



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 :
:
DENISE M. DAVIS-FLAX, LPN : FINAL ORDER
License # 26NP04130500 : 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. Denise M. Davis-Flax ("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 23, 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.

3. The Board received information that Respondent was arrested on March 21, 2014 by members of the Camden County Police Department and charged with violating N.J.S.A. 2C:35-10A(1) (Possession of Controlled Dangerous Substance or Analog).

4. On or about April 8, 2014, the Board sent Respondent a letter of inquiry, to her mailing address in Camden, New Jersey, via regular and certified mail, seeking information regarding her nursing employment, continuing education, and the March 21, 2014 arrest/criminal case. The regular mailing was not returned. The certified letter was returned to the Board as "unclaimed". Respondent failed to reply.

5. Respondent failed to notify the Board of any change of address.

CONCLUSIONS OF LAW

Respondent's failure to 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).

By virtue of having failed to respond to the inquiry, Respondent is 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, 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). Respondent also violated N.J.A.C. 13:37-5.7 by failing to notify the Board of a change of address within thirty days of the change. 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 related arrest on March 21, 2014, 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 October 20, 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, providing a narrative statement as to the circumstances that resulted in her

arrest, and providing documentation showing the charges against her were dismissed. Moreover, although initially respondent had not provided documentation of completion of required nursing continuing education for the 2011-2013 licensing cycle, the Board ordered that a follow-up letter advise her to address this deficiency within ten (10) days, and respondent subsequently provided documentation of completion of thirty (30) contact hours of continuing education to be attributed to the 2011-2013 licensing cycle. The Board therefore finds that suspension is no longer applicable. However, the Board further finds that the reprimand for misrepresentation on the 2013 renewal application should be imposed, as well as the \$250 penalty for failure to timely complete continuing education, and the \$500 civil penalty for respondent's failure to timely respond to the Board's initial inquiry. Ms. Davis-Flax's failure to timely respond led to unnecessary delay and expense, as the Board was forced to issue an order to obtain the requested information.

With respect to the arrest for possession of cocaine, although the charges were dismissed, Ms. Davis-Flax admits to being "in the wrong place at the wrong time with the wrong person." Ms. Davis-Fax states she has been a nurse for 24 years, and is a woman of mature years. In effect she admits to the presence of cocaine in her vehicle. Therefore the Board finds that pursuant to N.J.S.A. 45:1-22(f), evaluation and monitoring are warranted to ensure that she

is properly discharging the functions of a licensee in a manner consistent with the health and welfare of the public.

ACCORDINGLY, IT IS on this 17th day of July, 2015

ORDERED that:

1. Respondent is hereby ordered to enroll, for a minimum of ninety (90) days, in the Recovery and Monitoring Program of New Jersey (RAMP) for evaluation and monitoring within thirty (30) days of service of this order.

All costs associated with the evaluation, monitoring, and/or treatment outlined above shall be the responsibility of, and paid directly by, Respondent.

2. A civil penalty in the total amount of seven hundred fifty dollars (\$750) is provisionally imposed upon Respondent, which includes a penalty of five hundred dollars (\$500) for failing to fully cooperate with a Board investigation and a penalty of two hundred and fifty dollars (\$250) for failing to timely complete continuing education. Payment shall be made by certified check or money order payable to the State of New Jersey, delivered to Leslie Burgos-Bonilla, 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 this order. 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 is reprimanded for her violation of N.J.S.A. 45:1-21(b) by providing a false answer on her renewal regarding her completion of continuing education.

NEW JERSEY STATE BOARD OF NURSING

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