



FILED
OSAH

MAR 14 2016

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

GEORGIA BOARD OF NURSING,
Petitioner,

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K. Westray

Kevin Westray, Legal Assistant

v.

Docket No.: OSAH-PLBD-LPN-SAN-
1628845-159-Howells

APRIL NICOLE LANIER,
Respondent.

INITIAL DECISION

The Georgia Board of Nursing (“Board”) seeks to revoke Respondent April Lanier’s license to practice as a licensed practical nurse (“LPN”) in the State of Georgia. The hearing in this matter was held on February 29, 2016, before the undersigned administrative law judge. Respondent failed to appear at the hearing and was in default pursuant to Rule 616-1-2-.30(5) of the Office of State Administrative Hearings (“OSAH”). Ga. Comp. R. & Regs. § 616-1-2-.30(5). Janet K. Jackson, Senior Assistant Attorney General, represented the Board at the hearing. For the reasons set forth below, the Board’s decision to revoke Respondent’s license is **AFFIRMED**.

I. Findings of Fact

1.

Respondent has been licensed as an LPN in the State of Georgia since November 7, 2007, and was so licensed at all times relevant to this case. The current status of Respondent’s license is “SUSPENDED.” (Exhibit P-1; Testimony of James D. Cleghorn, Executive Director of the Georgia Board of Nursing.)

2.

Based on information that Respondent was found by her employer, in or about September 2012, to have diverted narcotics, destroyed a medication record, and had a positive result for opiates on a drug screen test, the Board issued a Confidential Order for Mental/Physical

Examination (“Order”) on January 22, 2015. (Exhibit P-2.) The Order required Respondent to undergo an outpatient mental/physical examination within thirty (30) days of receiving the Order and to submit a report of the examination to the Board within forty-five (45) days of receipt of the Order. (Exhibit P-2; Testimony of Cleghorn.) The Order further stated that “[f]ailure to comply with the Order, unless such failure is due to circumstances beyond your control, constitutes a violation of O.C.G.A. § 43-26-40(a)(6), and may result in disciplinary proceedings to revoke, suspend, or otherwise sanction your license to practice as a licensed practical nurse in the State of Georgia.” (Exhibit P-2.)

3.

On March 10, 2015, the Board sent Respondent a letter by certified mail and email to Respondent’s mailing address and email address on file with the Board. The letter informed Respondent of her failure to comply with the Order and the requirement to submit the report of the examination to the Board by March 20, 2015. (Exhibit P-3; Testimony of Cleghorn.)

4.

Respondent failed to comply with the Board’s Order. As of the hearing date, Respondent had not submitted to the Board any report of a physical or mental examination as required by the Order. (Testimony of Cleghorn.)

5.

On June 3, 2015, Respondent was terminated from employment as a nurse at Golden Living Center in Tifton, Georgia. Respondent’s termination was based upon her employer’s determination that Respondent misappropriated controlled substances for her own use by withdrawing prescribed medication from the facility’s medication dispensing system and failing to document the withdrawal on the facility’s controlled substance log. Respondent also failed to

document administration of the medication on the resident's medication administration record. Respondent was not the nurse assigned to care for this resident on the date the medications were withdrawn. (Exhibit P-4; Testimony of Rebekah M. Tucker, Director of Nursing Services at Golden Living Center.)

6.

On June 25, 2015, Respondent was terminated from employment as a nurse at Pruitt Health Sylvester in Sylvester, Georgia.¹ Respondent's termination of employment was based upon the results of an internal investigation by Respondent's employer regarding missing narcotics. Cyndi Watson conducted the investigation. As a result of her investigation, she concluded that Respondent took the missing narcotics, which consisted of at least 60 tablets of oxycodone and/or hydrocodone. (Exhibit P-5; Testimony of Cyndi Ann Watson, Administrator of Pruitt Health Sylvester.)

7.

On one of the Controlled Drug Records, Respondent indicated that she "wasted" one tablet of hydrocodone on June 20, 2015 at 7:00 a.m. Respondent signed the record and there is another illegible signature next to her signature.² When asked whose signature was beside her own, Respondent told Ms. Watson that it was Taylor Walker. Nurse Walker was the oncoming nurse for the next shift. Nurse Walker did not witness the wasting of that medication and the signature beside Respondent's is not Nurse Walker's signature. (Exhibit P-5; Testimony of Taylor Walker.)

¹ During the investigation of missing narcotic medications, Cyndi Watson spoke with Respondent over the telephone. Ms. Watson asked Respondent to come in to discuss the investigation. Respondent refused to come in and stated that she was resigning without notice. Nonetheless, Pruitt Health Sylvester completed a Separation Notice on June 25, 2015, on which the reason for separation was noted as "serious rule violation." Thus, despite Respondent's purported resignation, the facility terminated her as of June 25, 2015. (Exhibit P-5; Testimony of Cyndi Watson.)

² When a narcotic is wasted, it is the policy of Pruitt Health Sylvester for two nurses to sign the Controlled Drug Record. (Testimony of Cyndi Watson.)

8.

On July 6, 2015, warrant number 15-0595 was issued in Worth County, Georgia for Respondent's arrest. The warrant was issued for one felony count of Forgery in the First Degree. (Exhibit P-6; Testimony of Hernandez.)

