

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 :
STEVEN KENT BOOTH : **NOTICE OF AGENCY ACTION**
TO PRACTICE AS A :
REGISTERED NURSE :
IN THE STATE OF UTAH : Case No. DOPL-2013-65

THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING TO
Steven Kent Booth ("Respondent"),
Taylorsville UT 84123:

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 146701, 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 and an administrative fine.

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:**

March 27, 2013 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 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:**

Thursday, June 13, 2013, 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 19TH day of February, 2013.

W. Ray Walker
W. Ray Walker
Regulatory & Compliance
Officer



L. MITCHELL JONES (USB 5979)
Assistant Attorney General
JOHN E. SWALLOW (USB 5802)
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 **STEVEN KENT BOOTH** : VERIFIED PETITION
TO PRACTICE AS A :
REGISTERED NURSE : Case No. DOPL- 2013 - 65
IN THE STATE OF UTAH :

PRELIMINARY STATEMENT

These allegations were investigated by the Utah Division of Occupational and Professional Licensing (“Division”) upon complaints that **STEVEN KENT BOOTH** (“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 the Utah Controlled Substance Act, Utah Code

Ann. §§ 58-37-1 through 58-37-21. 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 a registered nurse in the State of Utah pursuant to the Nurse Practice Act, Utah Code Ann. §§ 58-31b-101 through 58-31b-801, on or about March 23, 1993.

STATEMENT OF ALLEGATIONS

3. On or about September 21, 2007 the Division filed a Notice of Agency Action and Verified Petition seeking to sanction Respondent's registered nurse license along with Respondent's health facility administrator license. On or about May 24, 2008 a formal adjudicative hearing was held before the Utah Board of Nursing ("Board"). Respondent, represented by counsel at the hearing, contested the allegations in the Division's Verified Petition.

4. On or about August 4, 2008 the Division issued an Order accepting the findings, conclusions of law, and recommended order of the Board. The Board's

Recommended Order found that Respondent admitted that he took 360 tablets of Endocet, a Schedule II controlled substance, which had been prescribed to one of the patients of the facility where Respondent was employed. Respondent said at first that he took the medication for his significant other's use, but later admitted using the Endocet himself. Respondent admitted using Lortab and oxycodone for a year. Respondent resigned his employment when confronted about the missing Endocet by his employer. Respondent's licenses were revoked, the revocations stayed, and Respondent's registered nurse and health facility administrator licenses were placed on probation, subject to certain terms and conditions, for a period of five years.

5. Respondent allowed his health facility administrator license to expire on or about May 31, 2011.

6. On or about August 4, 2011 Respondent voluntarily signed a Stipulation and Order in DOPL Case No. OSC 2007-194, wherein Respondent admitted that he failed to provide a copy of his probationary terms to his employer in Missouri and that he forged the signature of his employer on an employer probation report that he submitted to the Division. As a sanction, Respondent's term of probation was extended for two more years.

7. On or about March 31, 2012 Respondent voluntarily signed a Stipulation and Order in DOPL Case No. 2012-157, wherein Respondent admitted that he failed to submit an employer report and 12-step participation report to the Division as required in December 2011 and failed to notify two different employers of his probationary status.

As a sanction Respondent was fined \$50 (fifty dollars).

8. Respondent was required to provide a sample for drug and alcohol analysis on October 3, 2012. Respondent failed to provide a sample on that date in violation of paragraphs 2 and 4 of the Division's Order in DOPL Case No. 2007-202 and subsequent stipulated agreements.

9. Respondent failed to check-in to determine if he was required to provide a sample for drug and alcohol analysis on the following dates:

April 20, 2012;
April 22, 2012;
May 18, 2012;
May 24, 2012;
May 28, 2012;
June 24, 2012;
July 16, 2012;
August 4, 2012;
August 18, 2012;
September 2, 2012;
September 17, 2012;
October 21, 2012;
November 9, 2012;
November 15, 2012; and
December 19, 2012.

10. Respondent provided a sample for drug and alcohol analysis on October 15, 2012. The sample subsequently tested positive for the presence of hydrocodone, at 460 ng/mL, when the testing cutoff is 300 ng/mL. Respondent's sample tested positive for morphine at over 985 ng/mL, when the testifying cutoff is 300 ng/mL. Respondent did not possess a valid prescription for hydrocodone or morphine on October 15, 2012.

