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 LICENSES OF **NICOLA IRENE RILEY, MD** TO PRACTICE MEDICINE AND TO ADMINISTER AND PRESCRIBE CONTROLLED SUBSTANCES IN THE STATE OF UTAH	: : : : : :	**NOTICE OF AGENCY ACTION** Case No. DOPL-2011-222

THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING TO Nicolae Irene Riley, MD ("Respondent"),
, Salt Lake City UT 84124 [Respondent's address]:

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 Brittany Butsch, 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 licenses to practice medicine and to

administer and prescribe controlled substances in the State of Utah should be subject to a disciplinary action. Unless otherwise specified by the Director of the Division, the Board 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 Karl Perry, 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. Perry 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 Perry.

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 23 day of June, 2011.

Mark B. Steinagel
Division Director

Karl G Perry (USB 2570)
Assistant Attorney General
Mark L Shurtleff (USB 4666)
Utah Attorney General
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BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING

OF THE DEPARTMENT OF COMMERCE

STATE OF UTAH

IN THE MATTER OF THE LICENSES OF **NICOLA IRENE RILEY, M.D.** TO PRACTICE MEDICINE AND TO ADMINISTER AND PRESCRIBE CONTROLLED SUBSTANCES IN THE STATE OF UTAH	))))))	**PETITION** Case No DOPL-2011- 222

The Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah (hereafter, "the Division"), by and through its counsel, Karl G Perry, Assistant Attorney General, submits the following Petition against Nicola Irene Riley, M D (hereafter, "Respondent")

PRELIMINARY STATEMENT

The following causes of action have been, and were, investigated by the Division upon information that the Respondent, a licensee of the Division, has engaged in acts and practices

which constitute violations of the Division of Occupational and Professional Licensing Act, Utah Code Ann §§ 58-1-101 to 58-1-504 and the Utah Medical Practice Act, Utah Code Ann §§ 58-67-101, *et seq*

The allegations against Respondent in this Petition are based upon information and belief arising out of the investigation conducted by the Division Each cause of action in this Petition shall be deemed to incorporate by reference those allegations set forth in the other paragraphs of this Petition

STATEMENT OF FACTS

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 At all times material to the allegations contained herein, the Respondent was either licensed by the Division or applying to the Division for a license to practice medicine under the Medical Practice Act, Utah Code Ann § 58-67-101, *et seq*, and to administer and prescribe controlled substances under the Controlled Substance Act, Utah Code Ann § 58-37-1, *et seq*

3 On or about June 8, 2004, the Respondent submitted her initial application to the Division to become licensed as a physician and surgeon and to prescribe controlled substances in the state of Utah

4 In her application to obtain a license to practice as a physician and surgeon in the state of Utah, the Respondent answered "Yes" to several questions on the application Those questions to which the Respondent answered "Yes" were

a Have you ever been **arrested for or charged with** a felony in any jurisdiction? (Bold in original)

b Have you ever pled guilty to, no contest to, or been convicted of a felony in any jurisdiction?

c Have you ever been incarcerated for any reason in any federal, state or county correctional facility or in any correctional facility in any other jurisdiction?

5 Attached to the Respondent's application for licensure was a written narrative in which the Respondent explained her "Yes" responses The Respondent stated that she was an officer in the U S Army from 1987-1992 stationed at Ft Carson, Colorado and that she was convicted of Conduct Unbecoming an Officer (Article 132) for the following stated reasons

1 Two enlisted soldiers under my jurisdiction were convicted of credit card fraud and criminal impersonation in June 1991

2 I pleaded not [sic] contest to my knowledge of the events and my failure to report their activity in a timely manner

3 As a result of my position and failure to act in a reasonable amount of time, I was listed as an accomplice to their acts

4 I was transferred to Fort Leavenworth Kansas for one year with a dishonorable discharge from the military

6 As a part of her application, Respondent signed an affidavit which stated that all the information in the application and all supporting documents was free of fraud, misrepresentation, or omission of material fact Further, the affidavit stated that to the best of her knowledge, the information she provided was truthful, correct and complete and disclosed all

material facts regarding the applicant that were necessary to properly evaluate the applicant's qualifications for licensure

7 On or about July 14, 2004, the Respondent met with the Utah Physicians Licensing Board to further explain her "Yes" responses Based on her responses to questions posed to her by various members of the Board, she was issued a license by the Division to practice as a physician and surgeon in the state of Utah effective July 14, 2004

8 In or about October 2010, the Division received a complaint that the Respondent had provided fraudulent information on her Utah Physician and Surgeon and Controlled Substance application

