

2nd AGENDA

BOARD OF NURSING December 12, 2013 – 8:30 a.m.

Room 474 (Fourth Floor)
Heber M. Wells Building
160 E. 300 S. Salt Lake City, Utah

This agenda is subject to change up to 24 hours prior to the meeting.

ADMINISTRATIVE BUSINESS:

1. Sign Per Diem
2. Call Meeting to Order.
3. Review and approve October 24, 2013 and November 14, 2013 minutes

BOARD BUSINESS:

- 9:00 a.m.** - Ray Walker, UAPA presiding officer training
10:00 a.m. - Rule – Foreign Educated Nurses
10:30 a.m. - Connie Call, Compliance report, probationer requests/miscellaneous

PROBATION INTERVIEWS:

Please note: The compliance report, report from Committees and probation interviews may result in a closed meeting in accordance with §52-4-205(1)(a).

11:00 am Brett Davis, non compliance

LUNCH: 11:15 a.m. – 1:00 p.m.

PROBATION INTERVIEWS:

1:00 pm Corinne Kinikini, New Order
1:30 pm Sami Weese, New Order

BOARD BUSINESS:

- 2:00 p.m.** - Kathryn Sparks, discussion regarding insulin in the school setting
2:30 p.m. - Environmental Scan
- Proposed Rules regarding FSMB Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain
 - Discussion regarding amendments (verbal versus written requests) to Stipulation and Orders
 - NCSBN CORE Measures

NEXT MEETING: January 9, 2014

Meetings scheduled for the next quarter: February 13, 2014; March 13, 2013 and April 10, 2014

Note: In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify, Dave Taylor, ADA Coordinator, at least three working days prior to the meeting. Division of Occupational & Professional Licensing, 160 East 300 South, Salt Lake City, Utah 84115, 801-530-6628 or toll-free in Utah only 866-275-3675

REVISED CHECKLIST FOR PUBLIC MEETINGS

(Fill in the blanks to correspond to each respective board, commission, or committee.)

- I am, PEGGY BROWN, chairperson of the BOARD OF NURSING.
- I would like to call this meeting of the BOARD OF NURSING to order.
- It is now (time) 8:30 (am / pm) on December 12, 2013.
- This meeting is being held in room 474 of the HEBER WELLS BUILDING in SALT LAKE CITY UT.
- Notice of this meeting was provided as required under Utah's Open Meeting laws.
- In compliance with Utah's Open Meetings laws, this meeting is being recorded in its entirety. The recording will be posted to the Utah Public Notice Website no later than three business days following the meeting.
- In compliance with Utah's Open Meeting laws, minutes will also be prepared of this meeting and will be posted to the Utah Public Notice Website. Appropriately marked "pending approval" minutes will be posted no later than 30 days after the close of the meeting and "approved" minutes no later than three business days after approval.
- The following Board members are in attendance:

	YES	NO
<u>PEGGY BROWN</u> , Chairperson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>RALPH PITTMAN</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>CESCILEE RALL</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>MEGAN CHRISTENSEN</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>JAMIE JO CLINTON-LONT</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>DIANA PARRISH</u>	<input type="checkbox"/>	<input type="checkbox"/>
<u>CALVIN KREMIN</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>ALISA BANGERTER</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>BARBARA JEFFRIES</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>(VACANT)</u>	<input type="checkbox"/>	<input type="checkbox"/>
<u>(VACANT)</u>	<input type="checkbox"/>	<input type="checkbox"/>

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- The following Board members are absent: (Refer to the above list.)
- The following individuals representing DOPL and the Department of Commerce are in attendance:

	YES	NO
<u>Mark B. Steinagel</u> , Division Director	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Debra Hobbins</u> , Bureau Manager	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Shirlene Kimball</u> , Board Secretary	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Connie Call</u> , Compliance Specialist	<input type="checkbox"/>	<input type="checkbox"/>
<u>Ray</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

- We welcome any visitors and interested persons at this time. Please be sure to sign the attendance report for the meeting and identify yourself before speaking.
- As a courtesy to everyone participating in this meeting, at this time we ask for all cell phones, pagers, and other electronic devices to be turned off or changed to silent mode.
- Board motions and votes will be recorded in the minutes.
- Let us now proceed with the agenda.
- _____ (End of the Meeting) It is now (time) _____: _____ (am / pm), and this meeting is adjourned.

R156-1-302. Consideration of Good Moral Character, Unlawful Conduct, Unprofessional Conduct, or Other Mental or Physical Condition.

Pursuant to the provisions of Subsection 58-1-401(1) and (2), if an applicant or licensee has failed to demonstrate good moral character, has been involved in unlawful conduct, has been involved in unprofessional conduct, or has any other mental or physical condition which conduct or condition, when considered with the duties and responsibilities of the license held or to be held, demonstrates a threat or potential threat to the public health, safety or welfare, the Division may consider various relevant factors in determining what action to take regarding licensure including the following:

- (1) aggravating circumstances, as defined in Subsection R156-1-102(2);
- (2) mitigating circumstances, as defined in Subsection R156-1-102(16);
- (3) the degree of risk to the public health, safety or welfare;
- (4) the degree of risk that a conduct will be repeated;
- (5) the degree of risk that a condition will continue;
- (6) the magnitude of the conduct or condition as it relates to the harm or potential harm;
- (7) the length of time since the last conduct or condition has occurred;
- (8) the current criminal probationary or parole status of the applicant or licensee;
- (9) the current administrative status of the applicant or licensee;
- (10) results of previously submitted applications, for any regulated profession or occupation;
- (11) results from any action, taken by any professional licensing agency, criminal or administrative agency, employer, practice monitoring group, entity or association;
- (12) evidence presented indicating that restricting or monitoring an individual's practice, conditions or conduct can protect the public health, safety or welfare;
- (13) psychological evaluations; or
- (14) any other information the Division or the board reasonably believes may assist in evaluating the degree of threat or potential threat to the public health, safety or welfare.

