

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
MARK STEINAGEL, DIRECTOR
DEPARTMENT OF COMMERCE
P.O. BOX 146741
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6711
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
MONICA CECILIA COOK TO PRACTICE
AS AN **ADVANCED PRACTICE**
REGISTERED NURSE AND TO
ADMINISTER CONTROLLED
SUBSTANCES IN THE STATE OF UTAH

ORDER
CASE NO. DOPL-2012-302

BY THE DIRECTOR:

Mark B Steinagel, Director of the Division of Occupational and Professional Licensing, has reviewed the March 14, 2013 amended findings of fact, conclusions of law, and recommended order on remand and following the entry of relief under Rule 60(b) of the Utah Board of Nursing in this matter and hereby adopts the recommendation in its entirety

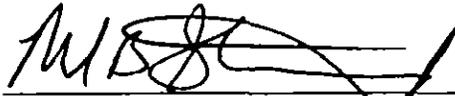
ORDER

Respondent's license is revoked, and Respondent is assessed a civil penalty of \$5,000.

This order shall be effective on the signature date below.

DATED this 15th day of March, 2013.

UTAH DEPARTMENT OF COMMERCE

A handwritten signature in black ink, appearing to read 'MBS', is written over a horizontal line.

Mark B. Steinagel
Director, Division of Occupational and Professional
Licensing

Notice of Right to Administrative Review

Review of this order may be sought by filing a written request for administrative review with the Executive Director of the Department of Commerce within thirty (30) days after the issuance of this order. Any such request must comply with the requirements of Utah Code Ann. § 63G-4-301 and Utah Admin Code R151-4-902.

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AMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDED ORDER ON REMAND
AND FOLLOWING THE ENTRY OF
RELIEF UNDER RULE 60(b)

CASE NO. DOPL-2012-302

APPEARANCES:

David S. Cook for Respondent Monica Cecilia Cook
L. Mitchell Jones for the Division of Occupational and Professional Licensing.

BOARD MEMBERS:

John R Killpack
M. Peggy Brown
Barbara Jeffries
Marie Partridge
Susan M. Kirby
Diana Parrish
Alisa Bangterter
Cescilee Rall
Ralph C. Pittman

BY THE UTAH BOARD OF NURSING:

On June 28, 2012, the Utah Division of Occupational and Professional Licensing (Division) brought allegations against Monica Cecilia Cook (Respondent) arising out of and relating to her practice as an advanced practice registered nurse (APRN). At all relevant times, Respondent has been licensed with the Division and subject to its jurisdiction and regulation. Respondent is currently licensed as an APRN under license number 379690-4405 and is authorized to prescribe schedule 2-5 controlled substances under license number 379690-8900

This matter was heard by a quorum of the Utah Board of Nursing (Board) in a hearing held August 9, 2012. In brief, the allegations against Respondent are that she allowed her Women's Health Care Nurse Practitioner certification (certification) from the National Certification Corporation for Obstetric, Gynecologic, and Neonatal Nursing Specialties (NCC) to expire, but thereafter submitted two renewal applications to the Division, attesting on each that she was qualified in all respects for the renewal of her APRN license

On August 21, 2012, the Board issued its findings of fact, conclusions of law, and recommended order. On August 23, 2012, the Director of the Utah Division of Occupational and Professional Licensing adopted the Board's recommendation and issued a final order. Respondent thereafter requested that the Executive Director of the Department of Commerce conduct a review of the Division's order

On November 2, 2012, the Division filed with the presiding officer a motion under Rule 60(b) of the Utah Rules of Civil Procedure (URCP 60(b)), requesting that the Division's August 23, 2012 order be vacated and that the agency record be reopened for the limited purpose of offering into evidence a more accurate and complete version of an exhibit that was reviewed

during the hearing. On November 8, 2012, the Executive Director suspended her review of the Division's order so as to allow the URCP 60(b) motion to be resolved at the agency level.

