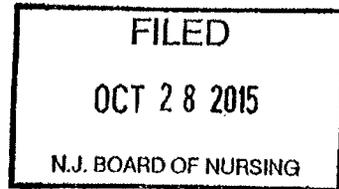


JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street, Fifth Floor
Post Office Box 45029
Newark, New Jersey 07101
Attorney for the State Board of Nursing



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

IN THE MATTER OF THE LICENSE OF	:	
	:	Administrative Action
EUGENIA KHURGIN, R.N.	:	
License #26NR13881700	:	
	:	FINAL ORDER
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 that respondent does not possess the required education for licensure as a registered professional nurse in the State of New Jersey, which the Board has reviewed and upon which the following findings of fact and conclusions of law are made:

FINDINGS OF FACT

1. Respondent is a registered professional nurse in the State of New Jersey who was initially granted a New Jersey nursing license on August 29, 2008.

2. Respondent first arrived in the United States in 2005, and has lived in New Jersey since she arrived in the country.

3. In 2007, respondent applied for licensure as a nurse in New Mexico and was granted a license by that state. Respondent never worked as a nurse in New Mexico.

4. Respondent acknowledged that when she graduated from school in Minsk, in Belarus, she had obtained a degree as a physician. Respondent's diploma bears the date of June 27, 1998.

5. The Board obtained records of respondent's educational history from her licensing file at the New Mexico Board of Nursing on or about September 17, 2014, and forwarded those documents for evaluation to CGFNS International (also known as the Commission on Graduates of Foreign Nursing Schools) in order to obtain an evaluation of her nursing educational credentials.

6. The resulting evaluation indicated that respondent's studies and the diploma were equivalent to a diploma as a physician.

7. The records themselves demonstrate that respondent only had four weeks of education in nursing practice.

8. Although when the Board granted respondent's application for licensure in 2008, Respondent had truthfully disclosed the names of the educational institutions she had attended, the Board did not refer respondent's educational credentials to CGFNS for evaluation. Respondent's application

for licensure was granted by endorsement, i.e., base entirely on the fact that respondent then held a current valid license in New Mexico.

CONCLUSIONS OF LAW

1. Pursuant to N.J.S.A. 45:11-26(a), licensure as a nurse in the State of New Jersey requires completion of a course in professional nursing study in an accredited school of professional nursing.

2. Pursuant to N.J.S.A. 45:11-26(b), the Board may issue a license to practice nursing without examination to an applicant who has been duly licensed by examination under the laws of another State if, in the opinion of the Board, the applicant has the qualifications required by this Act for the licensing of professional nurses or equivalent qualification.

3. Pursuant to N.J.A.C. 13:37-2.3, graduates of foreign nursing programs require a transcript review performed by the Commission on Graduates of Foreign Nursing Schools (CGFNS).

4. Pursuant to N.J.A.C. 13:37-4.1, a registered professional nurse licensed in another state who wishes to be licensed in New Jersey may be licensed by endorsement if he or she meets the requirements set forth in N.J.S.A. 45:1-14 et seq., N.J.S.A. 45:11-26 and N.J.S.A. 45:11-27.

5. Pursuant to New Mexico's Nursing Practice Act, §61-3.13, before being considered for licensure as a registered nurse, an applicant must furnish evidence of having successfully completed an approved program of nursing for licensure as a registered nurse.

6. The evaluation by ICD, a division of CGFNS International, indicates that respondent's course of study outside of the United States was the equivalent of the completion of a specialized Bachelor in Medicine degree.

7. Respondent's own admission, and the evaluation by ICD, indicates that respondent did not graduate from a school of professional nursing. Accordingly, respondent did not meet the statutory requirements for licensure under both New Jersey and New Mexico law, as respondent did not complete a course in professional nursing study in an accredited school of nursing (New Jersey), or an approved program of nursing for licensure as a professional nurse (New Mexico), and the Board does not consider obtaining a diploma as a physician to be the equivalent of a course in professional nursing study in an accredited school of nursing.

DISCUSSION

In the opinion of the Board, while both physicians and nurses have the ultimate goal of healing the sick, the

professional focus and education of a physician differs greatly from the professional focus and education of a nurse, and the formal education provided to physicians and nurses reflect those differences; the credential of a physician cannot be substituted for the credential of a nurse.

