

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

**GEORGIA BOARD OF NURSING,**  
**Petitioner,**

v.

**Respondent.**

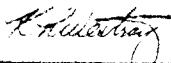
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: **Docket No.:**  
: **OSAH-PLBD-RN-[REDACTED]-Miller**



JUL 21 2016

**INITIAL DECISION**

**I. SUMMARY OF PROCEEDINGS**

  
Kevin Westray, Legal Assistant

The Petitioner, the Georgia Board of Nursing (“Board”), brought this action seeking to sanction the Respondent’s license to practice as a registered professional nurse (“RN”). The evidentiary hearing took place on June 15, 2016,<sup>1</sup> before the undersigned Administrative Law Judge of the Office of State Administrative Hearings. The Board was represented by J. Scott Forbes, Assistant Attorney General. The Respondent, [REDACTED] was represented by Jeffrey R. Sliz, Esq.

After consideration of the evidence presented and for the reasons stated below, the Respondent’s license to practice as an RN in Georgia is **SUSPENDED INDEFINITELY**, under the conditions set forth in section IV of this Initial Decision.

**II. FINDINGS OF FACT**

1.

The Respondent holds a license to practice as an RN in the State of Georgia and held such license at all times relevant to the issues presented for hearing. The Board originally issued

<sup>1</sup> The hearing record closed on June 29, 2016, when the parties filed their proposed sanctions and the transcript (cited herein as “T.”) was received.

her license on October 8, 1996, and it is scheduled to expire on January 31, 2017. The Respondent's license currently is on probationary status.<sup>2</sup> (T. 16-17; Exhibits P-1, P-4.)

**A. Private Consent Order, March 2012**

2.

On March 20, 2012, the Board docketed a Private Consent Order between the Board and the Respondent ("2012 Order"). According to the 2012 Order, the Respondent underwent a Board-ordered mental/physical examination ("MPE") in January 2011. Based on the MPE's results and the Respondent's "history of alcohol abuse," the 2012 Order placed limitations on the Respondent's license for two years. Among other provisions, the Respondent was required to participate in a Board-approved aftercare program, abstain from alcohol and controlled substances, undergo random alcohol and drug screens, submit personal quarterly reports to the Board, and ensure that additional quarterly reports were submitted by her aftercare counselor and her employer(s), if any. The 2012 Order also stated that if the Respondent failed to comply with its terms, her license would be subject to further sanction or revocation. The Respondent signed the order and had her signature notarized. (T. 21-23, 34; Exhibit P-3.)

**B. Public Consent Order, November 2014**

3.

On November 17, 2014, the Board docketed a Public Consent Order between the Board and the Respondent ("2014 Order"). The 2014 Order was based on findings that the Respondent had violated the 2012 Order by failing to submit quarterly personal reports since June 2012 and failing to submit quarterly aftercare reports since June 2013. The 2014 Order also stated that the Respondent had been discharged from her aftercare group for failure to attend meetings and

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<sup>2</sup> An RN may continue practicing while her license is on probation, though such practice will be subject to certain limitations. (T. 17.)

failure to undergo random urine screens. Based on these facts, the 2014 Order placed the Respondent's license on probation. As conditions of her probation, the 2014 Order, like the 2012 Order, required the Respondent to participate in a Board-approved aftercare program, abstain from alcohol and controlled substances, undergo random alcohol and drug screens, submit personal quarterly reports, and ensure that the Board received quarterly reports from her aftercare counselor and employer(s), if any. The Respondent was eligible to petition for termination of her probation after two years, upon her submission of evidence that she had completed two years of continuous sobriety and her certification that she had complied with all conditions of probation. However, her failure to comply with the terms of her probation would subject her license to further sanction, including revocation. The Respondent signed the 2014 Order and had her signature notarized. (T. 24-25; Exhibit P-4.)

4.

Regarding the requirements for participation in an aftercare program and the submission of quarterly aftercare reports, the 2014 Order provided as follows:

Throughout the period of probation, the Respondent shall participate in a structured aftercare program for chemical dependence approved by the Board. Respondent's participation in such program shall be viewed as a condition precedent to all other provisions set forth herein, and the Respondent's failure to comply with that requirement, upon substantiation thereof, shall subject the Respondent's license to revocation. . . .

