

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

JAMES RICHARD HOPPENS, LPN
License # 26NP04736400

TO PRACTICE NURSING IN THE
STATE OF NEW JERSEY

Administrative Action

**FINAL ORDER
OF DISCIPLINE**

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. James Richard Hoppens ("Respondent") holds License No. 26NP04736400 as a Licensed Practical Nurse (LPN) in the State of New Jersey and permitted that license to lapse when he did not renew by the expiration date of May 31, 2013.

2. On or about July 30, 2013, the Board issued a Demand for Statement in Writing Under Oath ("Demand") asking Respondent inter alia about allegations that he had been terminated from his place of employment in April of 2013 because of

allegations that he diverted Percocet for his own use; about allegations that he tested positive for alcohol in April of 2013 while at a doctor's appointment; requiring Respondent to provide certificates of completion for all nursing continuing education completed since May 31, 2008; and asking for an explanation as to why he ceased participation with the Recovery and Monitoring Program of New Jersey (RAMP) in 2013.

3. Respondent sent in a partial reply dated August 10, 2013, denying any diversion and indicating that he had ceased participating in RAMP because RAMP declined to investigate a "complaint" purportedly received by RAMP. Respondent did not address the question about his having tested positive for alcohol, nor did he document any continuing education or respond to the other questions in the Demand.

4. On his 2011 renewal application, Respondent indicated that he would have completed required continuing education by May 31, 2011.

5. Respondent enrolled in RAMP in 2008 following an incident where he demonstrated bizarre behavior in the course of his employment at a long term care facility. Respondent admitted to RAMP's then-Director that he was an alcoholic. RAMP had been advised on or about April 19, 2013 that Respondent had been terminated from his nursing employment because of issues with Respondent's medication administration which raised concerns about possible diversion of medication. According to RAMP's Director, Respondent consults professionally with a doctor because of a medical condition, and in April of 2013 RAMP was advised by the doctor that Respondent had recently tested positive for alcohol; that the doctor was unaware of Respondent's recent termination; and that the doctor had not been made aware of the

reasons for Respondent's RAMP participation, or that Respondent was seeing a second doctor who was also prescribing pain medication for him.

CONCLUSIONS OF LAW

Any professional or occupational license not renewed within thirty days of its expiration date shall be suspended without a hearing pursuant to N.J.S.A. 45:1-7.1(b). As such, Respondent's license was automatically suspended, without a hearing, on July 1, 2013.

Respondent's failure to fully respond to the Board's inquiry constitutes a failure to cooperate with a Board investigation in violation of N.J.A.C. 13:45C-1.2 and 1.3, which the Board deems professional misconduct, thereby subjecting respondent to sanctions pursuant to N.J.S.A. 45:1-21(e).

Respondent's failure to document required continuing education for the June 1, 2009 - May 31, 2011 biennial period constitutes a violation of N.J.A.C. 13:37-5.3, subjecting him to sanctions pursuant to N.J.S.A. 45:1-21(e) and (h).

Respondent's indication on his renewal application in 2011 that he would satisfy continuing education requirements by May 31, 2011 constitutes misrepresentation in violation of N.J.S.A. 45:1-21(b).

Respondent's withdrawal from participation in RAMP, taken in conjunction with the positive test for alcohol -- along with the other issues of Respondent's termination from nursing employment and whether Respondent had disclosed to his doctor the details of his participation in RAMP and the reasons therefor -- indicates that Respondent was engaged in drug or alcohol use that was likely to impair his ability to

practice nursing with reasonable skill or safety within the intendment of N.J.S.A. 45:1-21(l).

Based on the foregoing findings and conclusions, a Provisional Order of Discipline was entered on December 23, 2013 seeking a reprimand, a seven hundred and fifty dollar (\$750) civil penalty, and a suspension until Respondent provides a full response, provides proof of completion of required continuing education and demonstrates that he is fit and competent to practice nursing. Copies were served upon 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 and conclusions of law by 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.

DISCUSSION

Respondent timely replied to the Provisional Order of Discipline. Regarding continuing education, Respondent provided proof that he had completed the following hours of continuing education:

30 hours within the June 1, 2007 – May 31, 2009 biennial period;

0 hours within the June 1, 2009 – May 31, 2011 biennial period;

0 hours within the June 1, 2011 – May 31, 2013 biennial period; and

30 hours completed after Respondent's license expired on May 31, 2013.

Respondent may apply the most recent thirty hours to cure the deficiency from a

previous biennial period, but there still remains a deficiency of thirty hours. For the June 1, 2009- May 31, 2011 biennial period, Respondent failed to complete the required continuing education and falsely certified that he had completed the required continuing education. As such, the two hundred and fifty dollar (\$250) civil penalty for failing to timely complete continuing education is warranted, as is the reprimand for misrepresenting on his 2011 renewal application that he had timely completed the continuing education.