R156-1-102. Definitions.

In addition to the definitions in Title 58, as used in Title 58 or this rule:

- (2) "Aggravating circumstances" means any consideration or factors that may justify an increase in the severity of an action to be imposed upon an applicant or licensee. Aggravating circumstances include:
 - (a) prior record of disciplinary action, unlawful conduct, or unprofessional conduct;
 - (b) dishonest or selfish motive;
 - (c) pattern of misconduct;
 - (d) multiple offenses;
 - (e) obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the Division;
 - (f) submission of false evidence, false statements or other deceptive practices during the disciplinary process including creating, destroying or altering records after an investigation has begun;
 - (g) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the Division;

(h) vulnerability of the victim;
(i) lack of good faith to make restitution or to rectify the consequences of the misconduct involved;
(j) illegal conduct, including the use of controlled substances; and
(k) intimidation or threats of withholding clients' records or other detrimental consequences if the client reports or testifies regarding the unprofessional or unlawful conduct.

(16) "Mitigating circumstances" means any consideration or factors that may justify a reduction in the severity of an action to be imposed upon an applicant or licensee.

(a) Mitigating circumstances include:

(i) absence of prior record of disciplinary action, unlawful conduct or unprofessional conduct;

(ii) personal, mental or emotional problems provided such problems have not posed a risk to the health, safety or welfare of the public or clients served such as drug or alcohol abuse while engaged in work situations or similar situations where the licensee or applicant should know that they should refrain from engaging in activities that may pose such a risk;

(iii) timely and good faith effort to make restitution or rectify the consequences of the misconduct involved;

(iv) full and free disclosure to the client or Division prior to the discovery of any misconduct;

(v) inexperience in the practice of the occupation and profession provided such inexperience is not the result of failure to obtain appropriate education or consultation that the applicant or licensee should have known they should obtain prior to beginning work on a particular matter;

(vi) imposition of other penalties or sanctions if the other penalties and sanctions have alleviated threats to the public health, safety, and welfare; and

(vii) remorse.

(b) The following factors may not be considered as mitigating circumstances:

(i) forced or compelled restitution;

(ii) withdrawal of complaint by client or other affected persons;

(iii) resignation prior to disciplinary proceedings;

(iv) failure of injured client to complain;

(v) complainant's recommendation as to sanction; and

(vi) in an informal disciplinary proceeding brought pursuant to Subsection 58-1-501(2)(c) or (d) or Subsections R156-1-501(1) through (5):

(A) argument that a prior proceeding was conducted unfairly, contrary to law, or in violation of due process or any other procedural safeguard;

(B) argument that a prior finding or sanction was contrary to the evidence or entered without due consideration of relevant evidence;

(C) argument that a respondent was not adequately represented by counsel in a prior proceeding; and

(D) argument or evidence that former statements of a respondent made in conjunction with a plea or settlement agreement are not, in fact, true.

UTAH ADMINISTRATIVE PROCEDURES ACT

Authority

- Statute: 63G-4
- Rules: R151-4
R156-46b



UTAH ADMINISTRATIVE PROCEDURES ACT

Core Concept

- Administrative Law requires two things:
 - Notice; and
 - Opportunity to be Heard.



UTAH ADMINISTRATIVE PROCEDURES ACT

Scope of Act

- Governs, with exceptions
All state agency actions that determine the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license, and
 - Judicial review of these actions



UTAH ADMINISTRATIVE PROCEDURES ACT

Scope of Act



- Exceptions include:
 - Procedures for making agency rules, or the judicial review of those procedures or rules.
 - Applications for employment and internal personnel actions within an agency concerning its own employees, or judicial review of those actions.
 - Issuance of citations under Title 58, unless contested, and
 - State agency actions under Title 63, Chapter 2, GRAMA, except per Section 63-2-603.

UTAH ADMINISTRATIVE PROCEDURES ACT

Definitions



- "Adjudicative proceeding" means an agency action or proceeding described in Section 63G-4-102.
- "Presiding officer" means an agency head, or an individual or body of individuals designated by the agency head, by the agency rules, or by statute to conduct an adjudicative proceeding.

If fairness to the parties is not compromised, an agency may substitute one presiding officer for another during any proceeding.

A person who acts as a presiding officer at one phase of a proceeding need not continue as presiding officer through all phases of a proceeding.

UTAH ADMINISTRATIVE PROCEDURES ACT

Commencement of Adjudicative Proceedings



- Commenced by either:
 - A notice of agency action, if commenced by the agency, or
 - A request for agency action if commenced by persons other than the agency.

UTAH ADMINISTRATIVE PROCEDURES ACT

Options Before or During Adjudicative Proceedings



- UAPA allows an agency prior to and a presiding officer during an adjudicative proceeding to:
 - Request or order conferences with parties and interested persons to
 - Encourage settlement,
 - Clarify the issues,
 - Simplify the evidence,
 - Facilitate discovery, or
 - Expedite the proceedings

UTAH ADMINISTRATIVE PROCEDURES ACT

Notices of Agency Action



- Must be in writing, signed by a presiding officer, and include:
 - Names and mailing addresses of all persons to whom notice is being given by presiding officer, and the name, title and mailing address of any attorney or employee who has been designated to appear for the agency.
 - The agency's file number.
 - The name of the adjudicative proceeding.
 - The date that the notice of agency action was mailed.
 - Statement whether the proceeding is to be conducted formally or informally.