9 As a part of its investigation, the Division requested and received from the United States Army documents which do not comport with the explanation given by Respondent in her application Among other military documents, the Division received a Stipulation of Fact dated July 8, 1991 and agreed to and signed by Respondent, which was part of Respondent's criminal proceeding, and which that describes the Respondent's involvement as follows

a That on or about July 1, 1990, Respondent conspired with two other individuals to commit forgery, larceny of personal property and criminal impersonation The Respondent agreed to participate in the illegal conspiracy to steal jewelry from merchants in the Colorado Springs area

b That on or about July 14, 1990, the Respondent went to a jewelry store with two other individuals and filled out credit applications and obtained

jewelry by forging credit receipts

c That on or about July 14, 1990, the Respondent went to Gordon's Jewelers and used a false or fictitious identity to provide false information to Gordon's Jewelers to obtain credit in another person's name That the Respondent did this with the intent to unlawfully gain a personal benefit and to defraud Gordon's Jewelers That the Respondent falsely or fraudulently signed a credit receipt to obtain merchandise

d That on or about August 25, 1990, the Respondent and one other individual went to Bailey Banks and Biddle Jewelers and falsely used another individual's identity to obtain merchandise with the intent to unlawfully gain a personal benefit and defraud Bailey Banks and Biddle Jewelers The Respondent again on August 27, 1990 returned with another individual and used a false or fictitious identity to provide false information to Bailey Banks and Biddle Jewelers to obtain credit in another person's name Respondent did this with the intent to unlawfully gain a personal benefit and to defraud Bailey Banks and Biddle Jewelers The Respondent falsely or fraudulently signed a credit receipt to obtain merchandise

10 Furthermore, in Respondent's criminal proceeding, she was found to have violated Article 133 of the Uniform Code of Military Justice for Conduct Unbecoming an Officer following her conviction on five of seven criminal charges, or specifications Those convictions consisted of

a Conspiracy to commit forgery, larceny of personal property and criminal impersonation,

b Violating § 18-5-113 of the Colorado Revised Statutes by knowingly assuming a false or fictitious identity, with intent to unlawfully gain a personal benefit and to defraud ,

c With intent to defraud, falsely making the signature of another person to two credit purchase receipts,

d Violating § 18-5-113 of the Colorado Revised Statutes by knowingly assuming a false or fictitious identity of another soldier, with intent to unlawfully gain a personal benefit and to defraud , and

e With intent to defraud, falsely making the signature of another person to three credit purchase receipts

11 Based on her five convictions under Article 133 of the Uniform Code of Military Justice, the Respondent was sentenced to dismissal from the United States Army under dishonorable conditions, confinement to a military prison for 30 months, and forfeiture of all pay and allowances The Respondent's dismissal from the United States Army was effective March 12, 1993 The Respondent served over 12 months of her 30 month confinement at the USDB in Fort Leavenworth, Kansas before being released from custody She was paroled to her home state of New York upon her release

12 The documents from the United States Army show a direct involvement by the Respondent in the fraudulent criminal actions in Colorado, and they show she was convicted of violating Article 133 of the Uniform Code of Military Justice, not Article 132 This information is substantially different from the representations made on Respondent's application for licensure

13 Just three years after being dismissed from the United States Army and after

serving her term of confinement, the Respondent applied for admission to the University of Utah School of Medicine Nowhere in her application did the Respondent provide the School of Medicine with the information regarding her military charges and subsequent convictions, her confinement at Fort Leavenworth, or her dismissal from the United States Army under dishonorable conditions

14 The Respondent noted on her application to the University of Utah School of Medicine that she served as an officer in the U S Army from May 1987 through October 1992 and that during this time, she was a nuclear weapons storage officer at Ft Carson, Colorado The Respondent also stated that during this same period of time, she was an Executive Operations Officer and Adjutant/Personnel Officer In fact, Respondent spent a good portion of the latter part of her military service confined to the United States Disciplinary Barracks (the "USDB") at Fort Leavenworth, Kansas

15 Respondent also noted in the "Personal Comments" section of the application for admission to the University of Utah School of Medicine that "At the completion of my tour of duty in 1992, I left the military with numerous decorations, a multitude of experiences, and friends spanning the globe " (Underlining added) In fact, according to her DD Form 214, Certificate of Release or Discharge from Active Duty, the Respondent was awarded the Army Achievement Medal, the Army Service Ribbon, and the Parachutist Badge The Army Achievement Medal is awarded to junior officers for outstanding achievement that does not rise to the level of the awarding of the Army Commendation Medal The Parachutist Badge is awarded to personnel of any military service who complete the United States Army Basic