The Respondent shall provide a copy of this Order to Respondent's program counselor and shall cause Respondent's program counselor to submit quarterly reports to the Board by March 31, June 30, September 30, and December 31, commencing on the first reporting date following the effective date of this Order and continuing throughout the period of probation. The reports shall evaluate the Respondent's progress in rehabilitation and each quarterly report shall contain the results of at least one alcohol/drug screen requested by the program during the quarter. The reports shall include a disclosure of any medication being administered to the Respondent or prescribed as treatment for any illness of the Respondent. The receipt of a positive alcohol/drug screen, or a report from the Respondent's program counselor that the Respondent has failed to comply with

the requirements of the program or that the Respondent his otherwise unable to function as a registered professional nurse, shall be grounds for disciplinary action, in the discretion of the Board.

The Respondent's first aftercare report was due on December 31, 2014. (T. 25-26; Exhibit P-4 at 2-3.)

5.

Regarding the Respondent's abstention from alcohol and controlled substances, the 2014 Order stated:

The Respondent shall completely abstain from the consumption of alcohol, and shall also abstain from the consumption of controlled substances except as prescribed by a duly licensed provider for a legitimate purpose. **Should the Respondent be prescribed any controlled substances, a written report from the prescribing physician shall be submitted to the Board and to the Respondent's aftercare program counselor within ten (10) days of the prescribing thereof.**

(T. 25; Exhibit P-4 at 3 [emphasis in original].)

C. **Compliance with 2014 Order**

6.

The 2014 Order went into effect on November 17, 2014, but the Respondent did not participate in any aftercare programs, as required, until January 20, 2015, when she attended her first meeting of an aftercare group run by the Georgia Nursing Association ("GNA") in Canton, Georgia ("Canton GNA group"). The Respondent called out sick for the following meeting, on January 27, 2016. When the Respondent returned for the next scheduled group meeting, Cathy Bacon, a state-licensed RN who served as the aftercare group's facilitator,<sup>3</sup> informed her of a concern that had arisen. One of the Respondent's co-workers had been attending the Canton

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<sup>3</sup> As the group's facilitator from 2013 to 2016, Ms. Bacon was responsible for setting up the forum for support meetings, monitoring the nurses' drug screens, and submitting the nurses' quarterly aftercare reports to the Board. (T. 43, 45.)

GNA group for the past two years, and had indicated to Ms. Bacon that she would not be comfortable with the Respondent's presence at the meetings. In light of this conflict, the Respondent agreed to locate another aftercare group. Ms. Bacon provided the Respondent with the names and contact information of other GNA aftercare leaders. Ms. Bacon also agreed to continue documenting the Respondent's drug-screen results until another aftercare group could take over these monitoring duties. (T. 43-46, 54, 58, 61, 62-63; Exhibit P-5.)

7.

After leaving the Canton GNA group in early 2015, the Respondent did not resume participation in aftercare until June 2015. At that time, she returned to the Canton GNA group, as the issue regarding her co-worker had been resolved when her co-worker changed jobs. (T. 46, 58; Exhibit P-5.)

8.

Starting in June 2015, the Respondent proceeded to attend three consecutive meetings with the Canton GNA group.<sup>4</sup> During the second of these three meetings, on June 23, 2015, the Respondent informed Ms. Bacon that she had been prescribed Xanax, a mood-altering drug. The Respondent also disclosed to the entire group that she had obtained a prescription for Xanax. (T. 46-47, 48, 56, 58; Exhibit P-5.)

9.

Ms. Bacon testified that, based on her twenty years of nursing experience as well as her time working with addicts, the Respondent "seemed impaired" during the group meeting on June 23, 2015. She based her assessment on the Respondent's "extroverted" behavior, her slurred

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<sup>4</sup> At the hearing, Ms. Bacon testified that the three meeting dates were June 2, June 23, and June 30, 2015. However, in a letter she submitted to the Board in June 2015, she gave the meeting dates as June 16, June 23, and July 2, 2015. (Compare T. 46-48 with Exhibit P-5.) Ms. Bacon's overall testimony about what occurred during the three meetings is consistent with the account she gave in the letter. (See T. 46-48; Exhibit P-5.) Hence, this Court finds Ms. Bacon's testimony credible despite this discrepancy.

speech, and the fact that she “inappropriately would jump into other people’s conversations.” However, Ms. Bacon did not ask the Respondent to take a drug or alcohol screen at that time. (T. 46-48, 56-57, 58; Exhibit P-5.).

