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N.J. BOARD OF NURSING

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

IN THE MATTER OF THE SUSPENSION	:	
OR REVOCATION OF THE LICENSE OF	:	ADMINISTRATIVE ACTION
	:	
Justine A. Garcia, C.H.H.A.	:	PROVISIONAL ORDER OF
Certificate No. 26NH14795700	:	DISCIPLINE
	:	
	:	<input checked="" type="checkbox"/> FINAL ORDER OF DISCIPLINE
	:	(Finalized by default
	:	on <u>May 27, 2016 / 05/27/2016</u> )
HOMEMAKER-HOME HEALTH AIDE	:	
IN THE STATE OF NEW JERSEY	:	

**FINAL**

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 preliminary findings of fact and conclusions of law are made:

FINDINGS OF FACT

1. Justine A. Garcia ("Respondent") is a certified homemaker-home health aide in the State of New Jersey whose license expired on November 30, 2015. (Exhibit A).

2. Upon receipt of a flagging notice indicating that Respondent was arrested on June 30, 2015 by Ocean County Sheriff's Office, for violations of N.J.S.A. 2C:35-10A(1), Possess Controlled Dangerous Substance or Analog, and N.J.S.A. 2C:35-5A(1) Manufacture/Distribute Controlled Dangerous Substance, the Board sent a letter of inquiry, requesting certain information and submission of documents, to Respondent's address of record in Newark, New Jersey, via regular and certified mail on or about July 1, 2015. A response was due within twenty (20) days. The regular mailing was not returned; the certified mailing was returned as "Unclaimed." (Exhibit B).

3. Upon receipt of a second flagging notice indicating that Respondent was arrested on July 28, 2015 by Lakewood Township Police, for violations of N.J.S.A. 2C:35-10A(4), Possession of Less than 50 Grams Marijuana, and N.J.S.A. 2C:36-2 Possess Drug Paraphernalia, the Board sent a letter of inquiry, requesting certain information and submission of documents, to Respondent's address of record in Newark, New Jersey, via regular and certified mail on or about July 29, 2015. A response was due within twenty (20) days. The regular mailing was not returned; the certified mailing was returned as "Unclaimed." (Exhibit C).

4. To date, Respondent has not responded to the Board's requests for information.

CONCLUSIONS OF LAW

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

Certified homemaker-home health aides provide care to some of the most vulnerable members of our society - the infirm elderly. They have unfettered access to the homes, personal possessions, bank accounts and credit cards of their elderly patients. Possible addiction to illegal substances or alcohol raise particular concern as certificate holders who have not obtained appropriate treatment may pose a risk to the safety and security of those individuals entrusted to their care. Respondent's arrest for drug related conduct combined with her lack of cooperation with the Board's inquiry are sufficient indication that Respondent's continued practice as a homemaker-home health aide may jeopardize the safety and welfare of the public such that diagnostic testing and monitoring or psychological evaluation are warranted as a condition of

continued certification pursuant to N.J.S.A. 45:1-22(e) and (f) and N.J.S.A. 45:1-21(1).

ACCORDINGLY, IT IS on this 7<sup>th</sup> day of April, 2016, ORDERED that, UPON THE FILING OF A FINAL ORDER OF DISCIPLINE:

1. Respondent's certificate to practice as a homemaker-home health aide will be suspended until such time as Respondent cooperates fully with the Board's investigation by providing the Board with the information requested in the Board's letters of inquiry and demonstrates compliance with paragraph 2 below.

2. Respondent shall:

- a. Provide the Board with evidence that she is capable of discharging the functions of a certificate holder in a manner consistent with the public's health, safety and welfare and that she is not then suffering from any impairment or limitation resulting from the use of any addictive substance which could affect her practice.
- b. Provide the Board with an in-depth, current evaluation from a licensed clinical alcohol and drug counselor or psychiatrist or psychologist knowledgeable in addiction therapy who is aware of the circumstances of Respondent's arrest and this Provisional Order of Discipline and who has been pre-approved by the Board. Respondent shall provide documentation that she has complied with all recommendations of the licensed clinical alcohol and drug counselor or psychiatrist or psychologist.
- c. Affirmatively establish her fitness, competence and capacity to re-enter the active practice as a certified homemaker-home health aide within New Jersey, which may include, but not be limited to, biometric testing.

3. Upon the filing of a FINAL ORDER OF DISCIPLINE, Respondent shall, within 5 (five) days, mail her certificate, wall and wallet version, to practice as a homemaker-home health aide to Twalema Khonje, State Board of Nursing, P.O. Box 45010, Newark, New Jersey 07101.

4. Upon the filing of a FINAL ORDER OF DISCIPLINE, Respondent shall refrain from engaging in the practice as a certified homemaker-home health aide and shall not represent herself as a certified homemaker-home health aide, which includes but is not limited to performing delegated nursing regimens or nursing tasks delegated through the authority of a duly licensed professional nurse, until such time as her certification is reinstated. Any practice as a certified homemaker-home health aide in this State prior to such reinstatement shall constitute grounds for a charge of unlicensed practice.

5. Respondent is provisionally assessed a civil penalty in the amount of four hundred dollars (\$400). Two hundred dollars (\$200) for each of the Board's inquiries. 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 Twalema

Khonje, 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 a 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.

6. The within order shall be subject to finalization by the Board at 5:00 p.m. on the 30<sup>th</sup> day following entry hereof unless Respondent requests a modification or dismissal of the above stated Findings of Fact or Conclusions of Law by:

- a) Submitting a written request for modification or dismissal to Twalema Khonje, State Board of Nursing, 124 Halsey Street, Sixth Floor, P.O. Box 45010, Newark, New Jersey 07101.
- b) Setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed.
- c) Submitting any and all documents or other written evidence supporting Respondent's request for consideration and reasons therefor or offered in mitigation of penalty.

7. Any submissions will be reviewed by the Board and the Board will thereafter determine whether further proceedings are necessary. If no material discrepancies are raised through a supplemental submission during the thirty-day period, or if the

Board is not persuaded that the submitted materials merit further consideration, a FINAL ORDER OF DISCIPLINE will be entered.

8. In the event that Respondent's submissions establish a need for further proceedings, including, but not limited to an evidentiary hearing, Respondent shall be notified with regard thereto. In the event that an evidentiary hearing is ordered, the preliminary findings of fact and conclusions of law contained herein may serve as notice of the factual and legal allegations in such proceeding. Further, in the event a hearing is held and upon review of the record, the Board shall not be limited to the findings, conclusions and sanctions stated herein.

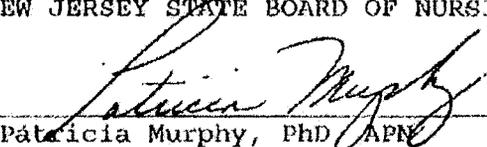
9. In the event that the Board receives no written request for modification or dismissal within 30 days following entry of this Provisional Order of Discipline, without further Board review, all referenced preliminary Findings of Fact and Conclusions of Law and all provisional sanctions or penalties imposed by this Order shall automatically become the Final Decision and Order of the Board. Thereafter, Respondent's failure to comply with any sanction or penalty imposed by this Order shall be considered a violation of a Board Order in contravention of N.J.S.A. 45:1-21 (e) and (h) and N.J.A.C.

13:45C-1.4 and may subject Respondent to additional sanction and/or penalty.

10. The Board reserves the right to initiate disciplinary proceedings based upon any information that Respondent ultimately provides in response to the letters of inquiry or upon any new information the Board receives.

NEW JERSEY STATE BOARD OF NURSING

By:

  
Patricia Murphy, PhD APN  
President