

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
MARK STEINAGEL, DIRECTOR
DEPARTMENT OF COMMERCE
P.O. BOX 146741
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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 TO PRACTICE
AS A **REGISTERED NURSE** IN THE
STATE OF UTAH

ORDER

CASE NO. DOPL-2013-65

BY THE DIRECTOR:

W. Ray Walker, Acting Director of the Division of Occupational and Professional Licensing, has reviewed the August 19, 2013 findings of fact, conclusions of law, and recommended order of the Utah Board of Nursing in this matter and hereby adopts the recommendation in its entirety.

ORDER

Steven Kent Booth's license to practice as a registered nurse in the state of Utah is revoked. Mr. Booth is prohibited from reapplying for a license for a period of five years from the date of this order.

This order shall be effective on the signature date below.

DATED this 20 day of August, 2013.

UTAH DEPARTMENT OF COMMERCE



W. Ray Walker
Acting 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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**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND RECOMMENDED ORDER**

CASE NO. DOPL-2013-65

APPEARANCES:

Gary R. Guelker for Respondent.
L. Mitchell Jones for the Division of Occupational and Professional Licensing.

BOARD MEMBERS:

Peggy Brown
Cescilee Rall
Barbara Jeffries
Alisa Bangerter
Ralph Pittman
Diana Parrish

BY THE UTAH BOARD OF NURSING:

On February 19, 2013, the Utah Division of Occupational and Professional Licensing (Division) brought allegations against Steven Kent Booth (Respondent) through a Notice of Agency Action and Verified Petition. At all relevant times, Respondent has been licensed with

the Division and subject to its jurisdiction and regulation. Respondent is currently licensed as a registered nurse.

This matter was heard by six members of the Utah Board of Nursing (Board) in a hearing held August 8, 2013. The Board has considered and weighed the evidence 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

1. On May 24, 2008, Respondent appeared before the Board for a hearing on allegations that he had diverted a Schedule II controlled substance from a patient, then lied to a Division investigator by claiming to have taken the medication for his significant other rather than for his own use. Ultimately, Respondent admitted that took medications from two patients' homes when the opportunity to do so presented itself.
2. At the time of the May 24, 2008 hearing, Respondent was licensed as a health facility administrator and was working in the home care and hospice industry.
3. On August 4, 2008, the Board issued an order finding that Respondent had engaged in unprofessional and unlawful conduct. Respondent's health facility administrator license was revoked. However, the revocation was stayed for five years, during which time Respondent's license was placed on probation according to stated terms and conditions.
4. In relevant part, Respondent's probation prohibited him from personally possessing or using prescription drugs without a current and valid prescription; required him to provide samples for drug testing as requested by the Division; required him to notify any employer of his license probation; and required any employer to provide periodic reports.

5. On August 4, 2011, Respondent entered into a stipulation and order with the Division to resolve allegations that Respondent had violated his probation by using his position as a home health care provider to obtain, possess, and use controlled substances that were not legally prescribed to him; by failing to provide an employer with a copy of the order placing Respondent's license on probation; and by forging his employer's signature on a periodic report.
6. Respondent admitted to the allegations, and an order was entered to extend the term of Respondent's license probation by two years, or until approximately August 4, 2015.
7. In the instant hearing, Respondent testified that he never actually forged his employer's signature. Rather, he signed his own name in place of his employer's on the required report. Respondent explained that he signed the stipulation, effectively admitting to forgery, because taking steps to correct the language in the stipulation would have been more difficult and time consuming than simply signing.
8. On April 16, 2012, Respondent entered into a second stipulation and order with the Division. In this case, Respondent admitted to violating his license probation by failing to submit required reports and by failing to inform two employers of his license probation. Respondent was fined \$50.
9. Since April 16, 2012, Respondent has continued to violate his license probation.
Specifically:
 - a. On at least 15 occasions, Respondent has failed to check in with the Division probation monitoring program to determine if he is required to provide a sample for drug and alcohol analysis.

- b. On October 3, 2012, Respondent was required to provide a sample for drug and alcohol analysis, but failed to do so.
 - c. On October 15, 2012, Respondent provided a sample for drug and alcohol analysis. Respondent's sample tested positive for hydrocodone at 460 ng/mL and positive for morphine at 985 ng/mL. The testing cutoff for both hydrocodone and morphine is 300 ng/mL.
 - d. On November 13, 2012, Respondent provided a sample for drug and alcohol analysis. Respondent's sample tested positive for morphine at 2,973 ng/mL. The testing cutoff for morphine is 300 ng/mL.
10. At no relevant time has Respondent had a valid prescription for hydrocodone or morphine. At hearing, Respondent admitted that he obtained prescription medications from a friend, but emphasized that his doing so should be viewed as an isolated relapse. Respondent attributed his relapse to stress at work, neck and back pain from a car accident, and grief at his mother's death.
11. In addition to violating specific terms of his license probation by obtaining and using non-prescribed controlled substances, Respondent has provided false information to the Division. Specifically:
- a. On or about November 5, 2012, Respondent entered information into the Division's probation monitoring program, falsely representing that a Utah physician had given him a prescription for a "hydrocodone compound."
 - b. On or about January 3, 2013, when interviewed by a Division investigator, Respondent falsely claimed that he had a valid prescription for hydrocodone.

