



I do hereby certify this to be a complete, accurate, and true copy of the document which is on file or is of record in the offices of the Texas Board of Nursing.  
*Patricia Ann Herbert*  
Executive Director of the Board

IN THE MATTER OF  
PERMANENT VOCATIONAL NURSE  
LICENSE NUMBER 107047  
ISSUED TO  
PATRICIA ANN HERBERT

§  
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§  
§

BEFORE THE TEXAS  
BOARD OF NURSING  
ELIGIBILITY AND  
DISCIPLINARY COMMITTEE

**ORDER OF THE BOARD**

TO: PATRICIA ANN HERBERT  
RT 1, BOX 532AD  
SLIDELL, LA 70461

During open meeting held in Austin, Texas, on **August 19, 2014**, the Texas Board of Nursing Eligibility and Disciplinary Committee (hereinafter "Committee") heard the above-styled case, based on the failure of the Respondent to appear as required by 22 TEX. ADMIN. CODE Ch. 213.

The Committee finds that notice of the facts or conduct alleged to warrant disciplinary action has been provided to Respondent in accordance with Texas Government Code § 2001.054(c) and Respondent has been given an opportunity to show compliance with all the requirements of the Nursing Practice Act, Chapter 301 of the Texas Occupations Code, for retention of Respondent's license(s) to practice nursing in the State of Texas.

The Committee finds that the Formal Charges were properly initiated and filed in accordance with section 301.458, Texas Occupations Code.

The Committee finds that after proper and timely Notice regarding the violations alleged in the Formal Charges was given to Respondent in this matter, Respondent has failed to appear in accordance with 22 TEX. ADMIN. CODE Ch. 213.

The Committee finds that the Board is authorized to enter a default order pursuant to Texas Government Code § 2001.056.

The Committee, after review and due consideration, adopts the proposed findings of fact and conclusions of law as stated in the Formal Charges which are attached hereto and incorporated by

reference for all purposes and the Staff's recommended sanction of revocation by default. This Order will be properly served on all parties and all parties will be given an opportunity to file a motion for rehearing [22 TEX. ADMIN.CODE § 213.16(j)]. All parties have a right to judicial review of this Order.

All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

NOW, THEREFORE, IT IS ORDERED that Permanent Vocational Nurse License Number 107047, previously issued to PATRICIA ANN HERBERT, to practice nursing in the State of Texas be, and the same is/are hereby, REVOKED.

IT IS FURTHER ORDERED that this Order SHALL be applicable to Respondent's nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

Entered this 19th day of August, 2014.

TEXAS BOARD OF NURSING

BY:



KATHERINE A. THOMAS, MN, RN, FAAN  
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

Attachment: Formal Charge filed May 16, 2014.

Re: Permanent Vocational Nurse License Number 107047  
Issued to PATRICIA ANN HERBERT  
DEFAULT ORDER - REVOKE

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of August, 2014, a true and correct copy of the foregoing DEFAULT ORDER was served and addressed to the following person(s), as follows:

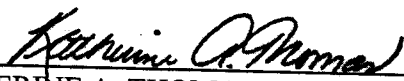
Via USPS Certified Mail, Return Receipt Requested

PATRICIA ANN HERBERT  
RT 1, BOX 532AD  
SLIDELL, LA 70461

Via USPS First Class Mail

PATRICIA ANN HERBERT  
109 W MAHONING ST  
DANVILLE, PA 17821

BY:

  
\_\_\_\_\_  
KATHERINE A. THOMAS, MN, RN, FAAN  
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

In the Matter of § BEFORE THE TEXAS  
Permanent Vocational Nurse §  
License Number 107047 §  
Issued to PATRICIA ANN HERBERT, §  
Respondent § BOARD OF NURSING

### FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, PATRICIA ANN HERBERT, is a Vocational Nurse holding License Number 107047, which is in delinquent status at the time of this pleading.

Written notice of the facts and conduct alleged to warrant adverse licensure action was sent to Respondent at Respondent's address of record and Respondent was given opportunity to show compliance with all requirements of the law for retention of the license prior to commencement of this proceeding.

### CHARGE I.

On or about September 26, 2013, Respondent's license to practice professional nursing was INDEFINITELY SUSPENDED, retroactive to January 24, 2013, by the Pennsylvania State Board of Nursing, Harrisburg, Pennsylvania. A copy of the Final Order dated September 26, 2013, is attached and incorporated, by reference, as part of this pleading.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(8), Texas Occupations Code.

