

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 : **NOTICE OF AGENCY ACTION**
LISA GAY KENDALL : **AND ORDER TO**
TO PRACTICE AS A REGISTERED NURSE : **SHOW CAUSE HEARING**
IN THE STATE OF UTAH : Case No. DOPL-OSC-2010-434

THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING TO
Lisa Gay Kendall ("Respondent"), Salt
Lake City UT 84115.

The Division of Occupational and Professional Licensing ("the Division") hereby files this notice of agency action. Said action is based on the Division's verified motion for order to show cause, 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. It is maintained under the jurisdiction and authority of the Division as set forth in §58-1-401(2). **Within twenty (20) 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 to clarify, refine or narrow the facts and violations alleged in the verified motion for order to show cause

Your written response, and any future pleadings or filings, which are a part of the official file in this proceeding, should be mailed or hand delivered to the following:

Signed originals to
Division of Occupational
and Professional Licensing
Attn: Disciplinary Files
(by mail): PO Box 146741
Salt Lake City UT 84114-6741
(by hand delivery):
160 East 300 South, 4th floor
Salt Lake City, Utah

A copy to:
L. Mitchell Jones
Assistant Attorney General
Heber M. Wells Building
(by mail): PO Box 140872
Salt Lake City UT 84114-0872
(by hand delivery):
160 East 300 South, 5th floor
Salt Lake City, Utah

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You may represent yourself or, at your own expense, be represented by legal counsel at all times while this action is pending. **Your legal counsel shall file an entry of appearance with the Division after being retained to represent you in this proceeding.** Until that entry of appearance is filed, the Division, its counsel, and the presiding officer will communicate directly with you.

The presiding officer for the purpose of conducting this proceeding 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 may have questions as to the procedures relative to the case, Judge Eklund can be contacted in writing at P O Box 146701, Salt Lake City, UT 84114-6701; by telephone at (801) 530-6648, or by electronic mail at seklund@utah.gov.

Pursuant to a determination previously made by the Division which generally governs proceedings of this nature, the Division is providing the relevant and nonprivileged contents of its investigative file to you, concurrent with the issuance of this notice.

The Division is also providing its witness and exhibit list to you, concurrent with the issuance of this notice. The witness list identifies each individual the Division expects to present as a witness and includes a brief summary of their testimony at the hearing. The exhibit list identifies each anticipated document which the Division expects to present at the hearing. The Division is also providing a copy of any document to you that has not been otherwise made available to you through the investigative file.

Concurrent with your filing of a written response, you should provide to the Division a copy of any documents you have which relate to this case. Further, you should provide your witness and exhibit list to the Division. The witness list should identify each individual you expect to present as a witness and include a brief summary of their anticipated testimony. The exhibit list should identify each document you expect to present at the hearing.

If you fail to file a response within the 20 days allowed or fail to attend or participate in any scheduled hearing, Judge Eklund may enter a default against you without any further notice to you.

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After the issuance of a default order, Judge Eklund may cancel any prehearing conference or hearing scheduled in the Division's verified petition, conduct any further proceedings necessary to complete the adjudicative proceeding without your participation and determine all issues in the proceeding.

If you are held in default, the maximum administrative sanction consistent with the verified petition may be imposed against you. That sanction in this case is revocation of license.

Counsel for the Division in this proceeding is L. Mitchell Jones, Assistant Attorney General, State of Utah. Mr. Jones may be contacted in writing at P O. Box 140872, Salt Lake City, UT 84114-0872 or by telephone at (801) 366-0310. You may, subject to the deadlines established herein, attempt to negotiate a settlement of this proceeding by contacting counsel for the Division.

Any stipulation in lieu of a response should be jointly signed by yourself and the Division and filed within the time that a response would otherwise be due. Alternatively, any stipulation to resolve this case in lieu of the hearing shall be jointly signed by the parties and filed no later than one (1) week prior to the scheduled hearing.

Unless this case is resolved by a stipulation between the parties in lieu of the filing of a response, a prehearing conference will be conducted as follows:

Monday, November 28, 2011 at 9:30 a.m. by teleconference

During the conference, Judge Eklund will address and resolve any further discovery issues. A schedule for the filing of any prehearing motions shall also be established.

Subject to the Department of Commerce Administrative Procedures Act Rules which govern this proceeding, the evidentiary hearing shall be conducted within 180 calendar days from the date of issuance of the notice of agency action.

You are entitled by law to an evidentiary hearing to determine whether your license to practice as a registered nurse in the State of Utah should be revoked, suspended or subjected to other disciplinary action. Unless otherwise specified by the Director of the Division, the Nursing Board will serve as fact finder in the hearing. **The hearing will be conducted as follows:**

Wednesday, December 7, 2011 at 11:00 a.m.

Conference Room 464, 4th floor, 160 East 300 South
Salt Lake City, Utah

During the evidentiary hearing, you will have the opportunity to present an opening statement, submit evidence, conduct cross-examination, submit rebuttal evidence and offer a closing statement to the fact finder. After the close of the hearing, the Board will take the matter under advisement and then submit its Findings of Fact, Conclusions of Law and a Recommended Order to the Division for its review and action.

Dated this 18th day of October, 2011.

