

FILED
OCT 06 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 :
:
MICHELE NEARY-PENDERGAST, RN : FINAL ORDER
License # 26NR11227400 : 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 are made:

FINDINGS OF FACT

1. Michele Neary-Pendergast ("Respondent") is a Registered Professional Nurse (RN) in the State of New Jersey and has been a licensee at all relevant times.

2. Respondent was suspected of diverting narcotics during the course of her employment as a nurse and by Consent Order filed on February 28, 2013, it was ordered and agreed that Respondent would refrain from the use of potentially addictive substances and continue participation with the Professional Assistance Program (PAP).

3. The Board received information on April 22, 2013 indicating that Respondent was arrested by members of the Pleasantville Police Department on April 22, 2013 and charged with violating N.J.S.A. 2C:35-10A(1) (Possession of Controlled Dangerous Substance), N.J.S.A. 2C:36-2 (Possession of Drug Paraphernalia) and N.J.S.A. 2C:36-6 (Posses/Distribute Hypodermic Needle).

4. The Board mailed a letter of inquiry to Respondent seeking information and documentation about the April 22, 2013 criminal matter, Respondent's nursing practice, and her completion of continuing education.

5. Respondent provided a partial response to the Board's letter of inquiry which included a police report of a heroin related arrest which occurred on January 3, 2013 (not April 22, 2013), information about her place of nursing employment, and a transcript of purported continuing education. Respondent did not address the different dates of arrest (April 22, 2013 in the flagging notice and January 3, 2013 in the police report) and also failed to provide a full response to the letter of inquiries to include copies of: municipal court complaint, accusation, indictment, plea documents, PTI documents, disposition, sentencing, proof of payment of fines, proof of

completion of sentencing, or any certificates of completion of continuing education. Respondent provided no information concerning the April 22, 2013 arrest.

6. Until receiving Respondent's partial reply to the letter of inquiry, the Board was unaware that Respondent was arrested on January 3, 2013, which was prior to the time when the Board entered the Consent Order with Respondent.

7. On May 4, 2013, Respondent completed an online application to renew her nursing license and answered yes to the question which asked whether she completed the thirty hours of required continuing education during the June 1, 2011 - May 31, 2013 biennial period.

CONCLUSIONS OF LAW

Respondent's failure to fully respond to the Board's inquiry constitutes 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 deems professional misconduct within the meaning of N.J.S.A. 45:1-21(e), and also subjects 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).

The transcript Respondent provided is not sufficient evidence of completion of continuing education. The documentation of completion of continuing education - most often a certificate of completion -- must indicate that the course completed was accredited/approved as continuing education and for how many hours it was accredited/approved. Respondent failed to demonstrate, to the satisfaction of the Board, that Respondent completed 30 hours of required continuing education during the June 1, 2011 - May 31, 2013 biennial period. The Board therefore finds Respondent in violation of N.J.A.C. 13:37-5.3, 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). Additionally, 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 her renewal application that she had completed the required continuing education when she did not demonstrate that she did so.

Lastly, Respondent's drug (heroin) related arrest (January 3, 2013 and/or April 22, 2013) while she was participating with the Professional Assistance Program, suggests that Respondent's level of monitoring, testing, treatment, and evaluation are insufficient to ensure that Respondent is properly discharging the functions of a licensee in a manner consistent with the safety and welfare of the public.

Based on the foregoing findings and conclusions, a Provisional Order of Discipline was entered on July 16, 2014, provisionally suspending respondent's nursing license, and imposing a reprimand and a total of \$750 in civil penalties. 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 30th 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.

Respondent replied to the Provisional Order, seeking consideration. She demonstrated timely completion of continuing education for the 2011-2013 renewal period, and submitted information, documentation and clarification relating to a January 3, 2014 drug-related arrest of respondent, of which the Board had not been aware at the time it entered into the consent order with PAP and respondent. She submitted a copy of the criminal Complaint and a narrative statement, indicating that she had been asleep in her car after working the night shift, while her husband, without her knowledge, was making a drug deal (heroin). Respondent also documented her admission into the Pre-Trial Intervention Program. The Board considered this matter, and noted that in February of 2014, the Board entered into a consent order with respondent and with the Professional Assistance Program of New Jersey (PAP) for continuing monitoring, and at the time the Board had not been informed as to respondent's arrest on heroin-related charges on January 3, 2014. That respondent had already been participating in an

intervention program at the time of the January arrest indicates to the Board that it has insufficient assurance that respondent is presently fit and competent to practice nursing. The Board therefore determined that until respondent had demonstrated to the Board's satisfaction that she was fit and competent to practice nursing, her nursing license should be suspended. The Board further determined that no reprimand or civil penalty should be imposed with regard to continuing education, although the \$500 civil penalty for respondent's earlier failure to fully respond to the Board's inquiry until after the filing of the Provisional Order, was still warranted, although she had complied belatedly with the Board's request for information. Accordingly,

IT IS on this 6th day of October, 2014

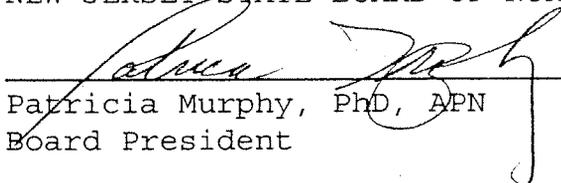
ORDERED that:

1. Respondent's license to practice nursing is hereby suspended until Respondent demonstrates, to the satisfaction of the Board, that she is fit and competent to practice nursing.
2. A civil penalty in the total amount of \$500 is imposed upon Respondent, for failing to cooperate with a Board investigation. Payment shall be made by certified check or money order payable to the State of New Jersey, delivered to

George Hebert, Executive Director, State of Board of Nursing,
P.O. Box 45010, Newark, New Jersey 07101. Payment shall be made
no later than fifteen (15) days after the entry of any Final
Order of Discipline in this matter. In the event Respondent
fails to make a timely payment, a certificate of debt shall be
filed in accordance with N.J.S.A. 45:1-24 and the Board may
bring such other proceedings as authorized by law.

3. Respondent shall refrain from practicing nursing and
shall not represent herself as a registered nurse until such
time as her license is reinstated. Any practice in this State
prior to reinstatement shall constitute grounds for a charge of
unlicensed practice.

NEW JERSEY STATE BOARD OF NURSING

By: 
Patricia Murphy, PhD, APN
Board President