UTAH ADMINISTRATIVE PROCEDURES ACT

Notices of Agency Action continued



- If formal (and for DOP), informally, a statement that each respondent must file a written response within 30 days of the mailing date of the notice.
- If formal or if otherwise required, a statement of the time and place of any scheduled hearing, a statement of purpose for which the hearing is held, and a statement that if a party fails to attend or participate, they may be held in default.
- If informal and a hearing is permitted and may be requested within a prescribed time, a statement that the parties may request a hearing within the time specified.

UTAH ADMINISTRATIVE PROCEDURES ACT

Notices of Agency Action continued



- A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;
- The name, title, mailing address, and telephone number of the presiding officer; and
- A statement of the purpose of the adjudicative proceeding and, to the extent known by the presiding officer, the questions to be decided

UTAH ADMINISTRATIVE PROCEDURES ACT

Notices of Agency Action continued



- It should be noted that in formal proceedings, DOPL separates the specified content requirements into two documents:
 - Petition (charging document), and
 - Notice of agency action which incorporates by reference the petition.

UTAH ADMINISTRATIVE PROCEDURES ACT

Requests for Agency Action



- Where law permits persons other than the agency to initiate adjudicative proceedings, request must be in writing, signed by the requester or their representative and include:
 - The names and addresses of all persons to whom a copy of the request is being sent;
 - The agency's file number, if known;
 - The date the request was mailed;
 - A statement of the legal authority and jurisdiction under which the request is made;
 - A statement of the relief for action sought; and
 - Statement of the facts and reasons forming the basis for relief or agency action.

UTAH ADMINISTRATIVE PROCEDURES ACT

Requests for Agency Action continued



- Agency may by rule prescribe one or more forms for eliciting information required in a request.
- Requests must be filed with the agency and mailed to each person having a direct interest in the request.

UTAH ADMINISTRATIVE PROCEDURES ACT

Requests for Agency Action continued



- The presiding officer must promptly review a request and notify the requesting party in writing.
That the request is granted and that the adjudicative proceeding is completed.
That the request is denied. And, if the proceeding is a formal one, that the party may request a hearing before the agency to challenge the denial. And
That further proceedings are required to determine the agency's response to the request.
- Notices of denial or further proceedings must meet the content requirements specified in Subsection 63G-4-201(e)

UTAH ADMINISTRATIVE PROCEDURES ACT

Classification of Adjudicative Proceedings



- All proceedings are formal unless classified by an agency as informal.
- Proceedings may be classified informal if
The use of informal procedures does not violate any procedural requirement imposed by a statute.
In the view of the agency, the rights of the parties to the proceeding will be reasonably protected by the informal procedures.
In the view of the agency, the agency's administrative efficiency will be enhanced by categorization, and
The cost of formal adjudicative proceedings outweighs the potential benefits to the public of a formal proceeding.

UTAH ADMINISTRATIVE PROCEDURES ACT

Classification of Adjudicative Proceedings



- Any time before a final order is issued in any adjudicative proceeding, the presiding officer may convert a formal proceeding to an informal one or vice versa if:
 - Conversion of the proceeding is in the public interest, and
 - Conversion of the proceeding does not unfairly prejudice the rights of any party

UTAH ADMINISTRATIVE PROCEDURES ACT

Informal Adjudicative Proceedings



- File review case decided without a hearing unless a hearing is required by statute or rule.
- Case may be put on a board agenda for review and recommendation. Normally includes taking public comment.
- Discovery prohibited, but access to agency files is generally permitted.
- Written response required by DOPL.
- Presiding officer at DOPL is the bureau manager.
- Subpoenas may be issued to compel production of necessary evidence.
- Intervention prohibited.

UTAH ADMINISTRATIVE PROCEDURES ACT

Informal Adjudicative Proceedings



- Hearings held only if required by statute or rule or permitted by rule and timely requested.
- Presiding officer designated by director or by statute or rule.
- Simplified hearings
 - Notice to parties required.
 - Open to the public and recorded.
 - Parties permitted to testify, present evidence and comment on the issues.
 - Rules of evidence generally inapplicable, e.g., hearsay permitted but on contested issues, rule of other residual evidence applies.

UTAH ADMINISTRATIVE PROCEDURES ACT

Informal Adjudicative Proceedings



- Within a reasonable time after the close of an informal proceeding, the presiding officer must issue a signed order in writing stating:
 - The decision.
 - The reasons for the decision, and
 - A notice of any right to administrative or judicial appeal available to the parties and the time frame for filing an appeal.
- The order must be based on the facts appearing in the agency's files and on the facts presented in evidence at any hearings.
- Order mailed to the parties.

UTAH ADMINISTRATIVE PROCEDURES ACT

Formal Adjudicative Proceedings



- Full hearing similar to a trial.
- Respondent required to file a written response within 30 days of mailing date of the notice.
- Presiding officers for DOPL proceedings:
 - Regulatory and Compliance Officer issues notices.
 - Administrative law judge conducts proceeding and rules on motions and evidence.
 - Licensing board acts as fact-finder and issues findings of fact, conclusions of law and recommended order.
 - Director issues final order and may issue amended findings of fact, conclusions of law and order after consultation with the board.