NOTICE IS GIVEN that staff will present evidence in support of the recommended disposition of up to, and including, revocation of Respondent's license/s to practice nursing in the State of Texas pursuant to the Nursing Practice Act, Chapter 301, Texas Occupations Code and the Board's rules, 22 Tex. Admin. Code §§ 213.27 - 213.33 and TEX. OCC. CODE Ch. 53. Additionally, staff will seek to impose on Respondent the administrative costs of the proceeding pursuant to Section 301.461, Texas Occupations Code. The cost of proceedings shall include, but is not limited to, the cost paid by the Board to the State Office of Administrative Hearings and the Office of the Attorney General or other Board counsel for legal and investigative services, the cost of a court reporter and witnesses, reproduction of records, Board staff time, travel, and expenses. These shall be in an amount of at least one thousand two hundred dollars (\$1200.00).

NOTICE IS GIVEN that all statutes and rules cited in these Charges are incorporated as part of this pleading and can be found at the Board's website, [www.bon.texas.gov](http://www.bon.texas.gov).

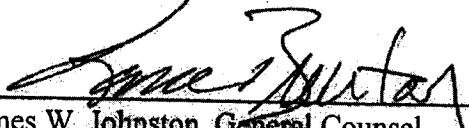
NOTICE IS GIVEN that to the extent applicable, based on the Formal Charges, the Board will rely on Adopted Disciplinary Guidelines for Criminal Conduct and on Adopted Disciplinary Sanction Policies for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder, which can be found at the Board's website, [www.bon.texas.gov](http://www.bon.texas.gov).

NOTICE IS GIVEN that, based on the Formal Charges, the Board will rely on the Disciplinary Matrix, which can be found at [www.bon.texas.gov/disciplinaryaction/discp-matrix.html](http://www.bon.texas.gov/disciplinaryaction/discp-matrix.html).

NOTICE IS ALSO GIVEN that Respondent's past disciplinary history, as set out below and described in the Order(s) which is/are attached and incorporated by reference as part of these charges, will be offered in support of the disposition recommended by staff: Order dated September 26, 2013.

Filed this 16<sup>th</sup> day of May, 2014.

TEXAS BOARD OF NURSING

  
James W. Johnston, General Counsel  
Board Certified - Administrative Law  
Texas Board of Legal Specialization  
State Bar No. 10838300  
Jena Abel, Assistant General Counsel  
State Bar No. 24036103  
Lance Robert Brenton, Assistant General Counsel  
State Bar No. 24066924  
John R. Griffith, Assistant General Counsel  
State Bar No. 24079751  
Robert Kyle Hensley, Assistant General Counsel  
State Bar No. 50511847  
John F. Legris, Assistant General Counsel  
State Bar No. 00785533  
John Vanderford, Assistant General Counsel  
State Bar No. 24086670

333 Guadalupe, Tower III, Suite 460  
Austin, Texas 78701  
P: (512) 305-6811  
F: (512) 305-8101 or (512)305-7401

Attachments: Order of the Board dated September 26, 2013.

D/2013.11.19

COPY

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BEFORE THE STATE BOARD OF NURSING

Commonwealth of Pennsylvania,  
Bureau of Professional and  
Occupational Affairs  
v.  
Patricia Ann Herbert, R.N.,  
Respondent

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Docket No. 0099-51-13  
File No. 12-51-08967

PROTHONOTARY  
2013 SEP 26 AM 8:47  
Department of State

FINAL ORDER

AND NOW, this 26<sup>th</sup> day of September, 2013, the State Board of Nursing, noting that neither party filed exceptions to the hearing examiner's proposal, it is hereby ORDERED that the proposed adjudication and order<sup>1</sup> of the hearing examiner, including the proposed findings of fact, proposed conclusions of law, discussion, and proposed order, is now the FINAL Order of the State Board of Nursing in this disciplinary proceeding. A copy of the hearing examiner's proposed adjudication and order is appended to this order as Appendix A.


TRUE AND CORRECT COPY  
CERTIFIED FROM THE RECORD  
THIS 15 DAY OF OCT AD. 2013

*J. Anne L. Weaver*  
PROTHONOTARY

<sup>1</sup> The Proposed Order of the Hearing Examiner incorrectly lists Respondent's license number as RN573372L. Respondent's license number is RN573372.

This order shall take effect thirty days from the date of mailing.