9.

On July 16, 2015, Respondent was interviewed by Robert Hernandez, an investigator from the Secretary of State's Office acting on behalf of the Board. Respondent told Mr. Hernandez that she has a drug addiction, she has been dismissed from several facilities because of the addiction, and that she was seeking treatment for her drug problem. (Exhibit P-7; Testimony of Hernandez.)

10.

On August 27, 2015, the Board issued an Order of Summary Suspension suspending Respondent's license to practice as a licensed practical nurse in Georgia. (Exhibit P-8; Testimony of Cleghorn.)

II. Conclusions of Law

1.

Because the Board seeks to revoke Respondent's license, the Board bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07(1)(a). However, Respondent bears the burden as to any affirmative defenses. *Id.* The standard of proof is preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

On July 1, 2014, the Georgia Board of Examiners of Licensed Practical Nurses ("LPN Board") statutorily merged with the Georgia Board of Nursing. See H.B. 332, 152nd Gen. Assemb., Reg. Sess. (Ga. 2013). As a result, all licensed practical nurses in Georgia are

currently licensed, regulated, and disciplined by the Georgia Board of Nursing and the Board of Nursing is authorized to enforce all investigative and disciplinary orders issued by the former LPN Board. O.C.G.A. § 43-26-5(a), (b).

3.

The Board therefore has the statutory authority to impose disciplinary action against Respondent's license pursuant to the Georgia Registered Professional Nurse Practice Act, O.C.G.A. §§ 43-26-1, et seq., the rules of the Georgia Board of Nursing, found at Ga. Comp. R. & Regs., Chapter 410, and the statutory provisions related to grounds for disciplinary actions by professional licensing boards found at O.C.G.A. § 43-1-19.

4.

Georgia Code Section 43-1-19(a)(8) authorizes the Board to discipline a licensee upon a finding that the licensee has:

[v]iolated a statute, law, or any rule or regulation of this state, any other state, the professional licensing board regulating the business or profession licensed under this title, the United States, or any other lawful authority (without regard to whether the violation is criminally punishable), which statute, law, or rule or regulation relates to or in part regulates the practice of a business or profession licensed under this title, when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement.

O.C.G.A. § 43-1-19(a)(8).

5.

Georgia Code Section 43-26-40 provides the Board with additional authority to discipline a licensee upon a finding that the licensee has: "Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practical harmful to the public . . . includ[ing] the improper charting of medication and any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing nursing practice" O.C.G.A. § 43-26-40(a)(3).

6.

The Board may also discipline a licensee upon finding that the licensee: “Displayed an inability to practice nursing as a licensed practical nurse with reasonable skill and safety due to illness, use of alcohol, drugs, narcotics, chemicals, or any other types of material, or as a result of any mental or physical condition.” O.C.G.A. § 43-26-40(a)(6). In enforcing this provision, “the board may, upon reasonable grounds, require a licensee . . . to submit to a mental or physical examination by a board approved health care professional.” O.C.G.A. § 43-26-40(a)(6)(A). Every person who is licensed as a licensed practical nurse in the state is deemed to have given consent to such mental or physical examination. Id. When a licensee fails to submit to an examination, “the board may enter a final order upon proper notice, hearing, and proof of such refusal.” Id.

7.

Based on the evidence, Respondent did not submit to the mental/physical examination as she was ordered to by the Board. The Order specifically notified Respondent that her failure to comply with the Order would constitute a violation of Georgia Code Section 43-26-40(a)(6). Therefore, when Respondent failed to submit to the examination as ordered by the Board, she violated a statute regulating the practice of nursing and thereby also violated Georgia Code Section 43-1-19(a)(8). By improperly withdrawing (i.e., misappropriating) resident medications and failing to appropriately chart and document the purported administration of those medications, Respondent engaged in unprofessional and unethical conduct in violation of Georgia Code Section 43-26-40(a)(3). Finally, Respondent’s admission that she has a drug addiction and that she has been terminated from more than one facility because of that addiction establishes that she has displayed an inability to practice as an LPN with reasonable skill and

safety due to the use of drugs. Therefore, Respondent has violated Georgia Code Section 43-26-40(a)(6). Accordingly, the Board has presented sufficient evidence to authorize disciplinary action against Respondent's license.

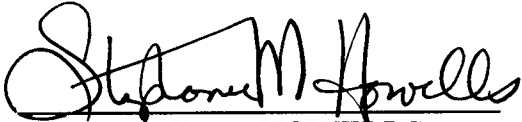
8.

When the Board finds that a licensee should be disciplined pursuant to Georgia Code Section 43-1-19(a), the Board may take any one or more of several disciplinary actions, including license revocation. O.C.G.A. § 43-1-19(d)(5). Given the above listed violations, as well as Respondent's failure to appear at the hearing to present any mitigating evidence, the undersigned concludes that Respondent's conduct warrants the revocation of her license.

III. Decision

Accordingly, for the foregoing reasons, the Board's decision to revoke Respondent's license is **AFFIRMED**. Petitioner's license to practice as an LPN is hereby **REVOKED**.

SO ORDERED, this 14th day of March, 2016.


STEPHANIE M. HOWELLS
Administrative Law Judge