UTAH ADMINISTRATIVE PROCEDURES ACT

Formal Adjudicative Proceedings



- Discovery permitted but not to the extent of rules of civil procedure.
- Subpoenas permitted to compel production of witnesses or evidence.
- Parties permitted to make an opening statement, present evidence, argue, respond, conduct cross-examination and submit rebuttal evidence.
- Testimony given under oath.
- Record made by a court reporter.
- Intervention permitted if petitioner establishes that petitioner's legal interests may be substantially affected and the interests of justice and the orderly and prompt conduct of the proceedings will not be materially impaired by allowing intervention.

UTAH ADMINISTRATIVE PROCEDURES ACT

Formal Adjudicative Proceedings



- Within a reasonable time following the hearing, the presiding officer shall sign and issue an order that includes:
 - Findings of fact;
 - Conclusions of law;
 - Statement of reasons;
 - Statement of any relief ordered;
 - Notice of any right to request reconsideration or administrative or judicial review, and the time frame for doing so.
- Order must be based exclusively on the evidence of record in the proceeding or facts officially noted. However, the presiding officer may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

UTAH ADMINISTRATIVE PROCEDURES ACT

Default



- Presiding officer may enter a default against a party if:
 - A party to an informal proceeding fails to participate;
 - A party fails to file a response when required; or
 - A party to a formal proceeding fails to attend a hearing or participate in a hearing.
- After entering a default, the presiding officer must conduct any further proceedings necessary to complete the proceeding.
- Order of default must include a statement of reasons.
- Defaulted party permitted to file a motion for set-aside.

UTAH ADMINISTRATIVE PROCEDURES ACT

Agency Review



- Commerce rules allow agency review of all DOPL actions with limited exceptions:
 - Agency reconsideration available for some exceptions.
- Requests must:
 - Be filed within 30 days after the issuance of the order;
 - Be signed by the party seeking review;
 - State the grounds for review and the relief requested;
 - State the date upon which it was mailed; and
 - Be mailed to the presiding officer and to each party.

UTAH ADMINISTRATIVE PROCEDURES ACT

Agency Review



- Any party may file a response to a request within 15 days of the mailing date of the request.
 - Must be mailed to the presiding officer and each of the parties
- Presiding officer may require briefs, memoranda, or oral argument from the parties.

UTAH ADMINISTRATIVE PROCEDURES ACT

Agency Review



- Within a reasonable time after the filing of the response, other filings, and any oral argument, a signed written order must be issued by the presiding officer containing:
 - A designation of the staying or rule permitting or retaining review
 - Statement of the issues reviewed
 - Findings of fact
 - Conclusions of law
 - Reasons for the disposition
 - Whether the decision below is to be affirmed, reversed, or modified, and/or remanded.
 - A notice of any right to further administrative or judicial review and the time limit for requesting it

UTAH ADMINISTRATIVE PROCEDURES ACT

Judicial Review



- Agency review, where permitted, is a prerequisite to judicial review
- Petition for judicial review must be filed within 30 days after the date issuance of the order constituting final agency action
- Petitions for stays during appeal normally made to the agency. Court may only overturn the agency and enter a stay upon a finding set forth in Subsection 63-46b-18(4)
- Informal proceedings are appealed to the district courts to review by triable jury without a jury
- Formal proceedings are appealed to the court of appeals to review on the record

UTAH ADMINISTRATIVE PROCEDURES ACT

Judicial Review



- Appellate court may grant relief only if, on the basis of the agency's record, it determines that a person seeking judicial review has been substantially prejudiced by any of the following:
 - Agency action, or the statute or rule on which the agency action is based, is unconstitutional on its face or as applied.
 - The agency has acted beyond its jurisdiction.
 - The agency has not decided all of the issues involved.
 - The agency has erroneously interpreted or applied the law.
 - The agency has engaged in any unlawful procedure or decision-making process, or has failed to follow prescribed procedure.

UTAH ADMINISTRATIVE PROCEDURES ACT

Judicial Review



- The persons taking the agency action were illegally constituted as a decision-making body, or were subject to disqualification.
- The agency action is based upon a determination of fact, space or implied by the agency that is not supported by substantial evidence when viewed in light of the whole record before the court, or
- The agency action is
 - An abuse of discretion.
 - Contrary to a rule of the agency.
 - Contrary to the agency's prior practice, unless the agency justifies the inconsistency giving facts and reasons that demonstrate a fair and rational basis for the inconsistency, or
 - Otherwise arbitrary or capricious.

UTAH ADMINISTRATIVE PROCEDURES ACT

Emergency Proceedings



- An agency may issue an order on an emergency basis without complying with the requirements of UAPA if:
 - The facts known by the agency show that an immediate and significant danger to the public health, safety, or welfare exists, and
 - The threat requires immediate action by the agency.
- Must promptly commence a formal adjudicative proceeding following the issuance of the order.

UTAH ADMINISTRATIVE PROCEDURES ACT

Emergency Proceedings



- Before conducting an emergency proceeding, DOPH is required to review the proposed action with a committee of no less than three licensees appointed by the chair of the licensing board for the profession involved.
- In issuing its emergency order, DOPH is required to:
 - Limit the order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;
 - Issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the using emergency proceedings; and
 - Give immediate notice to the persons who are required to comply with the order.

