



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

IN THE MATTER OF THE :
SUSPENSION OR THE REVOCATION : Administrative Action
OF THE CERTIFICATION OF :
 :
 :
Oleg Protas :
CERTIFICATE NO.26NH10594800 : FINAL ORDER
 :
 :
TO PRACTICE AS A :
HOME MAKER-HOME HEALTH AIDE :
IN THE STATE OF NEW JERSEY :

Following his arrest in July 2017 on charges of sexual assault, Oleg Protas, CHHA (Respondent) voluntarily surrendered his certification to practice as a homemaker-home health aide pending the outcome of the criminal matter. He was subsequently convicted of N.J.S.A. 2C:14-3B Criminal Sexual Contact, a crime in the fourth degree, and was sentenced to one (1) year of non-custodial probation. On or about May 16, 2019, the Attorney General filed a Verified Complaint seeking revocation or suspension of Respondent's certificate to practice as a homemaker-home health aide as well as attorneys' fees and costs. Concurrent with the filing of the Complaint, the Attorney General filed a Motion to Proceed Summarily ("Motion"), pursuant to Court Rule 4:67-2(b). The Attorney General simultaneously noticed Respondent that if the motion was granted, the Board may then try the action

on the return day of the motion or on such short date as fixed by the Board. Respondent did not file an answer to the Complaint or other written response. He did not telephone or appear at the Board office seeking an adjournment or otherwise respond to the Verified Complaint and Motion to Proceed Summarily.

A hearing was held before a quorum of the Board on November 12, 2019. Deputy Attorney General ("DAG") Michelle Mikelberg appeared on behalf of the complainant Attorney General. After waiting forty-five minutes after the scheduled time for the hearing, DAG Mikelberg represented that neither Respondent nor counsel for Respondent were in the hearing room or the lobby, and that no one had called the Attorney General or responded to the Verified Complaint and Motion to Proceed Summarily. She then made a motion to proceed with the hearing in default as adequate efforts at service had been made.

DAG Mikelberg demonstrated that a letter was sent to Respondent at his address of record advising of the date, time and location of the hearing. (P-8 in evidence, Letter dated October 11, 2019). Certifications were accepted into evidence showing that the Verified Complaint, Motion to Proceed Summarily and all accompanying documents were personally served on Respondent's mother at his address of record and that Respondent verbally

indicated to a board investigator via telephone that his mother could accept the documents. (P-7 in evidence, Certification of Service of Investigator Mahasky, dated June 4, 2018).

The Board granted the motion to proceed with a default hearing. The Board determined that the State had demonstrated that service of the Complaint and Motion had been made at Respondent's address of record, and found that the efforts at service were sufficient to place Respondent on notice of the scheduled hearing.¹

The Board next considered the unopposed Motion to Proceed Summarily. The Board was satisfied that the matter could be completely disposed of on the record on the return date of November 12, 2019, granted the Attorney General's Motion to Proceed Summarily and moved immediately to the hearing.

DAG Mikelberg argued that the conduct underlying Respondent's conviction and the conviction itself constituted both professional misconduct and the conviction of a crime that involved moral turpitude and adversely related to the activity regulated by the Board, thus providing basis for disciplinary sanction pursuant to

¹ The Board acknowledges that the Attorney General provided no certification of service for the October 11, 2019 letter advising Respondent of the date, time and location of the hearing. Within 30 days of service of this written order, Respondent may request that the Board reopen this matter upon provision of reasonable evidence that he did not receive notice of the time and place of the hearing.

N.J.S.A. 45:1-21(e) and (f). She further argued that the crime Respondent was convicted of (N.J.S.A. 2C:14-3B) was one which involved danger to a person which should result in an automatic disqualification from certification pursuant to N.J.S.A. 45:11-24.3. She urged the Board to permanently revoke respondent's certification to practice as a homemaker-home health aide.