10.

Based on the Respondent’s disclosure of her Xanax prescription and her behavior with the Canton GNA group on June 23, 2015, Ms. Bacon told the Respondent that she could continue to attend meetings but should no longer share during group discussions. Ms. Bacon testified that this decision was made because “this is a group that tries to learn to cope without medication,” and it was not conducive for other participants to hear about the Respondent’s use of Xanax. (T. 46-48, 56, 58; Exhibit P-5.)

11.

Following the session on June 23, 2015, the Respondent attended her third and final meeting at the Canton GNA group, during which she complied with Ms. Bacon’s request and did not participate in group discussion. For the group’s next scheduled meeting, on July 7, 2015, the Respondent called out, explaining that she was on vacation. (T. 48-49, 56-57, 58; Exhibit P-5.)

12.

Following the Respondent’s call-out on July 7, 2015, Ms. Bacon learned that the Respondent had been involved in a car accident. On or about July 14, 2015, the Respondent phoned Ms. Bacon and asked for her help. (T. 49, 58; Exhibit P-5.) Ms. Bacon and the Respondent differ as to the statements made by the Respondent during this phone conversation. Ms. Bacon asserted that she asked the Respondent whether she “had been using,” to which the Respondent replied that she had not been driving during the accident, but she had been drinking heavily and using Xanax at the time. The Respondent, in turn, testified that she told Ms. Bacon

that the driver had been heavily intoxicated, but that she herself had not been drinking. The Respondent did concede, however, that she told Ms. Bacon that she had been “under the influence of Xanax” at the time of the accident. (T. 49, 73; Exhibit P-5.)

13.

At the close of their phone conversation on or about July 14, 2015, Ms. Bacon notified the Respondent that she was no longer welcome at the Canton GNA group and that she would be removed from the group’s drug-screening log. Ms. Bacon also instructed the Respondent to contact the Board. On July 25, 2015, Ms. Bacon submitted a letter to the Board, detailing all of her interactions with the Respondent. (T. 49-50, 58; Exhibit P-5.)

14.

Ms. Bacon did not submit any quarterly aftercare reports to the Board on the Respondent’s behalf.<sup>5</sup> Ms. Bacon explained that she had not been provided an “updated or appropriately documented consent order,” and the Respondent “failed to complete required information for group attendance.” (T. 48; Exhibit P-5; see also Exhibit P-6.)

15.

The Respondent did not participate in an aftercare program during July and August 2015. In September 2015, the Respondent began participating in an aftercare program at Family Counseling & Recovery Center, Inc., in Cartersville, Georgia (“Family Counseling”). The Respondent participated in the program for approximately three months, during which she attended seven out of ten scheduled group meetings. At the end of December 2015, she took a

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<sup>5</sup> The Board did receive a drug screen report for the Respondent, which listed Ms. Bacon as the “case manager.” This report shows a series of test dates ranging from March 12, 2015, to May 5, 2015, and presumably are the drug-screen results that Ms. Bacon agreed to provide following the Respondent’s departure from the Canton GNA group in early 2015. (See T. 45-46.) However, although aftercare programs are charged with performing drug screens for the Board, a drug-screen report, by itself, does not qualify as a quarterly aftercare report as required by the 2014 Order. (T. 36-39, 45-46.)

leave of absence. When she failed to return, Family Counseling administratively discharged her on March 31, 2016. (T. 66; Exhibit P-6.)

16.

The Respondent has not attended an aftercare program since leaving Family Counseling in December 2015. (T. 66, 71-72; Exhibit P-6.)

17.

In total, the Board received three of the seven quarterly aftercare reports that were due following the effective date of the 2014 Order. More specifically, the Board received aftercare reports dated September 30, 2015; December 31, 2015; and March 31, 2016. All three reports were submitted by Family Counseling. The aftercare reports that were due on December 31, 2014; March 31, 2015; June 30, 2015; and June 30, 2016, have not been submitted. (T. 28-29, 39; Exhibit P-6.)

#### **D. Testimony of Respondent**

18.

At the hearing, the Respondent testified that she had voluntarily entered into both the 2012 Order and 2014 Order. Although she felt some of the requirements were unreasonable, she asserted that she had tried to comply with the 2014 Order "as best I could." (T. 60-61, 71.)