**BUREAU OF PROFESSIONAL AND  
OCCUPATIONAL AFFAIRS**

  
KATHY J. BARLEY  
ACTING COMMISSIONER

Respondent's Attorney:

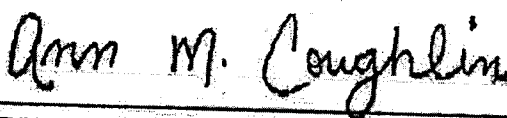
Prosecuting Attorney:

Board Counsel:

Date of Mailing:

**BY ORDER:**

**STATE BOARD OF NURSING**

  
ANN M. COUGHLIN, MSN, MBA, RN  
CHAIRPERSON

John L. McLaughlin, Esquire  
Marks, McLaughlin & Dennehy  
12 West Market Street  
Danville, PA 17821

Paul J. Jarabeck, Esquire

Beth Sender Michlovitz, Esquire

September 26, 2013

## Appendix A



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
STATE BOARD OF NURSING

RECEIVED  
AUG 01 2013  
Department of State  
Prothonotary

Commonwealth of Pennsylvania,  
Bureau of Professional and  
Occupational Affairs

v.

Patricia Ann Herbert, R.N.,  
Respondent

Docket No. 0099-51-13  
File No. 12-51-08967

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PROPOSED ADJUDICATION AND ORDER

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Joyce McKeever  
Hearing Examiner

Commonwealth of Pennsylvania  
GOVERNOR'S OFFICE OF GENERAL COUNSEL  
Department of State  
P.O. Box 2649  
Harrisburg, PA 17105-2649  
(717) 772-2686

DATE DISTRIBUTED 8/1/13  
PROSECUTION \_\_\_\_\_  
COUNSEL \_\_\_\_\_  
HEARING EXAMINER \_\_\_\_\_  
OTHER \_\_\_\_\_

## HISTORY

This matter comes before a hearing examiner for the State Board of Nursing (Board) on a Petition for Appropriate Relief (PAR) filed by the Commonwealth on January 24, 2013 against Patricia Ann Herbert, R.N. (Respondent). The PAR alleged that Respondent was placed in the Voluntary Recovery Program (VRP) by the Board's Adoption of a Consent Agreement (Agreement) and Order of June 4, 2012, and that Respondent subsequently violated the terms and conditions of the Agreement by: (1) relapsing to the use of alcohol; (2) failing to submit to a random unannounced and observed body fluid toxicology screens (ROBS); (3) failing to notify the Professional Health Monitoring Program (PHMP) of criminal charges filed against her in Montour County, Pennsylvania; and (3) failing to cooperate with monitoring by PHMP.<sup>1</sup>

The Commonwealth presented the PAR to the Board's Probable Cause Screening Committee on January 24, 2013.<sup>2</sup> On that same day, the Probable Cause Screening Committee issued a Notice and Preliminary Order (Preliminary Order), which terminated the period of probation and actively indefinitely suspended Respondent's license for no less than three years. The PAR and the Preliminary Order were filed with the Department of State Prothonotary on June 8, 2011. The Preliminary Order took effect on the date on which it was mailed to Respondent. On February 11, 2011, Respondent, through her Counsel, filed an Answer to the PAR in which she responded to the allegations and requested a hearing.

The Prothonotary's Office issued a Notice of Hearing for March 25, 2013. The hearing was held as scheduled. The Commonwealth was represented by Paul J. Jarabeck, Esquire, who

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<sup>1</sup> At the onset of the hearing the Commonwealth withdrew the charge at that Respondent violated the terms of the Consent Agreement (§(d)(22) and Order when Respondent test positive for the drug phentermine without providing to PHMP proof of a valid prescription and the charge that Respondent failed to provide proof of attendance at support group meetings.

<sup>2</sup> The members of the Probable Cause Screening Committee were Suzanne Hendricks, L.P.N.; and Robert E. Ames.

presented the Commonwealth's case through documentary evidence and the testimony of Kristen Long, Respondent's PHMP Case Manager. Respondent was present with counsel, John L. McLaughlin, Esquire and testified. The parties waived the filing of post hearing briefs and the record in this matter was on April 5, 2013, with the filing of the hearing transcript.<sup>3</sup>

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<sup>3</sup>N.T. hereafter refers to the notes of testimony.