DISCUSSION ON FINALIZATION

Based on the foregoing findings and conclusions, a Provisional Order of Discipline ("POD"), preliminarily concluding that the nursing license of respondent Eugenia Khurgin had been wrongfully issued and that rescission was required, was entered on June 19, 2015 and a copy was served on the respondent. The POD 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.

The Board, in the POD, preliminarily concluded that Ms. Khurgin had failed to complete a course of professional nursing study in an accredited school of professional nursing, as

required by N.J.S.A. 45:11-26(a). This failure, the Board determined, resulted in her failing to meet the statutory requirements for licensure under applicable New Jersey law. Additionally, the Board preliminarily found that respondent's studies in Minsk, Belarus, were comparable to the completion of a specialized Bachelor of Medicine program in the United States. As such, the Board concluded that the respondent's diploma as a physician was not equivalent to a course in professional nursing study in an accredited school of nursing, as mandated by N.J.S.A. 45:11-26(b)(2). The license to practice nursing in this State, the Board concluded, was therefore issued in error and must be rescinded.

In a written response to the POD, Alex Keoskey, Esquire, counsel for the respondent, requested that the Board dismiss or modify the findings of fact and conclusions of law detailed in the POD because, he argued, the Board's conclusions were incorrect. Specifically, while conceding that she did not complete a course in professional nursing as required by New Jersey law, Ms. Khurgin contended that she had demonstrated the requisite skill, education and experience to be licensed as a registered nurse in this State.

Following review of the submissions, the Board found that further proceedings were necessary and determined to conduct a

hearing. On October 13, 2015, a quorum of the Board conducted the hearing. The Attorney General, by David M. Puteska, Deputy Attorney General ("DAG"), presented the State's case by introducing the following joint exhibits that were admitted into evidence without objection:

- J-1 Provisional Order of Discipline filed June 19, 2015 and all attached exhibits;
- J-2 Education, Licensure Credentials, Work History and Performance Report prepared by Georgia Persky Consulting, dated August 14, 2015 and all attached exhibits;
- J-3 Letter, dated August 17, 2015, from Catherine M. Steinhauser, RN, BSN, to the Board of Nursing;
- J-4 Application of Respondent Eugenia Khurgin to the State of New Mexico for Licensure as a Registered Nurse;
- J-5 Board of Nursing, State of New Mexico, Default Order in the Matter of Eugenia Khurgin; and
- J-6 Certification of Erica N. Fuller and attached exhibits.

DAG Puteska argued that this was a simple matter of a person who was issued a license for professional nursing when in fact she does not possess the appropriate educational requirements for licensure as a professional registered nurse in New Jersey. He further contended that while she may have practiced as a nurse for six (6) years, the uncontroverted evidence proves that Ms. Khurgin attended medical school and was

awarded a degree in medicine, rather than completing a course in professional nursing from an accredited school of professional nursing, as required by N.J.S.A. 45:11-26(a). DAG Puteska contended that the respondent's nursing license was wrongly issued and therefore must be rescinded.

Following the presentation by DAG Puteska, Mr. Keoskey initiated the respondent's case by offering the testimony of Georgia Persky, RN, MBA, PhD. She provided testimony as to her credentials and was, without objection, accepted as an expert in the field of nursing. Ms. Persky testified that she was asked to review the credentials and educational preparation of the respondent in order to ascertain her qualifications to practice as a registered nurse under applicable New Jersey laws and regulations governing nursing. She also prepared a written report detailing her findings which was introduced into evidence as J-2.

In preparing her opinion regarding the respondent, Ms. Persky testified that she, among other things, interviewed Ms. Khurgin, reviewed the respondent's transcript and other translated educational documents and had physically visited the respondent's medical school in Minsk in previous years.

Respondent's expert asserted that educational and professional practices of physicians and registered nurses have

a different focus. Ms. Persky opined that a Physician's Model focuses on disease processes and resolution of those processes while the Nursing Model focuses on a more holistic, integrative, outcomes-based approach to the patient care process. [See J-2, page 4]. She indicated that her review revealed that Ms. Khurgin, in her studies at the Belarus Medical School from 1992-1998, attended post-secondary medical school for six (6) years and took courses relating to every physical system. Respondent also undertook, Ms. Persky noted, a four (4) week summer program within the six years that concentrated on nursing practice. [See J-2, page 4].