19.

The Respondent cited a number of factors that led to her inconsistent participation in aftercare treatment following the 2014 Order's effective date. First, she noted that she lived in north Georgia, and that few aftercare programs were available in that area. She also stated that she had stopped attending the Canton GNA group in July 2015 because she had been barred from



participating, and afterward she actively sought out other aftercare groups in her area until she found Family Counseling. The Respondent further explained that she had stopped attending Family Counseling in December 2015 because she had been terminated from her nursing position for a reason unrelated to impairment, and she did not have the financial means to pay for further counseling. Her subsequent search for employment was interrupted when she was involved in a “bad” car accident in February 2016, which resulted in multiple injuries that required a three-month recovery period. The Respondent testified that she had not been driving at the time of the accident, nor had she been drinking or otherwise impaired. Following her recovery, the Respondent found a new job at Cartersville Dialysis Spa in May 2016, where she is currently employed. (T. 61-62, 65-69, 71-72.)

20.

The Respondent denied abusing drugs or alcohol. She testified that she has never failed a drug test administered by the Canton GNA group, by an employer, or as part of any investigation or criminal arrest. She also contended that she “wasn’t taking medication” while participating in the Canton GNA group. (T. 63-65, 72, 73.)

21.

Regarding the Xanax prescription mentioned at the Canton GNA group, the Respondent testified that she took the medication to handle her anxiety and depression, which had been ongoing since 1999. Although the Xanax was prescribed by a physician, Dr. Alana Kent, the Respondent conceded that she did not inform Dr. Kent that she had entered into an addiction-related consent order with the Board. (T. 64, 70-71, 73-74.)

22.

The Respondent testified that she values her employment and her nursing license, and she wanted an opportunity to prove to the Board that she does not abuse drugs or alcohol. She also stated that she is willing to complete weekly drug screens and ensure that all required reports are properly filed with the Board. (T. 72.)

**E. Proposed Sanctions**

23.

The Board seeks revocation or indefinite suspension of the Respondent's license to practice as an RN. The lifting of an indefinite suspension would be conditioned on the Respondent providing documentation showing twenty-four months of continuous sobriety and the completion of an MPE. (Petitioner's Recommended Sanctions.)

24.

The Respondent proposes, instead, that her license be suspended for twelve months, with the suspension stayed upon her entry into an approved aftercare program. Under the Respondent's proposal, she would submit personal, employer, and aftercare reports to the Board each month, and she would abstain from alcohol and non-prescribed controlled substances. Any prescribed substances would be reviewed and approved by the Board. The Respondent suggests a "drop dead" provision, whereby the Board may revoke her license upon proof of her failure to comply with the above terms. Additionally, the Respondent proposes that she be ordered to submit to an MPE within thirty days of the final order in this case. (Respondent's Recommended Sanctions.)

### III. CONCLUSIONS OF LAW

1.

The Board bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

When a contested case is referred to the Office of State Administrative Hearings, the administrative law judge assigned to the case “has all the powers of the referring agency . . . .” O.C.G.A. § 50-13-41(b). The evidentiary hearing is *de novo*, and the administrative law judge “shall make an independent determination on the basis of the competent evidence presented at the hearing.” Ga. Comp. R. & Regs. 616-1-2-.21(1).

3.

The Board is the entity responsible for licensing registered professional nurses in Georgia and establishing standards for the nursing profession. The Board is authorized to sanction an RN who has violated the statutes and rules governing the profession as set forth in the Georgia Registered Professional Nurses Practice Act, O.C.G.A. §§ 43-26-1 to -13; the rules of the Georgia Board of Nursing, Ga. Comp. R. & Regs. 410-1-.01 to 410-14-.01; and the general statutory provisions regarding disciplinary actions by professional licensing boards, found at O.C.G.A. § 43-1-19.<sup>6</sup> The sanctions available to the Board are set forth in O.C.G.A. § 43-1-19(d), as follows:

- (1) Refuse to grant or renew a license to an applicant;
- (2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;

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<sup>6</sup> Chapter 1 of Title 43 is expressly adopted and incorporated by reference into Chapter 26 of Title 43. O.C.G.A. § 43-26-5(c).