On February 5, 2013, the presiding officer issued an order granting the Division's URCP 60(b) motion for relief, vacating the Board's August 21, 2012 findings of fact and conclusions of law, vacating the Division's August 23, 2012 order, and mandating a further proceeding for a limited purpose; specifically, to allow the Board to review the Division's complete exhibit, take evidence and testimony as to its foundation, and entertain arguments regarding the weight and effect it should be given in determining whether Respondent has engaged in unprofessional conduct as alleged by the Division. The presiding officer's order precludes the Board from amending its August 21, 2012 recommendation to include any additional, enhanced, or modified sanction against Respondent.

Also on February 5, 2013, the Executive Director issued an order remanding the matter to the Division for further proceedings. On February 7, 2013, the presiding officer issued a scheduling order setting the further proceeding for March 14, 2013 at 9:00 A.M. The proceeding was conducted as scheduled before a quorum of the Board. The Division was present and represented by counsel. Respondent did not attend, however, counsel for the Division provided the Board with an affidavit executed by Respondent.

The Board has considered and weighed the evidence and testimony from the August 9, 2012 hearing and the March 14, 2013 additional proceeding according to the applicable standard of proof, that being a preponderance of the evidence, and now enters the following findings of fact, conclusions of law, and recommended order.

FINDINGS OF FACT

The following facts are undisputed.

1. Respondent initially applied for her APRN license on June 23, 2005. In that application, she represented that her NCC certification would expire on March 31, 2008. The license was issued with an expiration date of January 31, 2010.
2. As part of her initial June 23, 2005 application, Respondent attested that she had read, and that she understood, the Utah Nurse Practice Act and Rules
3. Utah Administrative Code § R156-31b-303(3)(b) states that a person licensed as an APRN must be currently certified or recertified in the specialty area of practice in order to remain licensed
- 4 Respondent completed continuing medical education after obtaining her initial license, but did not submit her education to the NCC for review. Nor did Respondent apply with the NCC for renewal of her specialty certification. Therefore, on March 31, 2008, Respondent's NCC certification expired.
- 5 On January 11, 2010, and again on January 2, 2012, Respondent used the Division's online licensing system to submit renewal applications regarding her APRN license and her authorization to prescribe controlled substances. In doing so, Respondent reviewed the following statements and affirmed her understanding and compliance:
 - a. "I am qualified in all respects for the renewal or reinstatement of this license "
 - b. "To the best of my knowledge, the information contained in this application is complete and correct, and is free of fraud, misrepresentation, or omission of material fact "
 - c. **A.P.R.N.**
"In accordance with Subsection R156-31b-303(3)(b), you must have National Certification in your specialty area of practice or, if licensed as an APRN prior

to July 1, 1992, you may alternatively have practiced at least 400 hours in the past 2 years AND have completed 30 hours of approved continuing education."

d. "By selecting "Continue" you hereby certify that you have completed or will complete all renewal requirements, including those specified above and those stated in statute and rule, before the expiration or reinstatement of your current license. You also certify that you understand that you may be subject to audit by DOPL of having met these requirements Those selected for audit will be notified "

e "Please note that false, misleading, or fraudulent submittal may result in loss of licensure, criminal prosecution or both and is subject to audit. Additionally, DOPL reserves the right to initiate action at any time against a licensee who did not meet the renewal/reinstatement requirements at the time the license was issued."

6. In or about November of 2011, Respondent began to investigate the status of her NCC certification and learned that it had expired and could not be easily or quickly reinstated. On or about April 2, 2012, Respondent sent the Division a letter to inform them of the situation.

At the hearing, Respondent made three primary arguments as to why her license should not be revoked.¹ The Board will address each separately

¹ Respondent attempted to make the following additional arguments First, that the Division's use of a nationwide certifying organization in determining whether a licensee has fulfilled the requirements to qualify for renewal constitutes an illegal delegation of lawmaking authority Second, that the Division investigators who met with and spoke to Respondent prior to the hearing were unkind to her and most likely acted contrary to the internal policies and procedures of the Division and/or the Department of Commerce Third, that the Division acted unfairly and unreasonably in declining to settle this matter through a stipulated agreement by which Respondent would surrender her license The presiding officer did not allow Respondent to pursue these arguments at the hearing and, in fact,