UTAH ADMINISTRATIVE PROCEDURES ACT

Emergency Proceedings



- Subject of an Order issued in an emergency proceeding may request a hearing to challenge the order.
- Hearing must be held as soon as reasonably practicable, but not later than 20 days after receipt of request.
- Director designates presiding officer for hearing. Cannot be anyone who participated in issuing the emergency order.
- DOPH has burden of proof to establish the requirements of 63G-4-502 have been met.
- Order must be issued in accordance with 63G-4-208 within 15 calendar days following the hearing.

UTAH ADMINISTRATIVE PROCEDURES ACT

Declaratory Orders



- Any person may file a request for agency action, requesting that an agency issue a declaratory order determining the applicability of a statute, rule, or order. Rules:
 - Provide for the form, contents, and filing of petitions.
 - Set classes of circumstances under which an agency will not issue a declaratory order.
 - Commerce rules make these orders the exception rather than the rule.

**UTAH ADMINISTRATIVE
PROCEDURES ACT**

QUESTIONS



NOTICES OF AGENCY ACTION

• **FORMAL**

- Disciplinary proceedings not Designated as Informal
- Unilateral modification of a disciplinary order
- Termination of diversion agreements
- Nondisciplinary proceedings not Designated as Informal

• **INFORMAL**

- Nondisciplinary proceedings – Cancellation of Licensure
- Disciplinary proceedings
 - Cases before Construction Services Commission
 - 58-1-501(2)(a) – OSC for violation of order
 - 58-1-502(2)(c) – Conviction of crimes
 - 58-1-502(2)(d) – Disciplinary action in other jurisdiction
 - R156-1-501(1) – License surrender in other jurisdiction
 - R156-1-501(2) – Failing to properly identify L.L.C.
 - R156-1-501(3) – Failing to properly identify L.P.
 - R156-1-501(4) – Failing to properly identify P.C.
 - R156-1-501(5) – Using unregistered DBA

CITATIONS (Note: Exempt from UAPA unless contested)

- Citation

RESPONSE

Required

Requested

HEARING

Yes*

Yes*

Yes*

Yes*

No

Upon Request

PRESIDING OFFICER

Issue NOAAs R&CO
 Conduct Proceedings ALJ
 Fact Finder Board
 Recommended Orders Board#
 Final Orders Director#

Issue NOAAs R&CO
 Conduct Proceedings ALJ
 Fact Finder Board
 Recommended Orders Board#
 Final Orders Director#

Issue NOAAs R&CO
 Conduct Proceedings ALJ
 Fact Finder ALJ
 Recommended Orders ALJ
 Final Orders Director

Issue NOAAs R&CO
 Conduct Proceedings ALJ
 Fact Finder Board
 Recommended Orders Board#
 Final Orders Director#

Final Orders Director

Final Orders CSC#
 Final Orders Director#
 Final Orders Director#

Issue Citations Investigator
 Orders on Written Submission CC
 Conduct Informal Hearings R&CO
 Fact Finder at Hearings R&CO
 Orders at Hearing R&CO
 Payment Adjustments CC

* Unless Settled by Stipulation and Order # CSC with Concurrence of Director for Cases before CSC

REQUESTS FOR AGENCY ACTION

• **FORMAL**

- Special appeals boards (58-1-402)
- Declaratory orders
- Board of appeals (15A-1-207(3))

HEARING

PRESIDING OFFICER

• **INFORMAL**

- Licensure
 - Approval of application for initial licensure, renewal or reinstatement of licensure, relicensure, inactive licensure, or emeritus status.
 - Denial of application for initial licensure, renewal or reinstatement of licensure, relicensure, inactive licensure, or emeritus status.
 - Approval or denial of nondisciplinary surrender of licensure
- Lien Recovery
 - Approval or denial of claims against LRF
 - Payment of approved LRF claim payments
- Diversion Program
 - Matters relating to diversion program
 - Approval or denial of request for entry into Diversion
- Declaratory Orders
- Nondisciplinary Proceedings
- Disciplinary Proceedings
 - Sanctions imposed in a MOU
 - Request for Modification of Disciplinary Order
 - Request for Conversion

Yes Issue NOAAs R&CO

Yes Conduct Proceedings ALJ
Fact Finder Board
Recommended Orders Board
Final Orders Director

Yes Proper Filing BM
Conduct Proceedings ALJ
Fact Finder UBCC
Recommended Orders UBCC
Final Orders Director

No Issue Orders BM

No Issue Orders BM

No Issue Orders BM

No Approval & Denial Letters PM
Orders & Payments Director

No Various PM
Approvals Director
Denials Director

No Issue Orders Director

No Clerical & Procedural Mistakes BM
Other Requests Director

No Issue Order Director
Recommendation Board
Final Order BM
Orders Director
Director

All Other Requests Permitted by Statute or Rule not Designated as Formal

No Issue Order Director

INFORMAL ADJUDICATIVE PROCEEDINGS CHECKLIST

Updated 9/14/2012

Evaluate application for renewal or evidence supporting a disciplinary action and determine if it is appropriate to deny renewal or initiate informal disciplinary action. Consult with AG as necessary.

Note¹: Denial of renewal, violations of probation (58-1-501(2)(a)), criminal convictions (58-1-501(2)(c)), action by another jurisdiction (58-1-501(2)(d)), or violations of R156-1-501 (1) through (5) are now informal actions.

Note²: You can file a motion to convert other formal actions to informal actions if deemed appropriate at any point prior to entry of the final order. You must be able to show that: (1) it is in the public interest; and (2) it won't unfairly prejudice the rights of a party. See 63G-4-202(3). Consult with AG as necessary. These motions go to Mark for action.