- (3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;
- (4) Limit or restrict any license as the board deems necessary for the protection of the public;
- (5) Revoke any license;
- (6) Condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct;
- (7) Impose a fine not to exceed \$500.00 for each violation of a law, rule, or regulation relating to the licensed business or profession; or
- (8) Impose on a licensee or applicant fees or charges in an amount necessary to reimburse the professional licensing board for the administrative and legal costs incurred by the board in conducting an investigative or disciplinary proceeding.

O.C.G.A. § 43-1-19(d).

4.

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

Here, the Board proved by a preponderance of the evidence that the Respondent violated O.C.G.A. § 43-1-19(a)(8) by violating a lawful order of the Board. More specifically, the Respondent violated three provisions of the 2014 Order, as explained more fully below.

6.

First, the Respondent violated the 2014 Order's requirement that she abstain from alcohol and controlled substances during her two-year probation. While conflicting evidence was presented as to whether the Respondent had been drinking alcohol at the time of the July 2015

car wreck, the Respondent did concede at the hearing that she had been under the influence of the mood-altering drug Xanax<sup>7</sup> during the wreck. The Respondent also informed Ms. Bacon and the Canton GNA group during an aftercare meeting that she had a Xanax prescription, and she listed Xanax as one of her medications on her quarterly personal report for June 30, 2015. While the 2014 Order grants an exception for legally prescribed medications, the Respondent failed to provide the Board with a report from her prescribing doctor, as required by the order. Ms. Bacon, as the Respondent's aftercare counselor, also should have received a copy of the prescription—and in fact specifically asked the Respondent to supply one—but never received such information. Hence, the Respondent's use of Xanax, without appropriate documentation of a legitimate prescription, violated the Board's order.

7.

Second, the Respondent violated the 2014 Order by failing to participate in aftercare treatment throughout her probationary period. In the nineteen months since her probation began in November 2014, the Respondent's aftercare participation has consisted of only four meetings and two call-outs with the Canton GNA group, followed by three months' attendance at meetings held by Family Counseling. Although the Respondent cited several reasons for her sparse attendance record—including the lack of a nearby aftercare group, financial strain due to unemployment, and injuries sustained from a February 2016 car wreck—these reasons were not persuasive. Indeed, the evidence shows that Ms. Bacon provided contact information for other aftercare providers when the Respondent first left the Canton GNA group around January 2015, yet the Respondent did not resume aftercare until five months later, when she returned to the same group in June 2015.

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<sup>7</sup> Xanax (generic name alprazolam) is a Schedule IV controlled substance under the Georgia Controlled Substances Act. See O.C.G.A. § 16-3-28(a)(1).

8.

Third, the Respondent violated the 2014 Order by failing to ensure that the Board received reports from her aftercare program counselor during each quarter of her probationary period. As previously noted, the Board did not receive the quarterly aftercare reports that were due on December 31, 2014; March 31, 2015; June 30, 2015; and June 30, 2016.

9.

To the extent the Board attempted to prove that the Respondent committed additional violations of the 2014 Order (for example, her alleged failure to ensure that Dr. Kent submitted a written report to the Board and Ms. Bacon regarding her Xanax prescription), the Court declines to find such violations. Under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1, et seq., the Respondent was entitled to receive “[a] short and plain statement of the matters asserted” against her. O.C.G.A. § 50-13-13(a)(2)(D). “The fundamental requirement is notice calculated to apprise the party of each claim asserted so that he can prepare any defense he may have as to each charge.” Schaffer v. State Bd. of Veterinary Med., 143 Ga. App. 68, 69 (1977). Here, the Matters Asserted filed by the Board did not include any allegations related to her Xanax prescription. Therefore, the Respondent was not aware that the Board intended to present evidence on these allegations at the hearing, and they cannot serve as a basis to sanction her license. Id.

10.

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

[d]isplayed an inability to practice a business or profession licensed under this title with reasonable skill and safety to the public or has become unable to practice the licensed business or profession with reasonable skill and safety to the

public by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material[.]

O.C.G.A. § 43-1-19(a)(10).

11.