First, Respondent argued that she submitted her renewal applications in good faith. She did not understand that renewing her NCC certification required her to submit paperwork and fees to the national organization. She had completed her continuing medical education and did not understand that she was required to submit the coursework to the NCC for review. She assumed that any licensing or certifying body that needed to review her paperwork would audit her, and that her certification would remain in place absent such an audit. Respondent argued that, because she did not accurately understand the steps she had to take in order to renew and maintain her NCC certification, she honestly believed she was qualified for an APRN license when she submitted her renewal applications to the Division. Therefore, Respondent felt that she accurately attested to the statement, "*To the best of my knowledge*, the information contained in this application is .. free of misrepresentation" (emphasis added)

Second, Respondent referred the Board to Utah Code § 58-1-308(3)(a), which requires the Division to notify each licensee that the license is due for renewal, including a notice that the license will expire unless an application, a renewal fee, and documentation showing completion of renewal requirements are received prior to the date of expiration. Respondent argued that neither the Division's license renewal reminder card nor the renewal application itself notified Respondent that documentation of a current NCC certification would be required for renewal and, in fact, that no such documentation was ever requested. Therefore, Respondent argued that the Division failed to uphold its statutory duty to require of her documentation to evidence that she had fulfilled her renewal requirements. In these circumstances, Respondent indicated that she should be shown some leniency.

issued a prior order finding that the issues were not within the jurisdiction of the Utah Board of Nursing. Therefore, the Board does not address these issues here. In issuing this recommended order, the Board has not considered the related comments and arguments that Respondent expressed at the hearing prior to the Division's raising objections

Third, Respondent demonstrated that she completed significantly more hours of continuing medical education than would have been required to renew her NCC certification and, therefore, was qualified at all times to hold an APRN license. Respondent seemed to argue that the Board and Division should consider her attestation that she was "qualified in all respects" for her APRN license to be accurate in view of her ongoing education, even though her actual certification had expired.

The Board does not find these arguments to be persuasive.

As to Respondent's first argument, the Board finds that the requirements for renewing an NCC certification are taught and discussed in the associated pre-certification education. Each individual who is awarded a certification is given a handbook that details the process for submitting a renewal application to the NCC. The NCC maintains a website where the process and requirements are posted for easy reference. In addition, the NCC sends each certification holder a renewal reminder, using the address of record, prior to the date of expiration.² The administrative rules governing the nursing profession state unequivocally that an APRN is required to have a current certification in her specialty in order to renew her license. These rules are available online—they can be referred to at any time—and Respondent attested in her initial application that she had read and understood them. Finally, and perhaps most importantly, the website screens Respondent viewed and responded to when she renewed her license in 2010 and 2012 include an explicit reminder that a current NCC certification is required.

Therefore, the Board finds that Respondent may be deemed to have known at all relevant times that she was required to submit her continuing medical education certificates to the NCC.

² Respondent testified that she most likely did not receive these renewal notices because she and her family moved several times during the periods when they would have been sent to her, and she did not timely update her address with the NCC. The Board does not find this to be a mitigating circumstance. It is Respondent's responsibility to ensure that her contact information is up-to-date. If she fails to do so, she must bear the consequences of that failure.

and renew her specialty certification in order to attest that she was "qualified in all respects" to renew her APRN license with the Division. It is particularly significant that Respondent, by her own admission, began to question the status of her national certification in November of 2011, well over a month before she submitted her 2012 renewal application. In these circumstances, she had ample time to research the NCC renewal requirements and contact the Division, the NCC, or both for assistance and clarification. The Board finds no way to excuse her failure to do so. Similarly, where Respondent was on notice of a potential problem with her certification at the time she submitted her 2012 renewal application, the Board finds no way to excuse her false attestation that her certification was, or would shortly be, current.