Respondent was not lawfully administered hydrocodone or morphine by a prescribing

practitioner on or recently before October 15, 2012. Respondent thereby violated paragraph 1 of the Division's Order in Case No. DOPL 2007-202 and subsequent stipulated agreements.

11. Respondent provided a sample for drug and alcohol analysis on November 13, 2012. The sample subsequently tested positive for the presence of morphine at 2,973 ng/mL, when the testing cutoff is 300 ng/mL. Respondent did not possess a valid prescription for morphine on November 13, 2012. Respondent was not lawfully administered morphine by a prescribing practitioner on or recently before November 13, 2012. Respondent thereby violated paragraph 1 of the Division's Order in Case No. DOPL 2007-202 and subsequent stipulated agreements.

12. On or about November 5, 2012 Respondent entered information into the Division's Affinity e-Health probation monitoring program. Respondent entered information representing that he had obtained a prescription for "hydrocodone compound" from a Utah physician hereinafter referred to as "Dr. Doe." Respondent entered information stating that the date of the prescription was October 8, 2012 and the end date was October 31, 2012.

13. On or about January 3, 2013 Respondent told a Division investigator that he obtained a prescription for hydrocodone in October 2012 from Dr. Doe and filled the prescription at the WalMart pharmacy in Bennion, Utah.

14. A Division investigator met with Dr. Doe and a member of his staff on January 8, 2013 who told the Division investigator that he did not issue a prescription of

any kind to Respondent in October 2012. The last time Dr. Doe treated Respondent was in March 2012. Records show that Dr. Doe has never issued a prescription for a controlled substance to Respondent.

15. A Division investigator contacted the pharmacist at the WalMart store #1686 in Taylorsville, Utah, who provided the investigator with documents showing that their pharmacy had not issued Respondent any type of controlled substance since October 27, 2011, a year before Respondent said he obtained hydrocodone from that same pharmacy.

APPLICABLE LAW

16. 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."

17. 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;

18. 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;

19. 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;

20. Utah Code Ann. § 58-31b-502 defines “unprofessional conduct” as:

(5) unlawfully obtaining, possessing, or using any prescription drug or illicit drug;

21. Utah Code Ann. § 58-37-8(2)(a)(i) provides that:

(a) It is unlawful:

(i) for any person knowingly and intentionally to possess or use a controlled substance analog or a controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the person’s professional practice, or as otherwise authorized by this chapter.

COUNT I

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

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

23. 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 15 above.

24. 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

UNLAWFUL POSSESSION AND/OR USE OF A CONTROLLED SUBSTANCE

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

26. Respondent unlawfully possessed and/or used a controlled substance, as described in paragraphs 3 through 15 above.

27. Respondent has therefore engaged in unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a) and § 58-31b-502(5), and unlawful conduct as defined in Utah Code Ann. § 58-37-8(2)(a)(i), thus establishing grounds for sanctioning

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

COUNT III

VIOLETING A DIVISION ORDER

28. Paragraphs 1 through 27 are incorporated by reference as though fully stated herein.

29. Respondent violated a Division Order, as described in paragraphs 3 through 15 above.

30. 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).

COUNT IV

**DEALING WITH THE DIVISION THROUGH THE USE OF FRAUD,
FORGERY, INTENTIONAL DECEPTION, MISREPRESENTATION,
MISSTATEMENT, OR OMISSION**

31. Paragraphs 1 through 30 are incorporated by reference as though fully stated herein.

32. Respondent dealt with the Division through fraud, forgery, intentional deception, misrepresentation, misstatement, or omission, as described in paragraphs 3 through 15 above.

33. 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).

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 the Utah Controlled Substance Act; and
3. That Respondent's license to practice as a registered nurse in the State of Utah be immediately revoked, along with all residual rights pertaining to said license; that Respondent not be permitted to submit an application for licensure as a nurse in the State of Utah for a period of five years from the date of revocation; 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 13th day of February, 2013.



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 13th day of February, 2013.


NOTARY PUBLIC

My Commission Expires:

2-25-2014