The Board failed to prove, by a preponderance of the evidence, that the Respondent is unable to practice nursing with reasonable skill and safety due to the use of alcohol or controlled substances. See O.C.G.A. § 43-1-19(a)(10). At most, the evidence demonstrates that the Respondent (a) appeared “impaired” to an experienced RN during an aftercare meeting in June 2015; (b) had been under the influence of Xanax during a car wreck in July 2015, though she was not the driver involved; and (c) claimed she had a legal prescription for the Xanax, but failed to provide documentation of the prescription to the Board.<sup>8</sup> While the Respondent’s behavior certainly raises questions regarding her ability to practice nursing with reasonable skill and safety, the Board did not offer any expert testimony on this point, and the above facts—standing alone—do not speak directly to the Respondent’s performance of her nursing duties.<sup>9</sup> Thus, the Board fell short of proving a violation of O.C.G.A. § 43-1-19(a)(10).

12.

After considering the evidence as a whole, the Court concludes that the Respondent’s flagrant disregard of the 2012 and 2014 Orders warrants an indefinite suspension of her license. Although the Respondent has expressed that she is now willing to commit to regular drug testing, regular aftercare participation, and regular reporting, her failure to comply with the terms of two

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<sup>8</sup> The only evidence proffered to demonstrate the Respondent’s use of alcohol was Ms. Bacon’s testimony that the Respondent told her during a phone conversation that she had been drinking and using Xanax during the July 2015 car accident. While the Respondent conceded to the Xanax use, she denied drinking alcohol. As nothing else in the record points to the Respondent’s use or abuse of alcohol during the 2014 Order’s probationary period, this Court declines to reach such a conclusion.

<sup>9</sup> No evidence was proffered to show she has ever been impaired on the job or has ever endangered a patient due to her use of alcohol or controlled substances.

prior Board orders renders her proposal for a stayed suspension inappropriate under the circumstances. Rather, an actual suspension of her license will provide an opportunity and an incentive for her to demonstrate a more robust commitment to her continued sobriety. However, the minimum period of suspension shall be twelve months, rather than the twenty-four months suggested by the Board.

#### IV. DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Respondent's license to practice as an RN is hereby sanctioned as follows:

- (1) **Indefinite suspension:** The Respondent's license to practice as a registered nurse in Georgia shall be **SUSPENDED INDEFINITELY**. During the period of suspension, the Respondent shall not use the title "RN" or otherwise engage in the practice of nursing, and the suspension shall be reflected upon the Respondent's license. The Respondent is entitled to renew her license during the period of suspension. Failure to do so shall result in the revocation of her license as a matter of law.
- (2) **Petition for Restoration of License:** The Respondent shall be eligible to petition the Board for the lifting of such suspension and restoration of her license at any time following the effective date of this Order; provided, however, that such petition shall include documentation of **twelve (12) months of continuous sobriety** and the results of a **mental/physical examination**, as explained more fully below.
  - (a) **Twelve (12) Months of Continued Sobriety.** The Respondent's petition shall include documentation confirming that she has had twelve (12) months of continuous sobriety, including the results of random drug screens. Such documentation shall be submitted to the Georgia Board of Nursing at 237 Coliseum Drive, Macon, GA 31217-3858, in care of the Legal/Disciplinary Nurse Consultant.
  - (b) **Mental/Physical Examination.** The Respondent's petition shall include the results of a mental/physical examination that was completed within thirty (30) days of her petition to the Board. Such mental/physical examination shall be performed at the Respondent's expense by a Board-approved examiner. Prior to the examination, the Respondent shall provide the examiner with the following:



1. The Initial and Final Decisions in this matter;
2. The 2014 Order;
3. Any releases requested by the examiner for the purpose of disclosing the results of the mental/physical examination to the Board; and
4. Any releases requested by the examiner for the purpose of obtaining the Respondent's records from current or past providers of mental or physical treatment.

Further, the Respondent shall ensure that the examiner's report to the Board contains the following:

1. An acknowledgement that the examiner is aware of the reason for the examination, has read and understood the Initial and Final Decisions, and is qualified to complete the examination;
2. History of present illness;
3. Psychiatric history;
4. Prescription history, including current medications;
5. Family history;
6. Social history;
7. Psychosocial history obtained with input from a member of the Respondent's family or another appropriate party;
8. Collateral data collected from outside sources, including, but not limited to, workplace supervisors, family members, and others as deemed necessary by the examiner;
9. An assessment of substances used by the Respondent that have the potential to alter an individual's judgment (i.e., caffeine, alcohol, nicotine, illegal substances, etc.);
10. Risk assessment (fixed and variable);

11. Initial impression of results;
12. Axis I through Axis V (including DSM-IV or DSM-V diagnosis and prognosis);
13. A statement as to whether the diagnosis would likely affect the Respondent's ability to practice nursing with reasonable skill and safety to patients;
14. Treatment recommendations, if any; and
15. Recommended practice limitations, if any (i.e., limitations as to the practice setting, patient population, number of hours worked, and/or access to or administration of controlled substances).