Finally, Ms. Persky opined that, despite the fact that the respondent did not complete a "course of professional nursing study in an accredited school of professional nursing . . . ", as required by N.J.S.A. 45:11-26(a), the respondent's program in medicine and four (4) week summer program in nursing was "equivalent" to nurse training in the United States. [J-2, page 10]. She further testified that she believed Ms. Khurgin could continue to competently and safely practice nursing in New Jersey. In reaching this conclusion, Ms. Persky relied on the facts that: 1) the respondent had practiced as a nurse for approximately six (6) years without any complaints relative to her quality of care or practice; 2) her performance evaluations

at Jersey Shore University Medical Center ("Jersey Shore") were stellar; and 3) no misconduct has ever been alleged and that all of the credentials submitted to New Jersey and New Mexico were genuine. Hence, Ms. Persky testified that in her opinion the Board should continue to license the respondent and allow her to practice as a nurse.

On cross examination, Ms. Persky conceded that respondent attended medical school and not nursing school. Additionally, she testified that in her forty-five (45) years of nursing management, she is unaware of any licensed nurse who she supervised who did not possess a nursing degree. Finally, she testified that she had reviewed joint exhibit J-5 which indicated that, as of August 27, 2015, respondent's license to practice nursing in New Mexico had been revoked by default.

Respondent also presented the testimonies of Lucricia Schwartz and Kathleen Sullivan, respondent's Nurse Manager and nurse educator, respectively, at Jersey Shore. These witnesses testified, among other things, that Ms. Khurgin is an excellent nurse with superior skills.

Following its consideration of the entire record, the Board determined that its prior Provisional Order should become final with no modifications. The Board carefully evaluated respondent's arguments, submitted documentation and testimonies.

There is no question that this matter presents difficult issues for the Board. However, the Board found that, as set forth below, the facts and law as written compel a conclusion that Ms. Khurgin's license must be rescinded as it was wrongfully issued.

Courts have concluded that licenses issued in error, particularly those issued when the applicant did not actually meet the educational requirements, can be rescinded, canceled, or otherwise voided. See Packer v. Board of Behavioral Science Examiners, 125 Cal. Rptr. 96 (Ct. App. 1975) (license to practice as a marriage, family and child counselor revoked based on graduation from an accredited school); Gersch v. Illinois Department of Professional Regulation, 720 N.E.2d. 672 (Ill. App. Ct. 1999) (registration as a licensed clinical social worker canceled based on lack of advanced educational degree). These cases indicate that respondents should not be permitted to benefit from Board errors. The respondent here has already benefitted by practicing nursing for approximately six (6) years while not qualified to do so.

The evidence produced in the hearing indicates that the respondent first arrived in the United States and specifically New Jersey in 2005. She graduated from medical school in 1998 and obtained a degree as a physician. In 2007, she applied for, and was granted, licensure as a nurse in New Mexico. New

Mexico's applicable statutes require, among other factors, that an applicant provide evidence of having successfully completed an approved program of nursing for licensure as a registered nurse. [New Mexico Nurse Practice Act, §61-3.13(A)].

Ms. Khurgin subsequently applied for, and was granted, licensure as a professional registered nurse in New Jersey in or about 2008. Her application for licensure was granted by endorsement; N.J.S.A. 45:11-26(b); based on the fact that she held a current and valid license in New Mexico.¹ Now, however, with the issuance of the New Mexico Default Order, there is no basis for the granting of a license to the respondent by endorsement.

Case law indicates that an administrative agency has the inherent power to reconsider a previous decision. See Mastro v. Board of Trustees, Public Employees' Retirement System, 266 N.J. Super. 445 (1993); In re Parole Application of Trantino, 89 N.J.

¹ The Board notes that in a Default Order, effective August 27, 2015, the New Mexico Board of Nursing revoked respondent's license to practice nursing following its issuance of a Notice of Contemplated Action ("NCA") against the respondent. This document contends that the Board had sufficient evidence to suspend, revoke or impose other action against her license based on violation of the New Mexico Nursing Practice Act. Ms. Khurgin failed to appear at the hearing and her license was then revoked by default. [See J-5]. As indicated above, as a result of the revocation by default of respondent's New Mexico license, there is no basis for the grant of New Jersey licensure via endorsement. [See N.J.S.A. 45:11-26(b)(2)].

