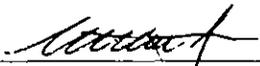
WHEREFORE, the Division requests the following relief

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 and the Nurse Practice Act, and

3 That Respondent's license to practice as a licensed practical nurse in the State of Utah be immediately revoked, along with all residual rights pertaining to said license. that Respondent not be permitted to reapply for licensure as any type of nurse in the State of Utah for a period of five years from the date Respondent completes the conditions of his criminal sentence, and that any other sanction that the Board may recommend-- including a fine, administrative penalty, or civil penalty authorized by statute and/or administrative rule-- be imposed against Respondent's license

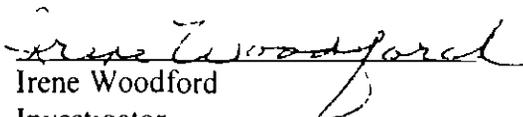
DATED this 18th day of October, 2010



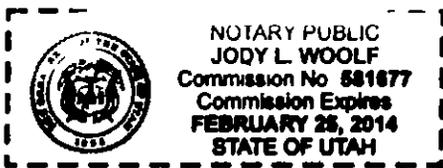
L MITCHELL JONES
Assistant Attorney General

STATE OF UTAH)
)
) SS
COUNTY OF SALT LAKE)

I, IRENE WOODFORD, after being duly sworn, depose and state that I have read the foregoing Petition and know the contents thereof, that the same is true to the best of my knowledge except as to matters stated on information and belief and that, as to those matters, I believe them to be true


Irene Woodford
Investigator
Division of Occupational &
Professional Licensing

SWORN AND SUBSCRIBED to before me this 18th day of October, 2010




NOTARY PUBLIC

My Commission Expires

2-25-2014