## FINDINGS OF FACT

### License Record

1. Respondent holds a license to practice professional nursing in the Commonwealth at license no. RN573372L, which was originally issued on May 6, 2006. (Board records)
2. Respondent's license has been suspended since January 24, 2013, by Order of the Board's Probable Cause Screening Committee. (Board records; Exhibits C-1 and C-2)
3. Respondent's current address of record is 109 West Mahoning Street, Danville, PA 17821. (Board records)

### Commonwealth's Evidence

4. Respondent was referred to the VRP after she reported on her license renewal application having been arrested for DUI (Driving Under the Influence) in September 2010. (N.T. 19, Exhibit C-9)
5. On June 4, 2012, the Board issued an Order adopting a Consent Agreement (VRP Agreement) entered into between Respondent and the Commonwealth, at File No. 11-51-10277, in which Respondent admitted that she had suffered from chemical abuse or dependency, specifically alcohol, since September 2001. (Exhibit C-1)
6. On July 12, 2012, Respondent agreed to a modification of the Agreement based upon positive drug screens on March 2, 21, and April 4, 2012; Respondent agreed to a withdrawal of permission to practice nursing, to attend 90 12-step meetings in 90 days, and to comply with treatment recommendations and avoid all products containing alcohol. (Exhibit C-1 at attached Exhibit A)
7. On August 24, 2012, Respondent tested positive for phentermine. (Exhibit C-1 at attached Exhibit A)

8. Respondent had provided the VRP with a prescription for phentermine on April 26, 2012, but had not provided notification to the VRP of refills in accordance with the requirement of the Agreement. (N.T. 24)

9. Kristen Long, Respondent's PHMP Case Manager, requested that Respondent provide an explanation for a positive screen on August 24, 2012. (N.T. 8; Exhibit R-4, p.1)

10. In a letter dated October 3, 2012, Respondent explained that she relapsed to drinking (alcohol), and that she had acquired a new sponsor that she works with every day. (Exhibit C-5)

11. On or about December 3, 2012, Respondent was notified that she had been charged with two counts of failure to keep records in violation of section 113(a) (21) of the Controlled Substance, Drug, Device and Cosmetic Act, Act of April 14, 1972, P.L. 233, *as amended*, 35 P.S. § 780-113(a)(21).

12. Respondent as of the date of the hearing has not notified PHMP that criminal charges had been filed against her. (N.T.25, 26)

13. Respondent failed to appear for a required drug screen on January 3, 2013 and has not provided an explanation to the VRP as required under her VRP Agreement. (N.T. 26)

#### Respondent's Testimony

14. Respondent has been licensed as a registered nurse since 1992. (N.T. 52)

15. In 2001 Respondent's husband of thirty years died suddenly and her mother died within six weeks of his death. (N.T. 52)

16. Respondent unknowingly became severely depressed and over a 10 year period relied increasingly on alcohol on her days off and evenings to deal with her loss and depression. (N.T. 53)

17. In September 2011 Respondent was arrested for the third time and charged with driving under the influence. (N.T. 53)
18. In May 2010 Respondent was sentenced in the Court of Common Pleas of Columbia County to six months' incarceration, three years' probation and fines. (N.T. 55)
19. Upon her release from incarceration on December 4, 2011, Respondent participated in work release and was employed as a staff nurse at Geisinger Medical Center. (N.T. 55-56)
20. While on probation Respondent was contacted by Theresa Moore of the Pennsylvania Nurse Peer Assistance Program (PNAP) who Respondent understood to be associated with the VRP. (N.T. 56)
21. On January 25, 2012, Respondent entered into an agreement with PNAP<sup>4</sup> in which she agreed to attend 90 consecutive meetings in 90 days, undergo counseling, submit to ROBS and monitoring through her employer. (N.T.58)
22. Although Respondent found working and complying with PNAP requirements exhausting, she completed these initial requirements. (N.T. 61)
23. On April 12, 2012, Respondent was accused of failing to document medications at her place of employment and lost her job. (N.T.61-62)
24. Following a report of positive ROBS on April 4, 2012, on July 9, 2012, Respondent agreed to a modification of her VRP Agreement where she agreed to complete another 90 days of consecutive attendance at support group meetings which Respondent completed. (N.T. 65)

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<sup>4</sup> Respondent testified that she was not sure whether the agreement was with PNAP or the VRP. However, it is clear from the written documents that the agreement in January 2012 predated the VRP Agreement of June 4, 2012 which was signed by the parties on April 3, 2012. (Exhibit C-3 p. 24)