Further, the Board does not consider that, by asking whether the renewal application is correct "to the best of [a licensee's] knowledge" the Division anticipates or allows for relicensure of an applicant who has been provided with all of the information regarding the renewal requirements and processes, but still manages to go awry. To read the question as allowing any excuse related to a licensee's subjective understanding of those requirements and processes to justify a misrepresentation would create an untenable loophole. Rather, the Board reads the question as allowing for leniency in circumstances where a relevant piece of information is not reasonably knowable at the time an application is submitted. Those circumstances are not the case here.

As to Respondent's second argument, the Board finds that the statute does not mandate that the Division require from a licensee any specific type or form of documentation to evidence completion of renewal requirements. In other words, the statute does not require the Division to collect from each licensee a copy of a current NCC certification or completion certificates from continuing medical education courses. Those items would indeed document completion of the

renewal requirements, but collecting them would also place an impossible burden on the Division, which does not have the staff or resources to physically review each license renewal application and the wide variety of accompanying documentation that would correlate with the different renewal requirements applicable to the thousands of licenses issued by the Division. Medical professionals are highly trained, highly educated, intelligent individuals who may be held to a high level of responsibility. It is reasonable to accept the attestation of such an individual as documentation that she has completed her renewal requirements, without requiring further paperwork to verify that attestation.

As to Respondent's third argument, the Board finds that completion of continuing medical education does not substitute for a current NCC certification. Utah Administrative Code § R156-31b-303(3)(b) states explicitly that an APRN must be currently certified in her specialty in order to qualify for renewal. Nothing in the rule allows for an exception if the licensee can demonstrate knowledge of her specialty through completion of education or any other means. The Division relies on the NCC to review the education, verify that it pertains to the area of specialty, and is otherwise adequate and appropriate for each certification. All of Utah's licensed APRNs are required to obtain their certifications through national certification organizations in order to claim qualification for renewal, and Respondent has presented no authority under which she may claim an exception to this requirement.

CONCLUSIONS OF LAW

Utah Code § 58-1-501(2)(h) provides that an APRN commits unprofessional conduct if it is determined that she has practiced or attempted to practice nursing by any form of action or communication that is false, misleading, deceptive, or fraudulent. Utah Code § 58-1-401(2)(b) provides that the Division may take action against a licensee who is found to have engaged in

unprofessional conduct. Permissible actions include revoking, suspending, or restricting a license, placing a license on probation, or issuing a public or private reprimand to the licensee. In addition, Utah Code § 58-31b-503(4)(a)(i) and § 58-31b-503(6)(b)(i) allow for the imposition of a civil penalty, within certain limits, as established by the Division through rule. Utah Administrative Code § R156-31b-402(8) provides that a civil penalty of up to \$2,000 may be imposed for an initial offense involving a misrepresentation or misstatement to the Division. A civil penalty from \$2,000 to \$10,000 may be imposed for a subsequent offense.

Respondent has practiced nursing under her license, which she obtained by submitting two applications in which she attested that she was qualified in all respects for renewal. In order to claim this qualification, Respondent was required to hold a current certification from the NCC in her specialty. Because Respondent did not hold that certification, her attestations regarding her qualifications were false and misleading and constitute misrepresentations and misstatements to the Division. Therefore, the Board finds that Respondent has committed two violations of Section 58-1-501(2)(h) and may be fined for both an initial and a subsequent offense under the Utah Administrative Code § R156-31b-402(8).

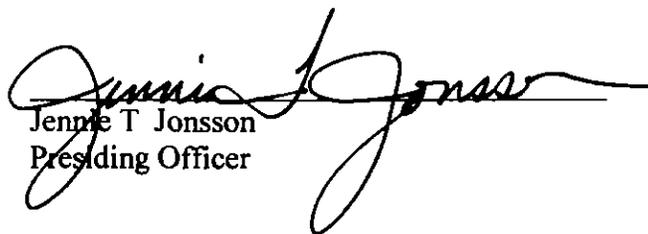
RECOMMENDED ORDER

On the basis of the findings of fact and conclusions of law outlined herein, the Utah Board of Nursing recommends to the Director of the Division (Director) that Respondent's license be revoked and that she be assessed a civil penalty of \$5,000.

DATED this 14th day of March, 2013

Signed by the Presiding Officer pursuant to a grant of authority
from the Utah Board of Nursing and on its behalf.

