



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

IN THE MATTER OF THE LICENSE OF :
: Administrative Action
JONATHAN McGRATH, L.P.N. :
License No. 26NP06424800 : 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. Jonathan McGrath ("Respondent") is a Licensed Practical Nurse (L.P.N.) in the State of New Jersey and has been a licensee at all relevant times.

2. On or about May 31, 2012, Respondent completed and submitted an online biennial renewal for the period of June 01, 2012 to May 31, 2014.

3. Respondent was asked on the biennial renewal application whether Respondent would have "completed the required continuing education credits by May 31, 2012," referring to the biennial renewal period of June 1, 2010 to May 31, 2012. Respondent

answered "Yes" and certified that answer by submitting the online application.

4. The Board received a report from a representative of Crest Haven Nursing and Rehabilitation Center ("Crest Haven") indicating that Respondent had been terminated for violating Federal HIPAA regulations and terms of his employment. Specifically, the complaint alleged that Respondent had taken photos of some of the Crest Haven residents without their permission and that the photos were posted to his Facebook account sometime on or before May 14, 2012. Upon receipt of this report, the Board sent a letter of inquiry requesting certain information and submission of documents regarding the occurrence, Respondent's current nursing practice, and continuing education to Respondent's address of record in Ocean City, New Jersey, via regular and certified mail on or about July 11, 2013. The regular mailing was not returned; the certified mailing was signed for and delivered on July 19, 2013.

6. Respondent replied to the Board's request for information and indicated that it was common for staff, including himself, to use their phones to take photos of their favorite residents. Respondent acknowledged taking the photos on his cell phone and that he kept his cell phone linked to his

laptop. The photos were posted on Respondent's Facebook account. After Respondent's employer questioned Respondent about the photos on his Facebook account, Respondent removed the photos from the account and changed the privacy settings on his account, phone and laptop. Respondent failed to provide proof of any continuing education credits.

7. Respondent's New Jersey license to practice nursing expired on May 31, 2014 and Respondent has not renewed his license.

CONCLUSIONS OF LAW

Any professional license not renewed within thirty days of its expiration date shall be suspended without a hearing. N.J.S.A. 45:1-7.1. As such, Respondent's license was suspended on July 1, 2014.

Pursuant to N.J.A.C. 13:37-5.3(b), licensees are required to complete a minimum of thirty (30) hours of continuing education during the preceding biennial period in order to renew their licenses. Pursuant to N.J.A.C. 13:37-5.3(f), licensees are required to maintain documentation of completion of continuing education for a period of four years after completion, and shall submit such documentation to the Board upon request.

When asked to provide certificates of completion of continuing education for the last three years, Respondent failed to provide any. As such, Respondent failed to demonstrate, to the satisfaction of the Board, that Respondent completed the continuing education credits required for renewal during the biennial period of June 1, 2010 to May 31, 2012. The Board therefore finds Respondent in violation of N.J.A.C. 13:37-5.3(b) and 13:37-5.3(f), which in turn subjects Respondent to sanctions pursuant to N.J.S.A. 45:1-21(e) and (h).

Respondent's use of dishonesty and misrepresentation during the 2012 license renewal process in falsifying his continuing education information constitutes a violation of N.J.S.A. 45:1-21(b), subjecting Respondent to sanctions.

Lastly, the Board finds that Respondent's use of his cell phone to take photographs of patients without their permission, and subsequent appearance of those photos on his Facebook account, in violation of facility policy and Federal HIPAA regulations, constitutes professional misconduct and subjects Respondent to discipline pursuant to N.J.S.A. 45:1-21(e).

Based on the foregoing findings and conclusions, a Provisional Order of Discipline seeking a suspension, reprimand, two hundred and fifty dollar (\$250) civil penalty, and

completion of a Board approved ethics course was entered on July 15, 2014, and a copy was forwarded to Respondent's last known address by means of both 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.

Mr. McGrath replied to the Provisional Order by providing payment of \$250 as well as documentation of completion of 28 contact hours of nursing continuing education completed in August of 2014, and two contact hours of continuing education completed on October 20, 2014. The Board finds that this demonstrates belated completion of continuing education requirements for the 2010-2012 licensing cycle. Although respondent has not completed continuing education for the 2012-2014 licensing cycle, since respondent did not renew his nursing license for the 2014-2016 licensing cycle, he is not required to

demonstrate completion of 30 contact hours of CE to be attributed to the 2012-2014 licensing cycle at this time. Accordingly, a disciplinary suspension is no longer applicable, although respondent cannot be reinstated without demonstrating completion of an additional 30 contact hours of continuing education. However, the Board determined that the reprimand, for misrepresentation as to continuing education on his 2012 renewal application, and the \$250 penalty, for failure to timely complete continuing education for the 2010-2012 licensing cycle, were warranted. In addition, the Board found that the requirement that Mr. McGrath complete an ethics course pre-approved by the Board was warranted, because it was clearly unethical to take photographs of residents on his cell phone and post them on his Facebook account.

ACCORDINGLY, IT IS on this 18th day of December, 2014,

ORDERED that:

1. Respondent is hereby reprimanded for violating N.J.S.A. 45:1-21(b) and (e).

3. A civil penalty in the amount of two hundred and fifty dollars (\$250) is hereby imposed upon Respondent for failing to timely complete continuing education. As respondent has already sent in payment of this amount, he need take no further action

with regard to this penalty.

3. Respondent shall complete a Board-approved ethics course within three months. Respondent shall obtain pre-approval from the Board for any course he proposes to take and shall submit proof of successful completion, in the form of a certificate, to the Board within three months of the filing of this order. This course shall be in addition to continuing education and shall not count towards the required thirty hours of continuing education.

4. Respondent's nursing license remains suspended by operation of law pursuant to N.J.S.A. 45:1-7.1, as it has been since July 1, 2014, for failure to renew his nursing license. This constitutes an administrative suspension, as opposed to a disciplinary suspension. If respondent seeks reinstatement, respondent shall be required to document completion of a minimum of thirty (30) contact hours of nursing continuing education completed subsequent to October 20, 2014.

NEW JERSEY STATE BOARD OF NURSING

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