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**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
STATE OF UTAH**

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IN THE MATTER OF THE LICENSE OF	:	<b>EMERGENCY ORDER</b>
KIM TERRY TO PRACTICE AS A	:	
PRIVATE PROBATION PROVIDER	:	
IN THE STATE OF UTAH	:	Case No. DOPL 2016-484
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The Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah (the "Division") initiated an Emergency Adjudicative Proceeding pursuant to Utah Code Ann. § 63G-4-502, the Utah Administrative Procedures Act; Utah Code Ann. § 58-1-108(2), the Division of Occupational and Professional Licensing Act; and Utah Administrative Code R151-4-111, the Department of Commerce Administrative Procedures Act Rules. The Division initiated the Emergency Adjudicative Proceeding upon evidence that the continued practice of Kim Terry (the "Respondent") as a private probation provider represents an immediate and significant danger to the public health, safety, and welfare; and that the threat

requires immediate action by the agency.

Before taking this action, the Acting Chair of the Private Probation Provider Licensing Board appointed a three-member committee to review with the Division the proposed action in this matter, pursuant to Utah Code Ann. § 58-1-108(2).

Pursuant to the Open and Public Meetings Act, Utah Code Ann. § 52-4-202, the Division provided notice of the meeting of the committee for **9:00 a.m. on July 28, 2016** at the Heber M. Wells Building located at 160 East 300 South, Salt Lake City, Utah. Notice of the Emergency Hearing was placed in the lobby of the Heber Wells Building and on the DOPL/public information website on July 26, 2016. The committee convened at the appointed date and time. The Emergency Hearing was closed pursuant to Utah Code Ann. § 52-4-205(1)(a) in order to discuss the professional competence and character of the Respondent. The presiding committee member affirmed under oath that the meeting was closed for that purpose. The committee reviewed the Division's proposed action and considered information in the form of testimony and exhibits. The Division, having considered the committee's recommendations, makes the following Findings of Fact, Conclusions of Law, and Order.

#### **FINDINGS OF FACT**

1. The Respondent was originally licensed to practice as a private probation provider on October 29, 2013, license number 8251204-5001.
2. The Respondent engaged in a sexual relationship with L.A., a probation client (name withheld to protect confidentiality (NWC)), beginning approximately in October 2015. The Respondent had sex with L.A. while he was conducting probation checks at L.A.'s residence and at least once in the Respondent's office. The Respondent would arrive at L.A.'s house in

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full uniform, including a firearm.

3. In approximately December 2015, the Respondent stopped servicing L.A. in his capacity as a private probation provider, and this termination of services confused L.A. After the Respondent terminated his professional relationship with L.A., she was not sure who her actual private probation provider was, to whom she had to pay for probation services, and whose orders she had to follow.

4. In addition to having sex with L.A., the Respondent was fully aware of the fact that L.A. was using illegal drugs while on probation, but he did not turn her in for probation violations.

5. On or about March 5, 2016, the Respondent arrived at the residence of JN, a probation client (NWC), to arrest him for violating his probation. The Respondent announced that he was "Adult Probation and Parole," drew his handgun and kicked in the front door of the residence. The Respondent then proceeded to handcuff a female non-client who was in the home at the time. There were no exigent circumstances that justified the Respondent's decision to kick in the front door of the residence. The Respondent does not work for Adult Probation and Parole.

6. On or about March 12, 2016, a sexually explicit text message was sent from the Respondent's cell phone to H.C. (NWC), one of the Respondent's probation clients. A portion of the text stated, "so would you ever consider letting him fuck you while I watch? delicate flower? you know you got him hot and horny !!" H.C. was alarmed by the sexually explicit text and reported it to the police.

7. On March 13, 2016, the Respondent sent H.C. a text, informing her that he was dropping her from his probationary services due to her allegations against him. The Respondent informed H.C. that it was unfortunate that she went to the police after he told her he had squashed the problem. The Respondent also informed H.C. that he had loaned his phone to a “psychopath.” When questioned about the sexually explicit text message by Nick Whitney, Tread Armament CEO, the Respondent told Whitney to “kiss [his] ass” and hung up on the gentleman.

8. On or about April 9, 2016, while driving with his wife and daughter in his automobile, the Respondent stopped another motorist and his wife at the intersection of Greensprings and Buena Vista in St. George, Utah. The Respondent, who was wearing a duty belt (with handcuffs and a handgun in it) and a probation officer badge around his neck, removed the driver from his car at gunpoint and handcuffed this gentleman because the Respondent believed the driver had committed assault.

9. On or about April 22, 2016, the Respondent was arrested by the Washington City Police Department and subsequently charged with two counts of aggravated assault (2<sup>nd</sup> degree felonies), one count of impersonating an officer (a B misdemeanor), two counts of unlawful detention (B misdemeanors) and one count of disorderly conduct (a C misdemeanor) for his conduct associated with the April 9, 2016 incident referred to in Paragraph 8 of this Emergency Order. The charges remain pending.