12. Respondent is currently employed as a director of nursing with a small hospice and home health care provider. Respondent's employer tracks the patients' prescriptions and investigates whenever it appears that medications might have gone missing or been misappropriated. All employees are subject to random drug screenings on the employer's request. To date, Respondent's employer has required a drug screening only one time.
13. Respondent's employer is aware of his addiction, including his recent relapse, and his history of license probation. Currently, Respondent is not assigned to provide regular in-home or hospice care to patients. His duties are almost exclusively administrative and supervisory.
14. It is possible that circumstances could arise in Respondent's current employment where he would be required to provide nursing care in a patient's private home, without supervision, and with access to prescription medications. In addition, Respondent has access to patient records, which include patient addresses and information about the medications that are prescribed for each patient and are likely to be found at each address. If Respondent were to present himself at a patient's home, neither the patient nor the family would have any immediate reason to question his presence or activities.

CONCLUSIONS OF LAW

15. Utah Code Ann. § 58-1-501(2)(h) provides that a registered nurse may not practice or attempt to practice the profession by any form of action or communication that is false, misleading, deceptive, or fraudulent. Respondent's disciplinary history demonstrates three prior instances of false, misleading, deceptive or fraudulent communications. First, on being investigated in 2008, he lied about his personal misuse of prescription medications. Second, after being placed on probation, he obtained employment without disclosing his

license probation, thus misleading his employer. Third, he either forged his employer's signature on a required report or, if his testimony at hearing is to be believed, signed a stipulation that he knew to contain a materially incorrect representation. These instances have been previously sanctioned; therefore, the Board declines to sanction them again. However, Respondent's pattern of false, misleading, deceptive, and fraudulent communications has continued. Most recently, he entered false information into the Division probation monitoring program and lied to an investigator about having a current prescription. The only explanation for Respondent's pattern of falsehood is that he understands the degree to which the truth might jeopardize his ability to license and practice as a registered nurse. Therefore, the Board concludes that Respondent's two recent false communications constitute attempts to maintain his license and employment in the nursing profession and, therefore, constitute two violations of Section 58-1-501(2)(h).

16. Utah Code § 58-31b-502(5) provides that a registered nurse commits unprofessional conduct if he unlawfully obtains, possesses, or uses any prescription drug. Utah Code § 58-37-8(2)(a)(i) provides that such conduct is unlawful, in addition to being unprofessional. Respondent's disciplinary history demonstrates two prior instances where Respondent took prescription drugs from others for his own use, and he admits in this action to having done so again. Where the first two instances have been sanctioned previously, the Board here finds one violation of Section 58-31b-502(5) and one violation of Section 58-37-8(2)(a)(i).
17. Utah Code § 58-1-501(2)(a) provides that a registered nurse commits unprofessional conduct if he is found to have violated any order regulating the profession of nursing.

Respondent's disciplinary history demonstrates two previous actions undertaken on Respondent's violating various terms and conditions of his license probation. These violations include failing to check in for drug testing, failing to provide a sample when requested, and failing to notify his employers of his history and license probation. In this action, Respondent admits that his two recent positive drug tests constitute two additional violations of his license probation. Therefore, the Board finds two violations of Utah Code § 58-1-501(2)(a).

18. Utah Code § 58-1-501(1)(e) provides that it is unlawful for a registered nurse to deal with the Division through the use of intentional deception, misrepresentation, or misstatement. As explained above, Respondent has a long history of lying to Division investigators, with the most recent instance occurring in the investigation of this action. In addition, Respondent intentionally entered false information into the Division's probation monitoring program. Where these two instances of intentional deception, misrepresentation, or misstatement have not been previously sanctioned, the Board finds two violations of Section 58-1-501(1)(e).
19. 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 or unlawful 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.
20. At hearing, Respondent argued that the Board could adequately protect the public by placing Respondent's license on probation with terms similar to those previously imposed. He emphasized that his license probation has been largely successful, helping him to stay drug free with the exception of his one recent relapse. In addition,

Respondent emphasized that his current employment has safeguards in place to restrict opportunities he might have to divert medications from patients.

21. The Board disagrees that yet another term of license probation will serve as adequate public protection. Respondent has previously been subject to conditions of license probation that required him to remain drug free, to communicate with employers, and to submit samples for drug testing. Respondent has repeatedly failed to comply with those conditions. In addition, Respondent's current employment in home health and hospice gives him opportunities to obtain prescription medications from patients who are too ill or unaware to notice a shortage. These are the very circumstances in which Respondent has previously diverted controlled substances. Although Respondent's employer has restricted his official access to patients and their medications, there is no way for any employer to monitor his actual access.
22. Also of concern to the Board is Respondent's history of dishonesty. He has repeatedly lied to the Division about his drug use and the degree to which he is in compliance with his license probation. Given this history, the Board does not consider the assurances Respondent offered at hearing to be particularly trustworthy. In short, Respondent has offered the Board nothing from which it might reliably conclude that he will not again succumb to his addiction. In these circumstances, the Board sees no reason to believe that imposing license restrictions similar to those previously imposed—and previously violated—would ensure the public safety.

RECOMMENDED ORDER

On the basis of the findings of fact and conclusions of law outlined herein, the Utah Board of Nursing recommends to the Acting Director of the Division that Respondent's license

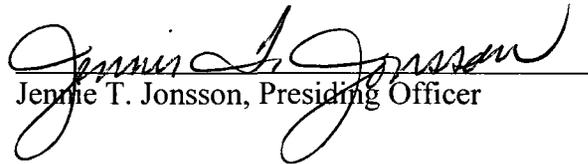
be revoked and that he be prohibited from reapplying for a license for a period of five years from the date of the order.

This recommended order shall be effective on the signature date below.

DATED this 19th day of August, 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 19th day of August, 2013, the undersigned personally delivered a true and correct copy of the foregoing document to the following:

W. Ray Walker
Acting Director, Division of Occupational and Professional Licensing
Department of Commerce
160 East 300 South, Fourth Floor
Salt Lake City, UT 84114-6711

