

FILED

APR 28 2014

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 :	Administrative Action
OR REVOCATION OF THE LICENSE OF :	
:	
TIMOTHY SMITH, LPN :	ORDER VACATING
License # 26NP05113000 :	PROVISIONAL & FINAL
:	ORDERS OF DISCIPLINE
:	
TO PRACTICE NURSING IN THE :	
STATE OF NEW JERSEY :	

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the Board has reviewed and upon which the following findings of fact and conclusions of law were made and are hereby rescinded:

FINDINGS OF FACT

1. Timothy Smith ("Respondent") is a Licensed Practical Nurse (LPN) in the State of New Jersey and has been a licensee at all relevant times.

2. On May 20, 2011, Respondent renewed his nursing license online and certified that he had completed the required continuing education for the June 1, 2009 - May 31, 2011 biennial period.

3. The Board received information that Respondent was arrested on December 17, 2012, by members of the West Deptford

Police Department and charged with violating N.J.S.A. 2C:35-10(a)(1).

4. On or about December 18, 2012, the Board sent Respondent a letter to his address of record in Sicklerville, New Jersey, via regular and certified mail, seeking information about his December 17, 2012 arrest, nursing employment, and continuing education. The letter reminded Respondent of his statutory and regulatory duty to cooperate with a Board investigation. The regular mailing was not returned. The United States Postal Service track and confirm system indicates that the certified mailing was returned as "unclaimed." Respondent failed to reply.

5. The Board received information indicating that the original criminal charge had been downgraded and that on March 19, 2013, a Judge of the West Deptford Municipal Court dismissed the downgraded charge stemming from the December 17, 2012 arrest.

6. A review of information retained by the Board indicates that Respondent had a previous arrest in 1991 and conviction in 1992 for selling cocaine.

7. On May 28, 2013, Respondent renewed his nursing license online and certified that he had completed the required

continuing education for the June 1, 2011 - May 31, 2013 biennial period.

CONCLUSIONS OF LAW

Respondent's failure to respond to the Board's inquiry constituted a failure to cooperate with a Board investigation, in contravention of N.J.A.C. 13:45C-1.2 and 1.3, which the Board deemed professional misconduct within the meaning of N.J.S.A. 45:1-21(e), and also subjected Respondent to disciplinary action pursuant to N.J.S.A. 45:1-21(h).

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 of license. N.J.A.C. 13:37-5.3(a). Additionally, a 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. 13:37-5.3(f).

By virtue of having failed to respond to the inquiry, Respondent was deemed to have failed to demonstrate, to the satisfaction of the Board, that Respondent completed 30 hours of required continuing education during the June 1, 2009 - May 31,

2011 biennial period and 30 hours for the June 1, 2011 - May 31, 2013 biennial period. The Board therefore found Respondent in violation of N.J.A.C. 13:37-5.3, which the Board deemed professional misconduct within the intendment of N.J.S.A. 45:1-21(e) and also constituted 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). Additionally, the Board also found that Respondent engaged in the use or employment of dishonesty, deception, or misrepresentation within the intendment of N.J.S.A. 1-21(b) by falsely certifying on his renewal applications that he had completed the required continuing education when he did not demonstrate that he did so.

Lastly, Respondent's recent drug-related arrest, coupled with his past criminal history, raised sufficient concern such that testing, monitoring, evaluation, and treatment seemed warranted, as a condition for continued or reinstated licensure, to evaluate whether Respondent's continued practice as a nurse may jeopardize the safety and welfare of the public pursuant to N.J.S.A. 45:1-22(e) and (f).

DISCUSSION

Based on the foregoing findings and conclusions, a Provisional Order of Discipline imposing a civil penalty, the

completion of a comprehensive mental health and substance abuse evaluation, reprimand, and suspending Respondent's license to practice as a licensed practical nurse in the State of New Jersey was entered on November 15, 2013. Copies were served on Respondent via regular and certified mail. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the thirtieth 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.

Although the Provisional Order sent by means of certified mail was returned as "unclaimed", the regular mail was not returned. Respondent called the Board's attorney on November 20, 2013, acknowledged that he had received the Provisional Order, and stated that he would send in a written response. Based upon Respondent's phone call, extra time was afforded beyond the thirty day period for a written response. More than four months elapsed after the filing of the Provisional Order

and the Board mistakenly believed that it had not received a written response. As such, a Final Order of Discipline was filed by default on April 4, 2014.

After receiving the Final Order of Discipline, Respondent petitioned the Board and provided proof that he had timely responded to the Board, completed all the required continuing education during the appropriate time frames, and had a prescription for the CDS for which he was arrested in December 2012, which is why the criminal matter was dismissed. Respondent provided proof that his response had been received in the Board's building and that someone had signed for the envelope upon delivery. His response, however, was lost after arriving in the building. The Board acknowledging that an administrative mishap occurred, and for good cause shown;

ACCORDINGLY, it is on this 28th day of Apr, 2014

ORDERED that:

1. The Final Order of Discipline filed on April 4, 2014 and the Provisional Order of Discipline filed on November 15, 2013 are hereby vacated in their entirety.

NEW JERSEY STATE BOARD OF NURSING

By: Patricia Murphy PLD APN
Patricia Murphy, PhD, APN
Board President