Airborne Course It signifies simply that the recipient has completed Army parachutist training and is qualified for airborne operations The Army Service Medal is awarded to all members of the Army, Army National Guard, and U S Army Reserve upon completion of their basic entry level training following enlistment in the military For officers such as the Respondent, the medal is awarded upon successful completion of their basic orientation course

16 As noted above, the Respondent noted on her application for acceptance to the School of Medicine that she had served as a Nuclear Weapons Storage Officer at Fort Carson, Colorado as well as an Executive Operations Officer and Adjutant/Personnel Officer from May 1987 through October 1992, a total of five and a half years Respondent's actual time served on active duty was four years, 1 month The remainder of the time, the Respondent was either incarcerated or on parole Indeed, according to Respondent's DD Form 214, the Respondent's actual lost time from active duty was from July 10, 1991 through March 12, 1993, the date she was dishonorably discharged These dates correspond to the period of her confinement at the USDB and her subsequent parole

17 In a June 27, 2010 letter to Carol Johnson, Compliance Analyst for the Maryland Board of Physicians, the Respondent again falsely stated that she was charged with violation of Article 132, Conduct Unbecoming an Officer, with conspiracy to commit fraternization, credit card fraud and subsequent criminal impersonation due to fellow soldiers under her care using other people's credit cards The Respondent advised Ms Johnson that she " failed to report them in a timely manner and was held accountable for [her] lack of

inaction " [sic] The Respondent informed Ms Johnson that she had pled no contest to the charges and agreed to 30 months with a minimum of one year confinement at Fort Leavenworth with subsequent parole to her home of record By this explanation, the Respondent falsely stated the basis for her incarceration and subsequent dishonorable discharge from the United States Army Further, the Respondent falsely advised Ms Johnson that she had pled no contest for what essentially amounted to her failure to supervise and control enlisted personnel under her command when in fact she was found to be an active participant in the crimes committed

APPLICABLE LAW

18 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,

Utah Code Ann § 58-1-401(2)(a) and (b)

19 Utah Code Ann § 58-1-501(1)(e) defines "Unlawful conduct" as conduct, by any person, that is defined as unlawful under this title and includes

> (e) 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,

20 Utah Code Ann § 58-1-501(2)(a), (b) & (h) defines "Unprofessional conduct"

as conduct, by a licensee or applicant, that is defined as unprofessional conduct under this title or under any rule adopted under this title and includes

(a) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title,

(b) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title,

(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,

FIRST CAUSE OF ACTION

21 As described above, In explaining the "Yes" responses included on her application to the Division for licensure, the Respondent provided false and misleading information and omitted information essential to the Division's licensing decision

22 As described above, Respondent has engaged in a pattern of conduct consisting of providing false and misleading information on applications for licensure or for admission to an educational institution That pattern of conduct tends to show that her false and misleading statements or her omissions to the Division were intentionally deceptive

23 As set forth above, Respondent has engaged in unlawful conduct in violation of Utah Code Ann § 58-1-501(1)(e)

24 As set forth above, Respondent has engaged in unprofessional conduct in violation of Utah Code Ann § 58-1-501(2)(a)(b) & (h)

WHEREFORE, the Division requests an order granting the following relief

1 Determining that Respondent engaged in the acts alleged herein,

2 Determining that by engaging in the above acts, Respondent engaged in unprofessional and unlawful conduct as defined in Utah Code Ann § 58-1-501(2)(a),(b) & (h) and Utah Code Ann § 58-1-501(1)(e)

3 Suspending Respondent's licenses to practice medicine and to administer and prescribe controlled substances for at least twelve (12) months

4 Assessing an appropriate administrative penalty against Respondent pursuant to Utah Code Ann § 58-67-402 in at least the amount of fifteen thousand dollars ($15,000 00)

5 Ordering such other and further relief and sanctions against Respondent's licenses to practice medicine and to prescribe controlled substances in the State of Utah as may be just and reasonable

DATED this 23rd day of June, 2011

MARK L SHURTLEFF
UTAH ATTORNEY GENERAL

By _____
Karl G Perry
Assistant Attorney General

VERIFICATION

STATE OF UTAH)
ss
COUNTY OF SALT LAKE)

On the 23 day of June, 2011, personally appeared before me Brittany Butsch, an investigator with the Division of Occupational and Professional Licensing, who after being duly sworn, deposes and says that she has read the foregoing Petition and knows the contents thereof, that the same is true to the best of her knowledge except as to matters stated on information and belief and that, as to those matters, she believes them to be true

Brittany Butsch

Brittany Butsch

Sworn and Subscribed to before me this 23 day of June, 2011

Notary Public

My Commission Expires

2/25/2013

NOTARY PUBLIC
CAROL W. INGLESBY
Commission No 577663
Commission Expires
FEBRUARY 25, 2013
STATE OF UTAH