W Ray Walker

W Ray Walker
Regulatory & Compliance
Officer



L MITCHELL JONES (U S B 5979)
Assistant Attorney General
MARK L SHURTLEFF (U S B 4666)
Attorney General
Commercial Enforcement Division
Heber M Wells Building
Box 146741
Salt Lake City, UT 84114-6741
TEL (801) 366-0310

**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
LISA GAY KENDALL
TO PRACTICE AS A
REGISTERED NURSE
IN THE STATE OF UTAH

**VERIFIED MOTION FOR
ORDER TO SHOW CAUSE**

Case No DOPL-OSC-2010-434

The State of Utah, Department of Commerce, Division of Occupational and Professional Licensing (hereinafter "Division"), through L Mitchell Jones, Assistant Attorney General, pursuant to Utah Code Ann Title 63G Chapter 4, Utah Code Ann § 58-1-106(1)(a), § 58-1-108(1), and Utah Administrative Code R156-46b-201(2)(a), hereby moves for an order requiring **LISA GAY KENDALL** (hereinafter "Respondent") to appear at a time and date certain and to show cause, if any, as to why Respondent's probation and license to practice as a registered nurse in the State of Utah should not be revoked for Respondent's failure to comply with the terms and conditions of a Stipulation and Order (hereinafter "stipulated agreement"), entered into by Respondent and the Division on or about December 6, 2010 in Case No DOPL-2010-434. The stipulated agreement is hereby incorporated by reference into this Verified Motion for Order to Show Cause, and attached as Exhibit A along with all Amended Orders affecting the

stipulated agreement. The factual allegations in this Motion are based upon the Division's information and belief arising out of its investigation. This motion is based on the factual allegations and legal argument set forth below.

FACTUAL ALLEGATIONS

1 Respondent voluntarily signed the stipulated agreement on December 6, 2010. The Division issued the Order sanctioning Respondent's license on December 7, 2010.

2 Paragraph 13 of the stipulated agreement provides that any violation of the terms of the stipulated agreement by Respondent constitutes the basis for initiation of disciplinary action by the Division against Respondent. The disciplinary action may include imposition of an appropriate sanction, including revocation or suspension of Respondent's license. In Paragraph 10 of the stipulated agreement Respondent agreed to abide by all applicable federal and state laws, regulations, rules and orders related to Respondent's practice as a nurse.

4 Respondent has violated the terms and conditions of the stipulated agreement in the following respects:

a Respondent violated subparagraph 8(1)(i) of the stipulated agreement by failing to provide samples for drug urinalysis as requested by the Division or the contract drug testing company on the following dates:

May 17, 2011, and
August 11, 2011

b Respondent violated subparagraph 8(1)(i) of the stipulated agreement by failing to call in to a designated telephone number to determine if Respondent is required to provide a sample for drug analysis every day between August 12, 2011 and October 4, 2011.

c Respondent violated subparagraph 8(1)(c) of the stipulated agreement by admitting on or about March 26, 2011 to Division staff to using marijuana in March 2011, and admitting on or about June 18, 2011 to Division staff to ingesting alcohol on June 12, 2011, and admitting on April 14, 2011 to the

Utah Board of Nursing that Respondent had used alcohol since signing her stipulated agreement on December 6, 2010

- d Respondent violated subparagraph 8(1)(a) of the stipulated agreement by failing to meet with the Board as directed on January 13, 2011
- e Respondent violated subparagraph 8(1)(o) of the stipulated agreement by failing to attend her required Professionals in Recovery support group twice per month in February 2011
- f Respondent violated subparagraph 8(1)(l) of the stipulated agreement by failing to submit her self-assessment, employer evaluation, professionals in recovery attendance record, and 12-step attendance record that were due to the Division on June 1, 2011 in a timely manner

LEGAL ARGUMENT

As Respondent has violated the terms and conditions of probation, Respondent is in violation of the stipulated agreement. Violation of the terms of the stipulated agreement constitutes unprofessional conduct as set forth in Utah Code Ann. § 58-1-501(2)(a). Utah Code Ann. § 58-1-401(2)(a) provides that the Division may revoke, suspend, restrict, place on probation, or otherwise act upon the license of an individual who has engaged in such unprofessional or unlawful conduct.

The Division has shown good cause for this motion. If Respondent fails to show why Respondent's probation and license to act as a registered nurse in the State of Utah should not be revoked, Division requests that an order be issued revoking Respondent's license and any residual rights pertaining to such license.

DATED this 18th day of October, 2011

MARK L SHURTLEFF
ATTORNEY GENERAL



L MITCHELL JONES
ASSISTANT ATTORNEY GENERAL

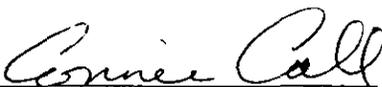
STATE OF UTAH)
 SS
COUNTY OF SALT LAKE)

Connie Call, first being duly sworn, states as follows

1 I am an employee of the Utah Division of Occupational and Professional Licensing and have been assigned to work on this case

2 I have read the foregoing motion, including the section entitled "Factual Allegations " All of the factual allegations are true to the best of my knowledge, information and belief

DATED this 18 day of ~~Nov~~ October, 2011


CONNIE CALL

Subscribed and sworn to before me this 18 day of October, 2011


Notary