The mental/physical examination shall also include a medical history and physical examination, which may be performed by the Respondent's primary care physician prior to the remaining components of the mental/physical examination. Such physical examination shall include the results of a drug screen conducted within sixty (60) days of the petition by a laboratory certified by the National Institute of Drug Abuse, which drug screen shall include testing for, at a minimum, the following substances: amphetamines, methamphetamine, barbiturates, benzodiazepines, cannabinoids (including THC, marijuana, and artificial cannabinoids), cocaine, methaqualone, opioids (including natural, synthetic, and semi-synthetic substances such as morphine, heroin, methadone, codeine, hydrocodone, oxycodone, hydromorphone, and tramadol), fentanyl, sufentanil, remifentanil, alfentanil, propofol if indicated, and alcohol (using at least two of the following methodologies, which may require blood or hair samples: EtG, EtS, and PEth).

- (c) Discretion of Board. Lifting of the Respondent's suspension and restoration of the Respondent's license shall be in the Board's discretion. If the Board should deny the petition, the Respondent may request a hearing to determine whether the Board has abused its discretion, and/or the Respondent may submit a subsequent petition no sooner than six (6) months following the denial of her prior petition.
- (3) **Probation Under Such Terms As Board May Require.** If the Board should grant the Respondent's petition, the Respondent's license shall be

restored and placed on probation under such terms and conditions as the Board deems necessary for the protection of the public.

- (4) **Public Reprimand.** The Final Decision and dissemination thereof shall serve as a public reprimand to the Respondent.

SO ORDERED, this 20<sup>th</sup> day of July, 2016.



**KRISTIN L. MILLER**  
Administrative Law Judge

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

GEORGIA BOARD OF NURSING,  
Petitioner,

v.

[REDACTED]

Respondent.

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Docket No.: OSAH-PLBD-RN-[REDACTED] Miller

Agency Reference No.: [REDACTED]

**NOTICE OF INITIAL DECISION**

This is the Initial Decision of the Administrative Law Judge (Judge) in the case. This decision is reviewable by the Referring Agency. If a party disagrees with this decision, the party may file a motion for reconsideration, a motion for rehearing, or a motion to vacate or modify a default order with the OSAH Judge. A party may also seek agency review of this decision.

**FILING A MOTION WITH THE JUDGE AT OSAH**

The Motion must be filed in writing within ten (10) days of the entry, i.e., the issuance date, of this decision. **The filing of such motion may or may not toll the time for filing an application for agency review.** See O. C.G.A. §§ 50-13-19 and 50-13-20.1. Motions must include the case docket number, be served simultaneously upon all parties of record, either by personal delivery or first class mail, with proper postage affixed, and be filed with the OSAH clerk at:

Clerk  
Office of State Administrative Hearings  
Attn.: Kevin Westray, [kwestray@osah.ga.gov](mailto:kwestray@osah.ga.gov)  
225 Peachtree Street, NE, South Tower, Suite 400  
Atlanta, Georgia 30303-1534

**APPLICATION FOR AGENCY REVIEW**

An application for Agency Review must be filed within thirty (30) days after service of this Initial Decision. O.C.G.A. §§ 50-13-17 and 50-13-41. A copy of the application for agency review must be simultaneously served upon all parties of record and filed with the OSAH clerk. The application for Agency Review should be filed with:

Georgia Board of Nursing  
Professional Licensing Board Division  
Secretary of State  
237 Coliseum Drive  
Macon, Georgia 31217-3858

This Initial Decision will become the Final Decision of the agency if neither party makes a timely application for agency review according to O.C.G.A. §§ 50-13-17 and 50-13-41. In the event a party disagrees with the Final Decision a party must seek judicial review within thirty (30) days. See O.C.G.A. § 43-1 *et seq.*, and § 43-1-19 generally.