Draft a denial of renewal letter or notice of agency action using templates.

For denial of renewals, determine whether board review is necessary. If not, issue the denial letter. If so, put on the next board agenda and notify the licensee.

For notices of agency action, give them to Carol to assign a case # and to set up a disciplinary file. She will forward them to Ray for action and if issued will mail them with a certificate of mailing.

Wait for written response or for 30 days allowed for response, whichever occurs first. Give any responses received directly to Carol for inclusion in the disciplinary file.

If a response is received, review and determine whether the response is sufficient to resolve the issues. If so, dismiss the notice of agency action. If not, draft a letter to the licensee notifying them: (1) why their response is insufficient, and that it can be still be supplemented; (2) when the notice of action is scheduled as an agenda item for board review, and that their public comment is permitted; and (3) what action the Division will be recommending to the board.

If a response is not received, put on next board agenda for entry of default.

Prepare draft disciplinary orders incorporating the recommendations of Division.

At board meeting present the denials of renewal and/or notices of agency action on the agenda to the board, invite them to take public comment from licensees present, discuss, and recommend action to the Division by motion.

Modify disciplinary orders as necessary following the board meeting.

Issue disciplinary orders and/or denials of renewal. Provide disciplinary orders to Carol for certificate of service mailing and inclusion in the disciplinary file.

Note³: You can file a motion to convert informal actions to formal actions if determined appropriate at any point prior to entry of the final order. You must be able to show that: (1) it is in the public interest, and (2) it won't unfairly prejudice the rights of a party. See 63G-4-202(3). Consult with AG as necessary. These motions go to Mark for action.

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 [LICENSEE]	:	FINDINGS OF FACT, CONCLUSIONS OF LAW, RECOMMENDATION, AND ORDER
TO PRACTICE AS A [LICENSE]	:	
IN THE STATE OF UTAH	:	
	:	Case No. DOPL-OSC-20[XX-XXX]

FINDINGS OF FACT

1. Respondent was initially licensed in Utah as a [license classification] on [date].
2. Respondent was continuously licensed during the timeframes addressed herein.
3. The Division of Occupational and Professional Licensing (the "Division") entered order [#] placing the license of [Name] ("Respondent") on probation on [Date].
4. On or about [Date] the Division did a file review to determine whether Respondent is in compliance with the probationary order. That review shows that Respondent is out of compliance with the probationary order as follows:
 - (a) Paragraph number [number] of the probationary order requires [describe]. The evidence shows that Respondent [describe].
 - (b) Paragraph number [number] of the probationary order requires [describe]. The evidence shows that Respondent [describe].
 - (c) Paragraph number [number] of the probationary order requires [describe]. The evidence shows that Respondent [describe].
5. On [Date] the Division filed a Notice of Agency Action and Order to Show Cause ("Notice") alleging that Respondent failed to comply with [his/her] probationary order as described. The Notice alleges that by so doing Respondent engaged in unprofessional conduct in violation of Utah Code Annotated § 58-1-501(2)(a). The Notice seeks further

disciplinary action against Respondent pursuant to Utah Code Annotated § 58-1-401(2).

6. This matter is classified as an informal proceeding pursuant to Utah Administrative Code § R156-46b-202(2)(c).

7. A written response was required in this matter pursuant to Utah Administrative Code § R156-46b-402 and the Notice filed herein. Respondent filed a written response to the Notice on [Date] in which Respondent [describe].

8. This Notice was placed on the agenda of the [Date] meeting of the [Board] ("Board") for its recommended action. Respondent was notified by letter of the meeting and invited to attend and, at the discretion of the chair of the Board, provide public comment. Respondent [did] [did not] attend the meeting.

9. The Bureau Manager over [license classification] summarized Respondent's unprofessional conduct as described for the Board at its meeting. [The Bureau Manager (did not make a recommendation regarding action against Respondent's license.) (recommended that Respondent's license be (suspended) (revoked) (other).)]

10. [Respondent (was) (was not) invited to provide public comment] [and provided the following additional relevant information (describe).]

11. The Board considered the information presented and recommended that Respondent's license be [suspended] [revoked] [other].

CONCLUSIONS OF LAW

12. A review of relevant information supports a conclusion that Respondent violated [his/her] disciplinary order as set forth above constituting unprofessional conduct in violation of Utah Code Annotated § 58-1-501(2)(a).

13. Respondent's failure to comply with [his/her] probationary order constitutes a sufficient basis for further disciplinary action against Respondent in accordance with Utah Code Annotated § 58-1-401(2).

14. The following aggravating circumstances apply [describe in numbered subparagraphs – See § R156-1-302 and § R156-1-102(2)].

15. The following mitigating circumstances apply [describe in numbered subparagraphs – See § R156-1-302 and § R156-1-102(16)].

ORDER

After a careful consideration of this matter, the Findings of Fact and Conclusions of Law herein are hereby adopted by the Director. The Director concurs with the order recommended by the Board.

WHEREFORE, IT IS ORDERED Respondent's license to practice as a [license classification] in this state shall be [suspended] [revoked] [other].

Dated this day of 20xx

MARK B. STEINAGEL
Director

Agency review of this order may be obtained by filing a request for agency review within thirty (30) days after the date of this order. If you choose to file a request for agency review, you must adhere to the attached procedures.

