

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

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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	.	<b>AMENDED</b>
<b>DAMION T. SMUIN</b>	:	<b>NOTICE OF AGENCY ACTION</b>
TO PRACTICE AS A	:	
LICENSE PRACTICAL NURSE	:	
IN THE STATE OF UTAH	.	Case No. DOPL-2011-71

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THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING TO  
Damion T. Smuin ("Respondent"), Grand Junction CO  
81502-2187.

The Division of Occupational and Professional Licensing ("the Division") hereby files this Amended Notice of Agency Action. Said action is based upon the Amended Verified Petition of John Sims, 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 Amended 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

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.

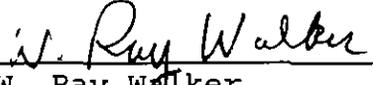
Counsel for the Division in this case is L. Mitchell Jones, Assistant Attorney General at (801) 366-0310 or P O Box 140872, Salt Lake City, UT 84114-0872. Within ten (10) days after the filing of your response, Mr. Jones will request the scheduling of a prehearing conference.

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 30<sup>th</sup> day of March, 2011.

  
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W. Ray Walker  
Regulatory & Compliance  
Officer

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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

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IN THE MATTER OF THE LICENSE  
OF **DAMION T. SMUIN**  
TO PRACTICE AS A  
LICENSED PRACTIAL NURSE  
IN THE STATE OF UTAH

AMENDED  
VERIFIED PETITION  
Case No DOPL-2011-71

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**PRELIMINARY STATEMENT**

These allegations were investigated by the Utah Division of Occupational and Professional Licensing (“Division”) upon complaints that **DAMION T. SMUIN** (“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 his 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 At all times material to the allegations contained herein, 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 58-69-801.

### **STATEMENT OF ALLEGATIONS**

3 Respondent was first licensed to practice as a licensed practical nurse in the State of Utah on or about July 31, 1995 and was so licensed at all time periods relevant to this Verified Petition.

4 On or about December 10, 2003 Respondent pleaded "no contest" to one count of attempted theft, a 3<sup>rd</sup> degree felony, amended to a Class A misdemeanor, in Eighth District Court, Uintah County, Utah. Respondent made restitution payments to the Social Security Administration.

5 In about 2009 Respondent was working as a licensed practical nurse at the Uintah Care Center (hereinafter "care center"), in Vernal, Utah.

6 In about May 2009 one ring was stolen from a care center resident hereinafter referred to as Jane Doe #1 In about 2009 two rings were stolen from a care center employee hereinafter referred to as Jane Doe #2 In about 2009 a scrap book was stolen from a care center resident hereinafter referred to as Jane Doe #3

7 On or about November 18, 2009 Respondent admitted to a Vernal police officer that Respondent knew that his roommate, who as also an employee at the care center, had stolen the items described in paragraph 5 above

8 Respondent admitted to the Vernal police officer that he had knowledge of the thefts and had allowed his roommate to store the items in a safe in their shared residence Respondent gave the Vernal police officer a box containing the stolen items described in paragraph 5 above

9 Pursuant to the conduct described above, on or about June 30, 2010 Respondent pleaded guilty to one count of theft by receiving stolen property, a 3<sup>rd</sup> degree felony amended to a Class A misdemeanor, and a violation of Utah Code Ann § 76-6-408, and one count of theft by receiving stolen property, a 2<sup>nd</sup> degree felony amended to a Class A misdemeanor, and a violation of Utah Code Ann § 76-6-408, in Eighth District Court, Vernal, Uintah County, Utah The pleas were held abeyance

#### **APPLICABLE LAW**

10 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 "

11 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,

12 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,

**COUNT I**

**CONDUCT LEADING TO CONVICTION OF AN OFFENSE REASONABLY  
RELATED TO RESPONDENT'S ABILITY TO SAFELY AND/OR  
COMPETENTLY PRACTICE AS A REGISTERED NURSE AND/OR AN  
OFFENSE INVOLVING MORAL TURPITUDE**

13 Paragraphs 1 through 12 are incorporated by reference as though fully stated herein

14 Respondent was convicted of an offense reasonably related to Respondent's ability to safely and/or competently practice as a licensed practical nurse and/or an offense involving moral turpitude, as described in paragraphs 3 through 12 above

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

**COUNT II**

**PRACTICING NURSING BY AN ACTION OR COMMUNICATION THAT WAS  
FALSE, MISLEADING, DECEPTIVE, AND/OR FRAUDULENT**

16 Paragraphs 1 through 15 are incorporated by reference as though fully stated herein

17 Respondent practiced or attempted to practice nursing by a form of action or communication that was false, misleading, deceptive, and/or fraudulent, as described in paragraphs 3 through 12 above.

18 Respondent has therefore engaged in unlawful conduct as defined in Utah Code Ann § 58-1-501(2)(a) and (h), thus establishing grounds for sanctioning Respondent's licenses 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, 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 the Respondent's license

DATED this 30<sup>th</sup> day of March, 2011

  
L MITCHELL JONES  
Assistant Attorney General

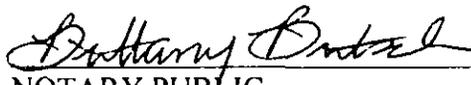
STATE OF UTAH )  
 )  
 ) SS  
COUNTY OF SALT LAKE )

I, JOHN SIMS, 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



John Sims  
Investigator  
Division of Occupational &  
Professional Licensing

SWORN AND SUBSCRIBED to before me this 30 day of March, 2011

  
NOTARY PUBLIC

My Commission Expires

2/25/14

