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N.J. BOARD OF NURSING

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

IN THE MATTER OF THE	:	
LICENSE OF	:	
	:	Administrative Action
ERIC POLO, R.N.	:	
License # NO 09819600	:	
	:	FINAL ORDER
TO PRACTICE NURSING IN THE	:	OF DISCIPLINE
STATE OF NEW JERSEY	:	

The New Jersey State Board of Nursing (Board) entered a Provisional Order of Discipline on December 9, 2013, following its review of information that Eric Polo, R.N., had been terminated from Newton Medical Center for suspected diversion of controlled dangerous substances, as well as its review of Mr. Polo's July 8, 2013, responses to the Board's June 2013 request for information, the certification of Robert Gibbons, a security officer at Newton Medical Center, and Mr. Polo's biennial renewal application pertaining to completion of continuing education credits. The Provisional Order proposed suspending Mr. Polo's nursing license until he demonstrates that he is fit and competent to practice nursing by undergoing an evaluation and monitoring under the auspices of the Recovery and Monitoring Program of New Jersey (RAMP) and demonstrates that he has completed continuing education required for renewal of his nursing license. The Provisional Order also sought to impose a reprimand and a \$250 civil penalty related to answers on his renewal regarding continuing education. The Provisional Order gave Mr. Polo the opportunity to request modification or dismissal by

submitting, within thirty business days of its entry, written reasons and argument as well as documents or other evidence in support of the request.

By letter dated January 8, 2014, Mr. Polo responded, challenging specific portions of the Board's provisional Order. In that letter, he refers back to his answers to the Board's June 2013 inquiry, denying that he had not cooperated with the Newton Medical Center review and stating that he had had been denied the opportunity to demonstrate that he had made appropriate chart entries related to medications he administered (Mr. Polo's July 2013 response was attached to the Provisional Order as Exhibit B). As to the Board's provisional Findings of Fact, specifically paragraph 3 finding Mr. Polo believed enrolling in RAMP to be punitive and alarming and insulting, Mr. Polo argued that he was not opposed to evaluation or screening, but that, in his opinion, RAMP was "not an evaluation program, it is a drug recovery program, and to this I felt strongly opposed." He continued:

This is a program that regardless of the outcome or findings carries with it a powerful and irrevocable stigma that is far reaching and could affect every facet of my life. My view is that this complaint is based more on fishing then [sic] fact and is lacking in true cause.

Further as to paragraph 3's provisional finding that "at a certain point he refused to respond to questions from investigators at Newton Medical Center who were looking into documentation discrepancies," Mr. Polo denies not cooperating at the initial interview, but does acknowledge that, after consulting with a lawyer and a family member, he declined to answer additional questions.

Mr. Polo also takes issue with the Board's reliance on the certification of Robert Gibbons, a security officer at Newton Medical Center (Exhibit C to the Provisional Order). Paragraph 7 of Mr. Gibbons's certification reads: "I asked Mr. Polo whether he

had any personal issues at present or in the past with respect to substance abuse, but he would not provide a "yes" or "no" answer." Mr. Polo states: "[W]hen asked about personal problems or substance abuse issues my response was **definitely and emphatically NO**. Not now, not ever, have I has a substance abuse problem." (emphasis in original). Mr. Polo further denies the accuracy of paragraph 8 of Mr. Gibbons's certification, which states when asked if he would submit to a drug test Mr. Polo said he first wished to consult with someone before providing an answer. Mr. Polo, again referencing his July 2013 response, repeated: "I told all the Newton representatives involved that I was not opposed to anything they wanted to do.' I believe this qualifies as an answer."

Mr. Polo also objects to the Board's provisional findings in paragraph 4. That provisional finding relies on Mr. Gibbons's investigation/audit related to medications that suggested Mr. Polo's actions were above the standard deviation for withdrawing medications that could be indicative of diversion. Of 108 entries reviewed, 46 (or 42.59%) were deemed questionable. Mr. Gibbons further offered that Mr. Polo was unable to provide a valid reason or explanation for the discrepancies, other than to say it must have been poor documentation on his part. In challenging the provisional finding, Mr. Polo questions Mr. Gibbons's conclusions, remarking that no explanation was given for reviewing 108 entries when 225 entries were provided. Further, Mr. Polo asserts that there is no indication of the type(s) of medication comprising the sample or why the 46 were deemed questionable.

Mr. Polo further objects to the provisional finding of paragraph 5, that is, inappropriate possession of five medications in his locker: Acetaminophen, Bumetanide,

Furosemide, and Ondansetron, and a Nitro-BID ointment tube. Mr. Polo states that the locker is in fact a shared locker that he shares with "at least 2 or 3 other part time, per diem or agency nurses...it was never locked...." He objects to "being held solely accountable for the contents of this locker."