10. On April 26, 2016, the Division filed a formal Petition against the Respondent, alleging the conduct described in paragraphs 1 through 9 of this Emergency Order. The Petition

gave the Respondent formal notice of the Division's concerns about the Respondent acting in an unprofessional, unethical, predatory and exploitive manner.

11. On or about July 19, 2016, the Division learned of some inappropriate text messages that the Respondent had sent to C.G. (NWC), one of his probationers, as well as some disturbing photos that C.G. sent to the Respondent in response to his request for the same. Specifically, on May 9, 2016, the Respondent sent a text to C.G. that stated, "Does it bother you that even though I'm your PO, that I have a crush on you?" A smiley face emoticon was included in the message.

Also on May 9, 2016, the Respondent sent C.G. the following text: "Hi Cassy. Hope you're doing well. This 'fan' or 'freak' is going to need another pic just to verify that you are o.k."

On the same day, the Respondent sent C.G. a text that said, "You are absolutely stunning, Cassy!

Wow!" On the same day, the Respondent texted C.G., "just want to see what's under your clothes. You don't have to show your face. I would keep them private. You are soooo

beautiful. Hope I haven't offended you, just would love to see what I can't have." On May 10,

2016, the Respondent sent the following text to C.G.: "Well, that's it! You mentioned conflict of interest. I apologize for my conduct. You are free to switch to another provider. Sorry for

the hassle and inconvenience that I've caused. Let me know whom you have found and I'll

follow up with my concurrence. Sorry I became attracted to you. I couldn't hold back and it

really f'd things up. I didn't mean it to." On May 13, 2016, the Respondent sent C.G. a text

that said, "I hope you'll forgive me for being a married freak with a crush on a client." On the

same day, the Respondent also sent C.G. a text that stated, "Anytime you'd care to send this freak some test photos, I'd be happy to evaluate them."

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Also on May 13, 2016, the Respondent admitted in a text to C.G. that he had been “unprofessional.” The Respondent was also involved in a bartering session with C.G. when she texted him, “I’m not made of money so keep that in mind.” The Respondent responds, “1-9 sessions. And your next photo shoot.” C.G. responds, “10 hours, 2 sessions and a front nude???” The Respondent responds, “Yes and yes.” C.G. answers, “deal.” The Respondent ends this exchange with a text that says, “Mmmmm. And your butt.”

C.G. felt pressured into sending the Respondent photos of herself. She sent the Respondent at least six photos of herself, one in a bikini and another in a reclined position with her midriff exposed.

12. The Division also recently learned that C.G. originally planned to use Tim Tabor as her private probation provider, and she went to what she thought was Mr. Tabor’s office in October of 2015 and left her paperwork there. Mr. Tabor never contacted her. Instead, C.G. got a call from the Respondent, who informed C.G. that Mr. Tabor was no longer in the State of Utah, but the Respondent could help her with her probation. This was a false representation. On or about July 19, 2016, DOPL Investigator Thornton interviewed Mr. Tabor. Mr. Tabor informed Thornton that he had not moved out of state in October of 2015. Mr. Tabor had moved offices from Suite 207, which was next to the Respondent’s office, to Suite 106. The Respondent then used both Suite 207 and 209 after Mr. Tabor relocated to Suite 106. Mr. Tabor also stated that the District Court was still giving out his old office number, 207, to potential clients in October 2015. At no time in 2015 or 2016 did Mr. Tabor stop taking probation clients.

13. On or about July 18, 2016, C.G.'s brother informed Investigator Thornton that he was very angry about the inappropriate texts his sister had received from the Respondent, and that he now accompanies C.G. on all of her probation interviews with the Respondent to make sure C.G. is safe. Also on July 18, 2016, C.G. admitted to Investigator Thornton that she was worried about the Respondent asking for nude photos and/or sex.

### **CONCLUSIONS FROM THE FACTS**

1. That the Respondent has engaged in a pattern of exploitive/predatory behavior with probationers, pursuant to Utah Code Ann. § 58-1-501(2)(k).
2. That the fact that the Respondent continues to engage in exploitive and predatory behavior, even after a Petition was served on him, is an aggravating circumstance pursuant to Utah Admin. Code Rule R156-1-102(2)(a), (b), (c) and (d) that supports a conclusion that the Respondent's continued practice as a privation probation provider poses a significant and immediate danger to the public.
3. That the fact that the Respondent continues to engage in exploitive and predatory behavior with probationers, who are extremely vulnerable victims, is another aggravating circumstance pursuant to Utah Admin. Code Rule R156-1-102(2)(h) that also supports a conclusion that the Respondent's continued practice as a privation probation provider poses a significant and immediate danger to the public.
4. That the fact that the Respondent has not made a good faith effort to rectify the consequences of his prior misconduct is yet another aggravating circumstance pursuant to Utah Admin. Code Rule R156-1-102(2)(i) that supports a conclusion that the Respondent's continued

practice as a privation probation provider poses a significant and immediate danger to the public.