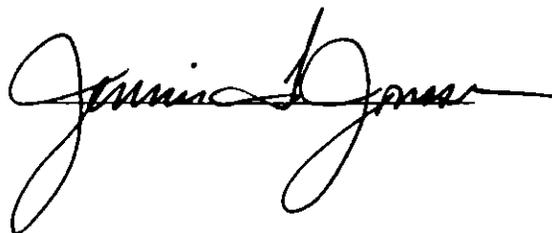
UTAH DEPARTMENT OF COMMERCE


Jennie T Jonsson
Presiding Officer

CERTIFICATE OF DELIVERY

I hereby certify that on the 14th day of March, 2013, the undersigned personally
delivered a true and correct copy of the foregoing document to the following:

Mark Steinagel
Director, Division of Occupational and Professional Licensing
Department of Commerce
160 East 300 South, Fourth Floor
Salt Lake City, UT 84114-6711



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 :
MONICA CECILIA COOK : **NOTICE OF AGENCY ACTION**
TO PRACTICE AS AN ADVANCED :
PRACTICE REGISTERED NURSE AND TO :
ADMINISTER AND PRESCRIBE CONTROLLED: :
SUBSTANCES IN THE STATE OF UTAH : Case No. DOPL-2012-302

THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING TO
Monica C. Cook ("Respondent"), 7428 Loch Doon Lane, Eagle
Mountain UT 84005:

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 petition, 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 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 to clarify,
refine or narrow the facts and violations alleged in the verified
petition.

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

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 Jennie Jonsson, 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 Jonsson can be contacted in writing at P O Box 146741, Salt Lake City, UT 84114-6701; by telephone at (801) 530-6706; or by electronic mail at jjonsson@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 30 days allowed or fail to attend or participate in any scheduled hearing, Judge Jonsson may enter a default against you without any further notice to you.

After the issuance of a default order, Judge Jonsson 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, July 30, 2012 at 9:00 a.m. by teleconference

During the conference, Judge Jonsson 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 licenses to practice as an advanced practice registered nurse and to administer and prescribe controlled substances 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 Board of Nursing will serve as fact finder in the hearing. **The hearing will be conducted as follows:**

Thursday, August 9, 2012 at 9:00 a.m. Conference Room 474
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 28 day of June, 2012.

W. Ray Walker
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 LICENSES
OF **MONICA CECILIA COOK**
TO PRACTICE AS AN ADVANCED
PRACTICE REGISTERED NURSE AND
TO ADMINISTER AND PRESCRIBE
CONTROLLED SUBSTANCES
IN THE STATE OF UTAH

VERIFIED PETITION

Case No DOPL- 2012-302

PRELIMINARY STATEMENT

These allegations were investigated by the Utah Division of Occupational and Professional Licensing (“Division”) upon complaints that **MONICA CECILIA COOK** (“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, the Nurse Practice Act, Utah Code Ann

§§ 58-31b-101 through 58-31b-801, and associated administrative rules. 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 first licensed to practice as an advanced practice registered nurse and to administer and prescribe controlled substances in the State of Utah pursuant to the Nurse Practice Act, Utah Code Ann. §§ 58-31b-101 through 58-31b-801, on or about July 14, 2005.

STATEMENT OF ALLEGATIONS

3 Respondent was first licensed to practice as an advanced practice registered nurse and to administer and prescribe controlled substances in the State of Utah on or about July 14, 2005.

4 On or about March 31, 2005 Respondent was certified as a "Woman's Health Care Nurse Practitioner" by the National Certification Corporation for Obstetric, Gynecologic, and Neonatal Nursing Specialties ("NCC").

