

**FILED**  
**AUG 02 2013**  
N.J. BOARD OF NURSING

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF NURSING

IN THE MATTER OF THE SUSPENSION OR :  
REVOCATION OF THE LICENSE OF :  
: ADMINISTRATIVE ACTION  
JUSTIN P. POLACHEK, RN :  
License No. 26NR11619900 : FINAL ORDER OF  
: DISCIPLINE  
TO PRACTICE NURSING IN THE STATE :  
OF NEW JERSEY :

This matter was opened to the New Jersey State Board of Nursing (the "Board") upon receipt of information which the Board has reviewed and upon which the following findings of fact and conclusions of law are made:

**FINDINGS OF FACT**

1. Justin P. Polachek ("Respondent") is a registered professional nurse in the State of New Jersey and has been a licensee at all times relevant hereto.

2. On or about May 5, 2012, Respondent completed and submitted an online application for biennial license renewal. Respondent was asked on the biennial renewal application whether Respondent completed the required continuing education credits for the biennial period of June 1, 2010 through May 31, 2012. Respondent answered "Yes" to the question, and certified that answer to be true by submitting the online application.

3. Upon receipt of a flagging notice indicating that Respondent was arrested on October 2, 2012 by the Camden Police

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Department for violation of N.J.S.A. 2C:35-10A(1) (Possession of Controlled Dangerous Substance), 2C:35-24 (Possession of Certain Prescription Drugs) and 2C:35-10.5A (Distribute Prescription Legend Drugs), the Board sent a letter of inquiry, requesting information about the criminal matter, Respondent's nursing practice, and his completion of continuing education. The letter of inquiry was mailed to Respondent's address of record in Port Murray, New Jersey, via regular and certified mail on or about October 4, 2012. The regular mailing was not returned; the certified mailing was returned as unclaimed.

4. By letter dated October 20, 2012, Respondent provided information indicating that the criminal charges were downgraded to violations of 2C:35(10)(c) (Failure to Give Controlled Dangerous Substance to Police) and returned to Camden City Municipal Court. The charges were dismissed on December 5, 2012. Respondent further indicated that he was unemployed, but that he was up-to-date on his continuing education. However, Respondent failed to provide any proof of completion of continuing education as requested by the Board.

#### CONCLUSIONS OF LAW

~~Pursuant to N.J.A.C. 13:37-5.3(b), a nurse shall complete a~~  
minimum of 30 hours of continuing education per biennial period. Falsification of any information submitted on the renewal application may result in penalties and/or suspension or revocation

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of the license. N.J.A.C. 13:37-5.3(a). Additionally, a registered professional nurse or licensed practical nurse shall maintain continuing education compliance documentation for a period of four years after completion of the hours and shall submit such documentation to the Board upon request. N.J.A.C. 13:3-5.3(f).

Respondent failed to demonstrate, to the satisfaction of the Board, completion of the required thirty hours of continuing education for the biennial period of June 1, 2010 through May 31, 2012. Respondent failed to demonstrate completion of any hours of continuing education during that time frame. The Board therefore finds Respondent in violation of N.J.A.C. 13:37-5.3(b), which the Board deems professional misconduct within the intendment of N.J.S.A. 45:1-21(e) and also constitutes a violation or failure to comply with a regulation administered by the Board within the intendment of N.J.S.A. 45:1-21(h).

Further, the Board finds that Respondent's submission of his 2013 renewal, wherein he answered affirmatively that he had completed, or would complete, the required continuing education, and subsequent failure to provide documentation of completion, constitutes the use or employment of dishonesty, deception, or ~~misrepresentation within the intendment of N.J.S.A. 45:1-21(b). See~~ also N.J.A.C. 13:37-5.3.

Lastly, Respondent's drug-related arrest, including the police report which alleges that Respondent possessed six bags of heroin,

along with Alprazolam, raises sufficient concern to warrant testing, monitoring, and evaluation, as a condition of continued or reinstated licensure, to evaluate whether Respondent's continued practice in nursing may jeopardize the safety and welfare of the public within the intendment of N.J.S.A. 45:1-22(f).

Based on the foregoing findings and conclusions, a Provisional Order of Discipline was entered on May 14, 2013, provisionally suspending respondent's nursing license, and imposing a public reprimand and a \$250.00 civil penalty. A copy of the Order was served upon respondent by certified and regular mail at her address of record. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30<sup>th</sup> business day following entry unless respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting respondent's request for consideration and reasons therefor.

Mr. Polacheck replied to the Provisional Order, forwarding ~~documentation of having timely completed continuing education~~ requirements for the June 1, 2010-May 31, 2012 renewal period. Accordingly, the Board determined that the suspension and other penalties relating to lack of compliance with continuing education

requirements were no longer applicable. The Board considered respondent's failure to address the portion of the Provisional Order requiring Mr. Polachek to undergo a mental health and substance abuse evaluation under the auspices of RAMP pursuant to N.J.S.A. 45:1-22(f), and the Board determined that respondent's being found with six bags of heroin, whether or not it resulted in a criminal conviction, was a sufficient basis to invoke that statutory provision and for the Board to order respondent to undergo evaluation.

ACCORDINGLY, IT IS on this 2<sup>nd</sup> day of August, 2013,

ORDERED that:

1. Respondent shall undergo a comprehensive mental health and substance abuse evaluation under the auspices of the Recovery and Monitoring Program of the Institute for Nursing (RAMP) and shall gain RAMP's support for reinstatement. Respondent shall enroll in RAMP, for purposes of obtaining a comprehensive mental health and substance abuse evaluation, within thirty days of filing of this Final Order.

3. Respondent shall expressly waive any claim to privilege ~~or confidentiality that he may have concerning RAMP reports and~~ disclosures to the Board, and use by the Board of that information in any licensing proceedings.

4. All costs associated with the evaluation and/or monitoring outlined above shall be the responsibility of, and paid directly by, Respondent.

NEW JERSEY STATE BOARD OF NURSING

By: *Patricia Murphy Ph.D. APN*  
Patricia Murphy, PhD, APN  
President