Finally, Mr. Polo responded to the provisional findings that he did not supply proof of completion of continuing education taken during the June 1, 2010 through May 31, 2012, as indicated on his biennial renewal. Mr. Polo, again referencing his July 2013 response, stated that he had some continuing education credits from Newton Medical Center that he is unable to access. He also stated that he is a current student at the College of Saint Elizabeth and Morris County College working toward completion of a Bachelor of Science in Nursing program. No proof of attendance, however, was submitted.

The deputy attorney general assigned to prosecute the Provision Order responded to Mr. Polo's submission. By letter dated January 17, 2014, the deputy noted:

It is the Attorney General's position that although Mr. Polo criticizes the investigation conducted at Newton, Mr. Gibbons's certification relating to Newton's investigation is sufficient, not to find that Mr. Polo engaged in diversion or has a drug problem, but to find that he should be required to undergo evaluation and monitoring to ascertain whether there is a problem. That is what RAMP is for, not only to provide treatment.

She further commented that although Mr. Polo asserts that he has completed his continuing education, he provided no proofs.

Still, in her letter, the deputy suggested that should Mr. Polo provide proofs of timely completion of continuing education, which could include transcripts from the BSN

program, and should he agree to enter a private letter agreement for evaluation and monitoring by RAMP, the matter could be resolved without sanctions. Should, however, Mr. Polo not provide proof of timely completion of continuing education and not agree to be evaluated and monitored, the sanctions anticipated by the Provisional Order should be finalized, thus suspending Mr. Polo's license until he demonstrates that he has completed the continuing education and that he is fit and competent to practice. The penalty and reprimand, she urged, should also be imposed.

The Board has fully considered Mr. Polo's assertions and arguments. Even accepting Mr. Polo's claim that he was initially cooperative with the Newton Medical Center investigation, he ultimately declined to provide further answers and submit to an evaluation related to suspected diversion. While a licensee's initial reluctance may be understandable, RAMP, recognized by the Board under the provisions of N.J.S.A. 45:11-24.10 et seq., is a confidential program designed to provide a balance between a licensee's rights and responsibilities and the Board's mandate to protect the public health, safety, and welfare. It provides an opportunity to sort out allegations in a non-disciplinary venue. Indeed, the Board has not found that Mr. Polo has diverted medication, nor has it found that he has a substance abuse problem. What it has found is a sufficient basis to inquire whether he has engaged in unlawful activities. Mr. Polo, right through the point at which the Board was to finalize its provisional order, could have entered an agreement to submit to the evaluation and monitoring. He did not.

Because RAMP is a confidential program, the reputational harm Mr. Polo professes to fear is specious. Had he not refused to participate, his claim that he has not and does not abuse drugs could have been borne out. Instead, any purported

reputational harm that he might suffer by virtue of a RAMP evaluation is at his own hand. But even were the Board to accept this licensee's misplaced concerns, it would not change its requirement that he submit to an evaluation and monitoring. It's directive that he do so is based in the Board's overarching responsibility to protect the public and to ensure that nurses who are providing care are not impaired.

Further, although the record does not contain full information related to the medications pulled by Mr. Polo that resulted in an anomalous usage report, there was a determination by the Medical Center that he was above the standard deviation. The Board again finds sufficient reliability in that report to support its determination that Mr. Polo, as a condition for continued licensure, submit to medical or diagnostic testing and monitoring, which may be required to evaluate whether continued practice may jeopardize the safety and welfare of the public. N.J.S.A. 45:1-22(f).

As to the medications found in a locker at the Medical Center, Mr. Gibbons's certification states that Mr. Polo "acknowledged inappropriate possession." Mr. Gibbons further states that Mr. Polo indicated the medications were being kept in case there was an emergency as they may be difficult to obtain. Four of the five medications were unopened and returned to stock. Mr. Polo denies that he acknowledged a personal possession of the medications and has denied that he stated the medications were difficult to obtain. He concludes by stating: "I fail to see how I am being held solely accountable for the contents of this locker." (January 8, 2014, submission in response to Provisional Order).

There appears to be insufficient evidence in the record for the Board to determine whether the medications found in the locker to which Mr. Polo had access

belonged to him or were placed there by him. Notably, none of the medications was a controlled dangerous substance. Although there is a question and a concern that Mr. Polo may have possessed the medications in a manner not sanctioned by the Medical Center, on the record submitted here, the Board cannot sustain its provisional finding. As such, the finding of paragraph 5 of the Provisional Order will not be adopted. The elimination of this element of the order, however, does not alter the conclusions reached by the Board as set forth below.

