

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
RACHEL M. SAENZ, L.P.N. :
License No. 26NP06722000 :
: 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. Rachel M. Saenz ("Respondent") is licensed as a Licensed Practical Nurse (LPN) in the State of New Jersey and has been a licensee at all relevant times.

2. On or about May 9, 2013, Respondent completed an online biennial license renewal application which asked "Will

you have completed the required continuing education credits by May 31, 2013," referring to the thirty hours of continuing education required during the June 1, 2011 - May 31, 2013 biennial period. Respondent answered "yes" and certified that answer to be true by submitting the online application.

3. On or about August 15, 2013, the Board received a flagging notice indicating that Respondent was arrested on August 14, 2013, by members of the State Police (Turnpike Police) for Possession of Marijuana/Hash in violation of N.J.S.A. 2C:35-10(a)(4).

4. On or about August 29, 2013, the Board sent Respondent, via certified and regular mail, a letter of inquiry ("Letter") relating to the arrest. The Letter requested that Respondent provide information relating to eight items, directed Respondent to respond within 20 days, and informed Respondent that her failure to respond could result in disciplinary action. In item 8, the Letter requested copies of the certificates of completion for all continuing education courses taken within the last three years.

5. The certified mailing of the letter was returned as unclaimed but the regular mailing was not returned.

6. Respondent has not contacted the Board to respond to the Letter.

CONCLUSIONS OF LAW

Respondent's failure to respond to the Board's Letter 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 subjecting Respondent to disciplinary action pursuant to N.J.S.A. 45:1-21(e) and (h).

Pursuant to N.J.A.C. 13:37-5.3, 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 the license. N.J.A.C. 13:37-5.3(a). Additionally, a registered professional nurse or licensed practical 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).

Respondent failed to demonstrate, to the satisfaction of the Board, that Respondent completed the 30 hours of continuing education ~~required for the June 1, 2011 to May 31, 2013 biennial~~ renewal period. Respondent provided no proof of continuing

education during that time frame. Respondent's failure to complete 30 hours of continuing education during the June 1, 2011 - May 31, 2013 biennial period constitutes a 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 in the intendment of N.J.S.A. 45:1-21(h).

Further, the Board finds that Respondent's submission of her 2013 renewal, wherein she answered affirmatively that she had completed, or would complete, the required continuing education, when she did not complete the required continuing education, constitutes the use or employment of dishonesty, deception, or misrepresentation within the intendment of N.J.S.A. 45:1-21(b).

DISCUSSION

Based on the foregoing findings and conclusions, a Provisional Order of Discipline seeking a suspension, seven hundred and fifty dollar (\$750) civil penalty, reprimand, and an evaluation under the auspices of the Board designated intervention program, the Recovery and Monitoring Program (RAMP), was entered on ~~July 7, 2014~~. 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.

Respondent replied to the Provisional Order of Discipline by fax sent on February 23, 2015. She apologized for not responding to the Board's letter of inquiry and for not providing information sooner. Respondent provided most of the information and documentation requested in the Board's letter of inquiry, but failed to provide a copy of the police report or any proof of completion of continuing education.

Respondent maintained that in August 2013, she was pulled over for careless driving after she hit a curb. Marijuana was found in the back seat of the vehicle. Respondent entered a six month diversionary program, paid eight hundred dollars (\$800) in fines and court fees, and the charge was dismissed. Respondent indicated that she was depressed by the ordeal and that it had caused her to reevaluate her life. She expressed remorse and

noted the importance of her nursing license. She professed: "I will not let poor decisions jeopardize my profession again."¹

Based upon Respondent's August 2013 drug-related arrest, the Board found that testing, monitoring, evaluation, and treatment were warranted, as a condition for continued or reinstated licensure, to evaluate whether Respondent's continued practice as a nurse may jeopardize the safety and welfare of the public pursuant to N.J.S.A. 45:1-22(f) and to ensure that Respondent can properly discharge nursing functions pursuant to N.J.S.A. 45:1-22(e). Respondent's second drug-related arrest validates the Board's concern. However, the Board is not basing