5 On an application for APRN licensure filled out and submitted by Respondent on or about June 20, 2005, Respondent indicated that her NCC Woman's Health Care Nurse Practitioner certification expired on March 31, 2008

6 Respondent's NCC certification did expire on March 31, 2008

7 Respondent continued to practice as an advanced practice registered nurse and continued to administer and prescribe controlled substances to patients, in the State of Utah, from on or about April 1, 2008 until on or about February 23, 2012, despite the fact that her NCC certification had expired on March 31, 2008

8 On or about January 10, 2010 Respondent renewed her licenses to practice as an APRN and to administer and prescribe controlled substances online using the Division's online renewal system

9 Respondent made a representation at the time of her January 10, 2010 renewal that she was qualified in all respects for the renewal of her license

10 Respondent's representation on January 10, 2010 that she was qualified in all respects for the renewal of her license was not true in that Respondent was not currently certified in her specialty area of practice as required by Utah law

11 On or about January 2, 2012 Respondent renewed her licenses to practice as an APRN and to administer and prescribe controlled substances online using the Division's online renewal system

12 Respondent made a representation at the time of her January 2, 2012 renewal that she was qualified in all respects for the renewal of her license

13 Respondent's representation on January 2, 2012 that she was qualified in all respects for the renewal of her license was not true in that Respondent was not currently certified in her specialty area of practice as required by Utah law

14 On or about April 5, 2012 Respondent met with two Division investigators and admitted the misconduct described in paragraphs 3 through 13 above

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(1)(e) defines "unlawful conduct" to include

- (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,

18 Utah Code Ann § 58-1-501(2)(a) 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,

* * *

(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,

19 Utah Administrative Code R156-31b-303(3)(b) provides

(b) An APRN shall complete the following

(i) be currently certified or recertified in their specialty area of practice,

COUNT I

PRACTICING OR ATTEMPTING TO PRACTICE NURSING BY ANY FORM OF ACTION AND/OR COMMUNICATION WHICH IS FALSE, MISLEADING, DECEPTIVE, OR FRAUDULENT

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

21 Respondent practiced or attempted to practice nursing in the State of Utah by any form of action and/or communication which is false, misleading, deceptive, and/or fraudulent, as described in paragraphs 3 through 14 above

22 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)

COUNT II

**APPLYING AND OBTAINING LICENSURE AND/OR DEALING WITH THE
DIVISION THROUGH THE USE OF FRAUD, FORGERY, INTENTIONAL
DECEPTION, MISREPRESENTATION, MISSTATEMENT, AND/OR**

OMISSION

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

24 Respondent applied and obtained licensure and/or otherwise dealt with the Division through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, and/or omission, as described in paragraphs 3 through 14 above

25 Respondent has therefore engaged in unprofessional conduct as defined in Utah Code Ann § 58-1-501(2)(a) and unlawful conduct as defined in Utah Code Ann § 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 III

PRACTICING AS AN APRN AND ADMINISTERING AND PRESCRIBING

CONTROLLED SUBSTANCES WITHOUT OBTAINING REQUIRED

CERTIFICATION AND/OR RECERTIFICATION

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

27 Respondent practiced as an advanced practice registered nurse and administered and prescribed controlled substances in the State of Utah without first obtaining required certification or recertification, as described in paragraphs 3 through 14 above

28 Respondent has therefore engaged in unprofessional conduct as defined in Utah Code Ann § 58-1-501(2)(a) and Utah Administrative Code R156-31b-303(b), thus establishing grounds for sanctioning Respondent's license pursuant to Utah Code Ann § 58-1-401(1) and (2)

COUNT IV

VIOLATION OF A STATUTE OR RULE REGULATING THE PRACTICE OF

NURSING

29 Paragraphs 1 through 28 are incorporated by reference as though fully stated herein

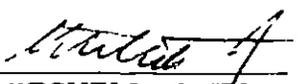
30 Respondent violated a statute or rule regulating the practice of nursing in the State of Utah, as described in paragraphs 3 through 14 above

31 Respondent has therefore engaged in unprofessional conduct as defined in Utah Code Ann § 58-1-501(2)(a), 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, the Nurse Practice Act, and associated administrative rules, and
- 3 That Respondent's licenses to practice as an advanced practice registered nurse and to administer and prescribe controlled substances in the State of Utah be immediately revoked, along with all residual rights pertaining to said licenses, 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 24th day of June, 2012


L MITCHELL JONES
Assistant Attorney General