Finally, despite repeated opportunities to provide proof that he has completed the required continuing education for the current biennial renewal period, Mr. Polo has not done so. Therefore, the Board will finalize its order assessing a civil penalty, imposing a reprimand, and continuing the suspension of his license until such proofs are received.

Having carefully reviewed Mr. Polo's objections and fully considered the materials submitted, the Board has determined that Mr. Polo's license is to be suspended until he can demonstrate that he is fit and competent to practice by undergoing an evaluation and monitoring by RAMP and until he can demonstrate proof of completion of continuing education for the 2010-2012 renewal period. Based on the failure to have provided proof of completion of continuing education, the Board will issue a reprimand and a penalty of \$250. The Board, as discussed above, will not adopt the conclusion that Mr. Polo engaged in professional misconduct related to the medications found in a locker that he had access to.

Therefore, the Board makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. 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 June 26, 2013, respondent was sent a letter of inquiry by the Board, asking about his termination from Newton Medical Center for suspected diversion of controlled dangerous substances, and also asking about his employment history and for documentation of continuing education completed to satisfy regulatory requirements for the June 1, 2010-May 31, 2012 renewal period.

3. Respondent indicated in response that his problems at Newton Medical Center were all related to computer charting. He also indicated that he would not voluntarily enroll in the Recovery and Monitoring Program of New Jersey (RAMP), because he viewed it as punitive, and moreover found it alarming and insulting to have entry into RAMP proposed to him. Respondent admitted that at a certain point he refused to respond to questions from investigators at Newton Medical Center who were looking into documentation discrepancies.

4. Robert B. Gibbons, who conducted an investigation with regard to missing medication that had been delivered to the Pyxis machine in the Intensive Care Unit at Newton Medical Center, reviewed the results of an audit on the activity of the Pyxis machine. He indicated that an anomalous usage report indicated that Eric Polo was above the standard deviation for withdrawing certain medications that could be indicative of diversion. Of 108 entries that were reviewed, 46 entries or 42.59% were deemed questionable, in that there were no orders for the medication; and/or there was no documentation of the medications being administered, wasted, or returned to the Pyxis; or the medication was ordered on a PRN basis and were withdrawn and not

administered until hours after the withdrawal. Mr. Gibbons stated that when Eric Polo was interviewed, he was unable to provide a valid reason or explanation for discrepancies, other than stating that it must have been poor documentation on his part.

5. Respondent did not supply documentation of compliance with continuing education requirements.

6. Respondent indicated on his renewal application submitted on May 11, 2012 that he would have timely completed required continuing education requirements for the June 1, 2010-May 31, 2012 renewal period by May 31, 2012.

CONCLUSIONS OF LAW

1. Pursuant to N.J.S.A. 45:1-22(f) the Board may order any person, as a condition for continued licensure, to submit to any medical or diagnostic testing, monitoring or psychological evaluation required to evaluate whether continued practice may jeopardize the safety and welfare of the public. The results of the Newton Medical Center investigation provide an ample basis for the issuance of such an order.

2. Respondent's failure to document required continuing education for the June 1, 2010-May 31, 2012 renewal period constitutes a violation of N.J.A.C. 13:37-5.3, subjecting respondent to sanctions pursuant to N.J.S.A. 45:1-21(e) and (h).

3. Respondent's indication on his renewal application that he would have timely completed continuing education requirements constitutes misrepresentation in violation of N.J.S.A. 45:1-21(b).

ACCORDINGLY, IT IS on this  day of May, 2014,

ORDERED that:

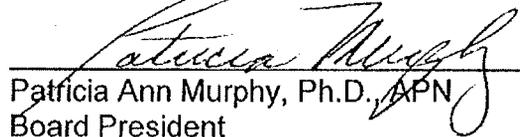
1. Respondent's New Jersey nursing license is suspended pursuant to N.J.S.A. 45:1-21(e) and N.J.S.A. 45:1-22(f) until he can demonstrate that he is fit and competent to practice nursing by undergoing evaluation and monitoring under the auspices of the Recovery and Monitoring Program of New Jersey (RAMP); and until respondent can demonstrate that he has satisfied continuing education requirements for the 2010-2012 renewal period. The suspension shall commence seven days following entry of this Final Order.

2. A public reprimand is imposed for misrepresentation with regard to continuing education on respondent's 2012 renewal application.

3. A \$250.00 civil penalty is imposed for respondent's failure to demonstrate timely completion of continuing education requirements in violation of N.J.A.C. 13:37-5.3.

NEW JERSEY STATE BOARD OF NURSING

By:



Patricia Ann Murphy, Ph.D., APN
Board President