¹ Two days after Respondent sent that information and documentation to the Board, she was arrested by members of the Hackensack Police Department and charged with violating N.J.S.A. 2C:36.2 (Possession of Drug Paraphernalia); N.J.S.A. 2C:35-10(a)(1) (Possession of Controlled Dangerous Substance (CDS)); N.J.S.A. 2C:35-5(b)(10)(b) (Distribute/Possess Marijuana With Intent); N.J.S.A. 2C:37-7.1(a) (Distribute CDS Within 500 feet of Public Housing); N.J.S.A. 2C:35-7 (CDS on School Property); and N.J.S.A. 2C:35-10.5(b)(2) (Possess Prescription Legend Drug).

this action on the second arrest; the Board reserves the right to initiate further action in the future based upon the second arrest.

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, as Respondent did not dispute the findings of fact or conclusions of law. She did not provide a response to the Board's letter of inquiry when she initially received it, although she later provided a response thereby obviating the necessity for a suspension until she provides a response. However, she did not complete any continuing education and the Board finds that suspension is still warranted on that basis. Further, her first drug-related arrest warrants a comprehensive mental health and substance abuse evaluation to ensure public safety prior to any reinstated practice as a nurse.

ACCORDINGLY, IT IS on this 11th day of September, 2015,

ORDERED that:

1. Respondent's license to practice as a Licensed Practical Nurse is hereby ~~suspended until~~ further Board Order and until such time as Respondent:

a. provides proof of completion of 30 hours of continuing education for each biennial renewal period from June 1, 2011 to the time of reinstatement (30 hours for June 1, 2011 - May 31, 2013; 30 hours for June 1, 2013 - May 31, 2015; etc.); and

b. undergoes a comprehensive mental health and substance abuse evaluation under the auspices of RAMP, and gains RAMP's support for reinstatement.²

2. Continuing education completed during a current biennial period and applied to cure the deficiency of a previous biennial period shall not also be used to satisfy the requirements of the current biennial period.

3. Respondent shall follow the recommendations made by RAMP and/or the evaluator for further treatment and/or lengthier enrollment in RAMP. By undergoing evaluation, Respondent expressly waives any claim of privilege or confidentiality that she may have concerning RAMP reports and disclosures to the Board, and use by the Board of that information in any proceedings. All costs associated with the evaluation, monitoring, and/or treatment outlined above shall be the

² To enroll in RAMP, Respondent should contact the RAMP coordinator at (609) 883-5335, Extension 15, leaving a message with a telephone number where Respondent may be contacted. In the event that there is no response within 48 hours, Respondent may contact RAMP's Director and leave a message with a contact number.

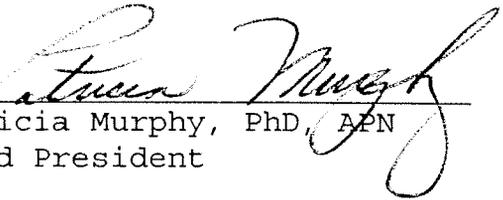
responsibility of, and paid directly by, Respondent.

4. A civil penalty in the amount of two hundred and fifty dollars (\$250) is hereby imposed upon Respondent for professional misconduct and her violation of board regulations pertaining to continuing education. Further, a civil penalty of five hundred dollars (\$500) is hereby imposed upon Respondent for her failure to cooperate with the Board. The combined civil penalties amount to seven hundred and fifty dollars (\$750). 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 State Board of Nursing, Attention: Leslie Burgos, 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 twenty-one (21) 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.

~~5. Respondent is hereby reprimanded for her violation of~~
N.J.S.A. 45:1-21(b).

6. Nothing in this Order shall limit the Board from taking further disciplinary action based on information provided by Respondent in reply to the Board's Letter or upon any new information received by the Board after the filing of the Provisional Order (Respondent's February 2015 arrest). Prior to reinstatement, Respondent shall provide information and documentation concerning her February 2015 arrest and the Board reserves the right to deny any petition for reinstatement.

NEW JERSEY STATE BOARD OF NURSING

By: 
Patricia Murphy, PhD, APN
Board President