The following documents were accepted into evidence:

Exhibit P-1 - The Somerdale Borough Police Department Arrest Report, reciting allegations that Respondent visited a former girlfriend against her wishes and refused to leave when asked. The former girlfriend alleged that she was not feeling well and fell asleep believing Respondent left the apartment. When she woke up Respondent was in her bed, her hands were tied up with a belt from her robe, her feet were zip tied together and Respondent's hand was inside her vagina. Respondent allegedly put his penis in her vagina before she was able to break out of the restraints.

Exhibit P-2 - Interim Consent Order of Voluntary Surrender.

Exhibit P-3 - Accusation of the Superior Court of New Jersey Law Division Camden County Criminal.

Exhibit P-4 - Plea Transcript, dated December 13, 2017. reflects that respondent admitted that he "through force or

coercion" touched his former girlfriend "over her clothing on her vagina and other intimate parts of her body."

Exhibit P-5 - Transcript of Sentencing.

Exhibit P-6 - Judgment of Conviction for Criminal Sexual Conduct.

After reviewing all of the evidence and deliberating in executive session, the Board found that the Attorney General conclusively established that there were multiple bases to impose discipline on Respondent. Most significantly, the Board found that Respondent's conviction was of a crime that disqualifies him from certification under N.J.S.A. 45:11-24.3. The crime that Respondent was convicted of, and the conduct respondent engaged in, as admitted in his guilty plea, involved moral turpitude and relating adversely to practice as a certified homemaker-home health aide, providing independent basis for discipline under N.J.S.A. 45:1-21(f).

In determining an appropriate penalty, the Board considered that certified homemaker-home health aides provide care to some of the most vulnerable members of our society - the infirm elderly and handicapped of all ages. It is imperative that certified homemaker-home health aides are able to control their behavior and exercise good judgment. Statutorily, we are required to disqualify

Respondent from certification based on his conviction for fourth degree criminal sexual contact. However, we are deeply concerned by Respondent's admitted conduct - namely that he assaulted a woman by touching her through force or coercion on her vagina and other intimate parts. Respondent has provided this Board with no mitigating information, did not submit an answer to the Verified Complaint filed in this matter and failed to appear for the hearing on November 12, 2019.

We conclude that the imposition of a permanent revocation and a meaningful monetary penalty is necessary to further our paramount obligation to protect the public health safety and welfare.² A penalty of up to \$10,000 for a first violation is authorized by N.J.S.A. 45:1-25 and we find that the full \$10,000.00 penalty is appropriate in this case. The revocation and \$10,000.00 penalty will serve both a punitive element - that is, to punish Respondent for his behavior - and a deterrent effect, as it is intended to send a message to the community of certified homemaker-home health aides at large that such conduct exposes a certificate holder to significant penalty. For the reasons cited above, we find Respondent's conduct to have been serious and thus find his case

² The Attorney General also requested that the Board impose attorney fees in the amount of \$4888.00. In the absence of any certification to support this request, it was denied.

to be one that fully supports the sanctions ordered herein.

ACCORDINGLY, it is on this 13th day of February 2020

**ORDERED, as announced orally on the record and effective
November 12, 2019:**

1. The certification of Oleg Protas to practice as a homemaker-home health aide is permanently revoked.

2. Respondent shall continue to cease and desist from engaging in practice as a certified homemaker-home health aide.

3. Any practice in this State shall constitute grounds for further sanctions for violation of a Board Order pursuant to N.J.A.C. 13:45C-1.4.

4. Respondent is hereby assessed a civil penalty in the amount of \$10,000.00 for the violations found by the Board and as set forth herein. Payment shall be made by credit card, wire transfer, bank check or money order or by certified check payable to the "State of New Jersey" and delivered to Joanne Magrath, 124 Halsey Street, 6th floor, Newark, New Jersey 07101. Any other form of payment will be rejected by the Board and returned to Respondent. Payment shall be made no later than fifteen (15) days from the date of this Order. In the event Respondent fails to make 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. Upon service of the written order in this matter, Respondent shall have 30 business days to request the Board to re-open this matter upon a showing that he did not receive notice of the hearing at his address of record with the Board.

NEW JERSEY STATE BOARD OF NURSING

By: Barbara Blozen EdD MA RN-BC CNL
Barbara Blozen, EdD, MA, RN-BC, CNL
Board President