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of _____, 2012, a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, RECOMMENDATION, AND ORDER, was sent first class mail postage prepaid to the following:

[LICENSEE]
[Street Address]
[City, State Zip]

Administrative Secretary

Draft Legislative Language for Resolving Psych APRN Intern License Issue

58-31b-302. Qualifications for licensure or certification - Criminal background checks.

....

(4) Applicants for licensure as an advanced practice registered nurse shall:

(a) submit to the division an application on a form prescribed by the division;

(b) pay to the division a fee determined under Section 63J-1-504;

(c) be in a condition of physical and mental health which will allow the applicant to practice safely as an advanced practice registered nurse;

(d) hold a current registered nurse license in good standing issued by the state or be qualified at the time for licensure as a registered nurse;

(e) (i) have earned a graduate degree in:

(A) an advanced practice registered nurse nursing education program; or

(B) a related area of specialized knowledge as determined appropriate by the division in collaboration with the board; or

(ii) have completed a nurse anesthesia program in accordance with Subsection (4)(f)(ii);

(f) have completed:

(i) course work in patient assessment, diagnosis and treatment, and pharmacotherapeutics from an education program approved by the division in collaboration with the board; or

(ii) a nurse anesthesia program which is approved by the Council on Accreditation of Nurse Anesthesia Educational Programs;

(g) to practice within the psychiatric and mental health nursing specialty, after completion of a doctorate or master's degree required for licensure.

(i) have made arrangements to complete supervised clinical practice in psychiatric and mental health nursing, including psychotherapy as defined by division rule, that will satisfy the requirements of Section 58-31b-305(2)(c);

(h) have passed the examinations as required by division rule made in collaboration with the board;

(i) be currently certified by a program approved by the division in collaboration with the board and submit evidence satisfactory to the division of the certification; and

(j) meet with the board, if requested, to determine the applicant's qualifications for licensure.

....

58-31b-305. Term of license - Expiration - Renewal.

(1) The division shall issue each license or certification under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(2) At the time of renewal, the licensee or person certified under this chapter shall show satisfactory evidence of each of the following renewal requirements:

(a) complete and submit an application for renewal in a form prescribed by the division and pay the renewal fee determined under Section 63J-1-504;

(b) meet continuing competency requirements as established by rule, which shall include continuing education requirements for medication aide certified established by the board and adopted by the division by rule; and

Deleted: successfully completed

Deleted: after completion of a doctorate or master's degree required for licensure

Deleted: to practice within the psychiatric and mental health nursing specialty

Deleted: and

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(c) if the licensee is a person licensed as an advanced practice registered nurse specializing in psychiatric mental health nursing,

(i) have successfully completed supervised clinical practice in psychiatric and mental health nursing, as defined by division rule, or

(ii) if renewing in less than two years from the date of initial licensure, be making appropriate progress toward the requirements of Section 58-31b-305(2)(c)(i).

(3) In addition to the renewal requirements under Subsection (2), a person licensed as an advanced practice registered nurse shall be currently certified by a program approved by the division in collaboration with the board and submit evidence satisfactory to the division of that qualification or if licensed prior to July 1, 1992, meet the requirements established by rule.

(4) Each license or certification automatically expires on the expiration date shown on the license or certification unless renewed in accordance with Section 58-1-308.

58-31b-306. APRN intern license.

(1) (a) The division may issue an APRN intern license to a person who meets all qualifications for a license as an advanced practice registered nurse under this chapter, except for the passing of required examinations, if the applicant:

(i) is a graduate of an approved nursing education program within the year immediately preceding application for an intern license;

(ii) has never before taken the examinations; and

(iii) submits to the division evidence of having secured employment conditioned upon issuance of the APRN intern license, and the employment is under the supervision of an advanced practice registered nurse or physician as defined by division rule.

(b) An APRN intern license issued under Subsection (1)(a) expires on the earlier of:

(i) a date following a period established by division rule;

(ii) the date upon which the division receives notice from the examination agency that the individual failed to take or pass the examinations upon notification to the applicant; or

(iii) the date upon which the division issues the individual an APRN license.

~~(2) (a) The division may issue an APRN intern license to a person who meets all qualifications for a license as an advanced practice registered nurse under this chapter, except course work in patient assessment or pharmacotherapeutics, if that applicant:~~

~~(i) is licensed in good standing as an advanced practice registered nurse in another state or jurisdiction; and~~

~~(ii) submits to the division evidence of having secured employment conditioned upon issuance of the APRN intern license, and the employment is under the supervision of an advanced practice registered nurse or physician as defined by division rule.~~

~~(b) An APRN intern license issued under Subsection (3)(a) expires on the earlier of:~~

~~(i) a date following a period established by division rule; or~~

~~(ii) the date upon which the division issues the individual a regular license.~~

Deleted: (2) An applicant specializing in psychiatric mental health nursing may be issued an APRN intern license upon completion of all licensure requirements, except for the passing of required examinations and completion of required clinical practice hours. ¶

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The Clock is Ticking: Keeping Time with APRN Consensus

The APRN Consensus set an ambitious timeline for completion of new standards for advanced practice registered nurses (APRNs). It's the fall of 2013 and there's a target consensus implementation date of 2015. How are we doing? Let's look at each area of APRN preparation that needs to be accomplished: education, accreditation, certification and licensure.