347 (1982). The Board has reconsidered its decision to grant a nursing license to Ms. Khurgin and concluded that the license was issued in error. Respondent does not satisfy the requirements for licensure in that she has not completed an approved program of nursing for licensure as a professional nurse. The Board's discovery of its mistaken belief that respondent graduated from an approved nursing program constitutes a

new development or new evidence relating to established facts or a material misapprehension concerning an essential matter which is critical to an agency determination . . .

such as, in the Board's decision as to whether to grant a license or not. [See Trantino, supra, 89 N.J. at 365]. Therefore, the Board has a reasonable basis to reconsider its decision to grant respondent a license.

In reconsidering its prior determination, the Board reviewed its endorsement statute. N.J.S.A. 45:11-26(b)(2) provides, in the pertinent portion, that the Board may issue a nursing license to an applicant

who has been duly licensed . . . by . . . the laws of another State . . . or any foreign country, if in the opinion of the board the applicant has the qualifications required by this act for the licensing of professional nurses, or equivalent qualifications.

N.J.S.A. 45:11-26(b)(2). A state agency may not ignore the plain language of a statute. Licensing requirements for professional nurses in the State of New Jersey include successful completion of a "course of professional nursing study in an accredited school of professional nursing." N.J.S.A. 45:11-26(a). Applicants by endorsement are held to the same requirement. [See N.J.S.A. 45:11-26(b)(2) and N.J.A.C. 13:37-4.1]. Quite simply, licensed professional nurses in the State of New Jersey must have completed a course in professional nursing study in an accredited nursing program. Respondent has not.

Further, the Board's review of an evaluation of respondent's educational transcript indicated in 2014 that her course of study outside of the United States was the equivalent to the completion of a specialized Bachelor in Medicine degree or, in other words, a diploma as a physician. [See J-6]. The Board concludes that the educational credentials and training as a physician is not equivalent or comparable to the training and education in professional nursing study in an accredited school of nursing as required by New Jersey law.

Ms. Khurgin asserts that N.J.S.A. 45:11-26 requires applicants to complete professional nursing courses to demonstrate he or she possesses the requisite skill, education,

training and experience to practice as a nurse. Hence, respondent argues that, despite not possessing the requisite nursing education, the evidence demonstrates that she possesses the necessary skill, training and experience to be licensed as a registered nurse in this State. The Board however is unable to find support for this proposition in the applicable laws. The Board found that the respondent's license was issued erroneously in that she does not meet the educational requirements and that her educational credentials are not equivalent. Therefore, it concluded her license must be rescinded.

Notwithstanding the Board's conclusion to rescind the respondent's nursing license, the Board emphasizes that Ms. Khurgin's competence is not in question here. The Board has determined to rescind, not revoke, the respondent's license as Ms. Khurgin has done nothing to warrant any discipline. Rather, the Legislature has spoken by detailing licensure requirements for professional nurses and the respondent has simply not met those requirements. New Jersey is a diverse State with healthcare workers from many different countries with differing educational credentials. While these workers may be highly skilled abroad, often their credentials are not substantially equivalent to New Jersey nursing practice and standards. Although the Board's findings here result in prohibiting

respondent from practicing nursing in New Jersey at this time, this does not have to be permanent. If Ms. Khurgin obtains the necessary education - a course of professional nursing study from an accredited nursing program - the Board would welcome her new application for a nursing license.

ACCORDINGLY, IT IS on this 28th day of OCTOBER 2015,

ORDERED that:

1. Respondent's New Jersey license is hereby rescinded, as it was wrongfully issued by the Board. The rescission is effective beginning October 28, 2015.

2. Respondent shall refrain from practicing as a nurse and shall not represent herself as a Registered Professional Nurse until such time as she obtains the statutorily required education, meets all other requirements, applies to the Board and is granted licensure as a nurse in the State of New Jersey.

NEW JERSEY STATE BOARD OF NURSING

By: *Patricia Murphy Ph.D. APN*
PATRICIA MURPHY, PhD, APN
Board President