Regarding the failure to cooperate, in response to the Provisional Order, Respondent has belatedly provided another lengthy response to the Demand. In this most recent reply, Respondent provided circuitous responses and avoided providing some pertinent information. For instance, when asked whether he had tested positive for alcohol while at a doctor's appointment, he maintained that he could not discuss his association with the doctor, but proceeded to include portions of a letter printed on the doctor's letterhead. This letter actually is a recreated, cut-and-paste compilation of portions of the doctor's letter that Respondent deemed pertinent. The Board was not convinced of the letter's authenticity or that Respondent had compiled the letter appropriately. Nonetheless, the Board determined that Respondent had substantially responded and that suspension was no longer warranted on the basis of failure to cooperate. However, the Board determined that Respondent's failure to fully respond to the original inquiry, thereby necessitating the filing of the Provisional Order of Discipline, and review of Respondent's subsequent reply months later, warrants imposition of a five hundred dollar (\$500) civil penalty.

Regarding the issue of impairment, Respondent's reply does not sway the Board

from a finding that Respondent is engaged in drug or alcohol use that is likely to impair his ability to practice nursing with reasonable skill or safety within the intendment of N.J.S.A. 45:1-21(l). Respondent's departure from RAMP without successfully completing the program or being released from the program causes great concern. Although Respondent maintains that he was released from RAMP, the Board finds otherwise. Similarly, Respondent's positive test for a potentially addictive substance (alcohol) while participating with RAMP is a violation of RAMP requirements and an indication that Respondent is not safe to practice. Respondent's departure from RAMP and positive test occurred in or around April 2013. As of May 31, 2013, Respondent allowed his license to expire and as such, has been unable to legally work as a nurse since that time. Pursuant to N.J.S.A. 45:1-22(e), the Board may order any person as a condition for reinstated licensure to secure medical or such other professional treatment as may be necessary to properly discharge licensee functions. Pursuant to N.J.S.A. 45:1-22(f), the Board may order any person as a condition for reinstated licensure to submit to evaluation, testing, and monitoring which may be required to evaluate whether continued practice may jeopardize the safety and welfare of the public.

The Board reviewed Respondent's submissions and determined that further proceedings were not necessary and that no material discrepancies had been raised. The Board was not persuaded that the submitted materials merited further consideration. Respondent has a long history of impairment related issues. He allowed his license to expire as of May 31, 2013 and his license was suspended by operation of statute 30 days thereafter. His license was administratively suspended at that time and he has not sought reinstatement. However, if Respondent ever seeks reinstatement,

prior to any reinstatement, he will have to demonstrate to the satisfaction of the Board that he is fit and competent to practice by gaining the support of the Board's designated intervention program, RAMP, to return to active practice.

ACCORDINGLY, IT IS on this 5th day of November, 2014,

ORDERED that:

1. Respondent's New Jersey nursing license shall remain suspended, to now be deemed a disciplinary suspension, until he has demonstrated that he is fit and competent to resume nursing practice by undergoing evaluation, monitoring, testing, and treatment under the auspices of RAMP or other Board-approved entity, gaining RAMP's support for his return to active practice, and until he has complied with all regulatory requirements for reinstatement.

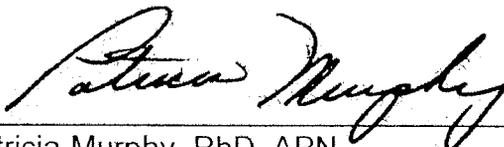
2. A public reprimand is hereby imposed for Respondent's violation of N.J.S.A. 45:1-21(b).

3. A civil penalty in the aggregate amount of seven hundred and fifty dollars (\$750), which includes five hundred dollars (\$500) for violation of N.J.A.C. 13:45C-1.2, -1.3, and two hundred and fifty dollars (\$250) for the violation of N.J.A.C. 13:37-5.3, is hereby imposed. Payment shall be made by certified check, bank cashier check, or money order payable to "State of New Jersey," or by wire transfer, direct deposit, or credit card payment delivered or mailed to George Hebert, Executive Director, State Board of Nursing, P.O. Box 45010, Newark, New Jersey 07101. Any other form of payment will be rejected and will be returned to the party making the payment.

Payment shall be made no later than fifteen (15) days after the date of filing of this Final Order of Discipline. 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.

NEW JERSEY STATE BOARD OF NURSING

By: 

Patricia Murphy, PhD, APN
Board President