Education

Educators have an ambitious agenda; they need to teach new content, as well as align with new accreditation requirements. New APRN programs need to be preaccredited. Programs need to align their curriculum with the Master's Essentials (2011) or the Doctorate of Nursing Practice (DNP) Essentials (2006). Additionally, they all must be accredited for core role programs offering one of the six described populations, as well as adhering to core competencies, clinical hours requirements, offer the three Ps (advanced pharmacology, advanced health assessment and physiology/pathophysiology courses), produce a transcript, embed wellness and gerontology content, and delineate acute or primary focus for certified nurse practitioner (CNP) programs. Educators have largely achieved their charges and aligned programs to these requirements. Some programs, we learn, do not produce transcripts that offer clear evidence of compliance and that continues to be worked on. Students may not always be aware of whether their programs are properly accredited, meet guidelines and allow for easy eligibility to sit for required certification at the program's completion. Postgraduate certificate completion programs also need to be accredited by 2015, and feedback indicates there may be too few of them to meet the needs of interested APRNs.

Education Program Accreditors

Education program accreditors will preapprove new programs, assure that all reviewed programs are aligned, set new standards to measure that, and accredit postgraduate certificate programs by 2015. They released new standards in the summer of 2013 and are on target to meet their timeline.

Certification

Certification testing programs for APRN roles and populations must devise new tests that measure acquisition of content knowledge in wellness, gerontology, the three Ps, and core role content. They must establish eligibility criteria for testing that assures the education program addressed all the requirements of the APRN Consensus

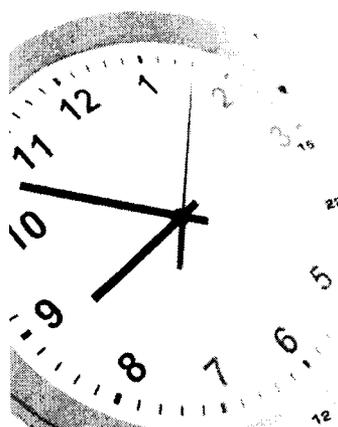
Model, including clinical hour requirements. New role certification tests have been launched for the adult/gerontology population and for certified nurse specialist (CNS) wellness through acute care. The previous tests will be phased out in 2014 or 2015. This is important for those APRN graduates who may never have attained certification. If they are graduates of earlier programs they need to test now because their programs would not qualify them for these new tests and the previous tests (that are appropriate for them) will no longer be available. Also, it is vital that those who presently hold advanced certification maintain that certification and not allow it to lapse. All certification programs allow for continued maintenance of certification through continuing education and other means. Allowing a current advanced certification to expire holds no guarantee that one could qualify to retest under the new exam criteria. Certification programs are meeting their timeline of 2013 for launch of new exams, and are on target to meet timelines for the retirement of previous exams.

Licensure

What of licensure? How are regulators doing in their requirements for consensus? Regulators were charged with implementing legislative language that would align state nurse practice acts or rules with the APRN Consensus Model. This was done through the NCSBN Model Acts and Model Rules, which were revised and aligned in 2012.

Regulators were charged to issue a second license to APRNs, license APRNs as independent practitioners with full prescriptive authority, to provide APRN representation on the board of nursing, and to include a grandfathering clause for currently practicing APRNs. The timeline for completion of these tasks is Dec. 31, 2015. Regulators were also charged with providing a means to measure progress towards these goals. This was accomplished through the [APRN maps project](#). States are displayed by their progress in aligning title, roles, second license,

[continued on page 5](#)



The clock is ticking. The focus must be unwavering. The dedicated efforts of these past years are a remarkable predictor that the implementation of the APRN Consensus Model will be accomplished.

continued from page 4

graduate or postgraduate degree requirements, advanced certification requirement, autonomous practice, and independent prescribing. Using this methodology, which assigns a single point for each element for each of the four roles, states/jurisdictions are 68 percent towards the total points needed by 2015.

A final element for regulators is the provision of a grandfather clause for those presently practicing. The APRN Consensus Model, Model Acts and most states' nurse practice acts have language that would address the grandfathering of those APRNs presently licensed or recognized within a state. Several states do not yet recognize all four roles as described in the model and, as they add them, they will define the eligibility for those who may be newly recognized.

Regulators are pretty well on target to meet the consensus deadline, but they are well aware that the work that remains is not just ambitious, it's also tough. During each legislative session gains are made. The past three years have seen remarkable state and jurisdictional alignment with consensus. The effort that produces such change is the result of cooperation and collabora-

tion between the boards of nursing and elements of LACE (licensure, accreditation, certification and education), as well as professional associations, consumer groups, government entities, action coalitions, and dedicated APRNs and RNs. Some efforts languish without action on important bills. Some efforts move fully towards alignment and some incrementally towards goals. All efforts are important and must be sustained.

The clock is ticking. The focus must be unwavering. The dedicated efforts of these past years are a remarkable predictor that the implementation of the APRN Consensus Model will be accomplished. *

REFERENCES

American Association of Colleges of Nursing. (2011). The essentials of masters education in nursing. Retrieved from www.aacn.nche.edu/education-resources/MastersEssentials11.pdf

American Association of Colleges of Nursing. (2006). The essentials of doctoral education for advanced nursing practice. Retrieved from www.aacn.nche.edu/publications/position/DNPEssentials.pdf

CENTER FOR REGULATORY EXCELLENCE (CRE) GRANT PROGRAM

CRE awards grants up to **\$300,000** (for up to two years) for research that advances the science of nursing policy and regulation. Research priorities include, but are not limited to: national and international regulatory issues; patient safety; practice; nursing education, continued competence; nurse mobility; and substance use.

Grant applications are due **April 4, 2014**.
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