5. That the Respondent has engaged in a pattern of conduct that is false, misleading, and in violation of his profession's ethical codes. This consistent pattern of aberrant unprofessional and unethical conduct strongly supports a conclusion that the Respondent's continued practice as a privation probation provider poses a significant and immediate danger to the public.

6. The Division finds that, pursuant to Utah Code Ann. § 58-1-401(2)(a), there is a factual basis to conclude that the Respondent has engaged in unprofessional conduct, that he poses an immediate and significant danger/threat to the public health, safety, and welfare; and that the Division should take immediate action to suspend and/or revoke his professional licenses.

#### CONCLUSIONS OF LAW

1. The Division has jurisdiction and authority to act in this matter and has followed appropriate statutory procedures regarding the initiation of emergency adjudicative actions.

2. Utah Code Ann. § 63G-4-502 provides:

(1) An agency may issue an order on an emergency basis without complying with the requirements of this chapter if:

- (a) the facts known by the agency or presented to the agency show that an immediate and significant danger to the public health, safety, or welfare exists; and
- (b) the threat requires immediate action by the agency.

(2) In issuing its emergency order, the agency shall:

- (a) limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;
- (b) issue promptly a written order, effective immediately, that



includes a brief statement of findings of fact, conclusions of law, and reasons for the agency's utilization of emergency adjudicative proceedings; and

- (c) give immediate notice to the persons who are required to comply with the order.

(3) If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the agency shall commence a formal adjudicative proceeding in accordance with the other provisions of this chapter.

3. That the actions of the Respondent constitute an immediate and significant danger to the public health, safety, and welfare; and require immediate action to protect the public health, safety, and welfare.

4. That the Respondent has engaged in unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a), (b), (h) and (k).

5. That the Respondent, by continuing to engage in predatory and exploitive unprofessional conduct with vulnerable victims, should be immediately disciplined due to the immediate and significant danger to the public and the aggravating circumstances associated with his misconduct pursuant to Utah Admin. Code R156-1-102(2)(a), (b), (c), (d), (g), (h) and (i).

6. That this Order is necessary to prevent immediate and significant harm to the public pending a formal adjudication of the matters addressed in this proceeding. Immediate action is necessary, and this Order is the least restrictive action necessary to prevent or avoid the danger to the public health, safety, or welfare.

7. The Respondent may challenge the Order pursuant to Utah Admin, Code R151-4-111 as follows:

R151-4-111. Review of Emergency Orders. Unless otherwise provided by statute or rule:

- (1) A division shall schedule a hearing to determine whether an emergency order shall be affirmed, set aside or modified based on the standards in Section 63G-4-502 if: the division has previously commenced an emergency adjudicative proceeding in the matter; and issued an order in accordance with Section 63G-4-502 that results in a continued impairment of the affected party's rights or legal interests; and the affected party timely submits a written request for a hearing.

A hearing under this rule shall be conducted in conformity with Section 63G-4-206.

- (2) Upon request for a hearing under this rule, the Division shall conduct a hearing as soon as reasonably practical but not later than 20 days from the receipt of the written request unless the Division and the party requesting the hearing agree in writing to conduct the hearing at a later date.

### **ORDER**

The license of Kim Terry to practice as a private probation provider in the State of Utah, license number 8251204-5001, is immediately suspended pending any hearing that may be convened pursuant to Utah Code Ann. § 63G-4-502 and Utah Admin. Code R151-4-111 that issues a contravening order. The Respondent shall immediately cease and desist from his practice as a private probation provider in the State of Utah pending any hearing that may be convened pursuant to Utah Code Ann. § 63G-4-502 and Utah Admin. Code R151-4-111 that issues a contravening order.

The Division will continue with the formal adjudicative proceeding that was filed on May 3, 2016 to impose final action in this matter.

### **RIGHT TO REVIEW**

1. In accordance with Utah Admin. Code R151-4-111, the Division will schedule a hearing upon receipt of a written request from the Respondent. At the hearing it will

be determined whether this Emergency Order should be affirmed, set aside, or modified, based on the standards set forth in Utah Code Ann. § 63G-4-502. Any such hearing shall be conducted in conformity with Utah Code Ann. § 63G-4-206.

2. Upon receipt of a request for hearing pursuant to Utah Admin Code R151-46b-16, the Division will conduct a hearing as soon as reasonably practical, but not later than twenty (20) days from receipt of a written request, unless the Division and the party requesting the hearing agree to conduct the hearing at a later date.

DATED this 28 day of July, 2016.

*W. Ray Walker*

W. Ray Walker  
Presiding Officer  
Division of Occupational and Professional  
Licensing.