25. In addition to 90 days of support group attendance PNAP required Respondent to be evaluated by Mazzitti & Sullivan Counseling Services in Harrisburg for evaluation; the evaluation recommended that Respondent undergo further counseling with Mazzitti & Sullivan Counseling Services in Harrisburg and submit to additional drug screens there. (N.T. 67-70)
26. Respondent told her PNPA case manager that she did not have a driver's license and that she could not afford to pay for the drug screens. (*Id.*)
27. Over a number of days around August 24, 2012, Respondent consumed a bottle of wine. (N.T. 80-81)
28. Around this time Respondent became more depressed and eventually was unable to go outside her house. (N.T. 65)
29. On November 28, 2012, Respondent was admitted to Behavioral Health of Sunbury, Pennsylvania; she was discharged on December 4, 2012 to Roxbury Treatment Center in Shippensburg, Pennsylvania, where she was an inpatient for 21 days. (N.T. 66, 71-72)
30. After Respondent was discharged from Roxbury she received a new contract from PNAP for three years requiring Respondent to attend another 90 meetings in 90 days and to attend counseling with Mazzitti & Sullivan Counseling Services in Harrisburg; Respondent's request that she continue with her counselor and doctors in Danville was rejected. (N.T. 73)
31. Respondent has not practiced as a nurse since April 2012. (N.T. 74)
32. Respondent has not participated in PHMP or PNAP since January 2013. (*Id.*)
33. Respondent received the PAR in this matter at her address of record with the Board, filed an Answer to the PAR and appeared with counsel at the hearing. (Docket entries)

### CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. (Findings of Fact, Nos. 1-3)
2. Respondent has been afforded reasonable notice of the charges against her and an opportunity to be heard in this proceeding, in accordance with the Administrative Agency Law, 2 Pa. C.S. § 504. (Finding of Fact, No. 33)
3. Respondent violated the terms of the Consent Agreement (¶(d)(22) and Order in that she failed to completely abstain from the use of drugs of abuse including alcohol. (Findings of Fact 6 and 10)
4. Respondent violated the terms of the Consent Agreement (¶(d)(22) and Order in that she had not provided notification to the VRP of refills or a new prescription for phentermine in accordance with the requirement of the Agreement. (Finding of Fact, No. 8)
5. Respondent violated the terms of the Consent Agreement (¶(d)(10) and Order in that Respondent failed to notify her PHMP case manager in writing of the filing of criminal charges against her as required under the agree. (Finding of Fact, No. 11,12)
6. Respondent violated the terms of the Consent Agreement (¶(d)(23) and Order in that she failed to submit to drug testing as required on January 3, 2013. (Finding of Fact, No. 13)
7. Respondent violated the terms of the Consent Agreement (¶(d)(1,3,4) and Order in that she failed to fully and completely comply with PHMP in its monitoring of the Agreement. (Findings of Fact)



## DISCUSSION

At the hearing, the Commonwealth presented its case through documentary evidence which included the PAR, the Preliminary Order and Respondent's Answer, and also through the testimony of Kristen Long, Respondent's PHMP Case Manager. The questions presented are whether the record supports the allegations in the PAR and, if so, what sanction is appropriate.

The degree of proof required to establish a case before an administrative tribunal in an action of this nature is a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). Ms. Long testified that Respondent relapsed to the use of alcohol, failed to submit to ROBS after January 2013, and failed to notify PHMP as to the filing of criminal charges against her or the issuance of prescriptions prescription refills.

At the close of the hearing, Respondent's counsel conceded that Respondent had violated the Agreement in some respects. (N.T. 86) Counsel asks the Board to consider Respondent's testimony that she is unable to comply with the requirements owing to the costs of drug screens and counseling, noting Respondent's willingness to participate in the program, citing her testimony that Respondent completed two successive period of 90 meetings in 90 days.

Counsel frankly acknowledged that Respondent "has a severe mental problem" (N.T. 87), that after she lost her job in April 2012 (close to the time when she signed the Consent Agreement) she began a downward spiral that became so severe that she was hospitalized from November 28, 2012 to December 24, 2012. Counsel contends, with the exception of the "issue of alcohol," the violations are notice violations and *de minimus* in nature. As to Respondent's relapse to alcohol, Counsel noted that the evidence showed Respondent consumed alcohol on

two occasions, that the violation was not egregious and did not involve a DUI or occur at work.  
(N.T. 91-92)

The Commonwealth argues that the "issue of alcohol" is the core of Respondent's violations in the sense that they demonstrate that Respondent does not show that she is committed to the VRP and her recovery and recommends the three-year suspension imposed by the Probable Cause Screening Committee and provided for in the Consent Agreement.

PHMP and VRP were created to implement the legislative mandate of Section 14.1 of The Professional Nursing Law,<sup>5</sup> which provides:

(b) The Board may defer and ultimately dismiss any of the types of corrective action set forth in this act for an impaired professional *so long as the licensee is progressing satisfactorily in an approved treatment program...*

(c) An impaired professional who enrolls in an approved treatment program shall enter into an agreement with the Board under which the professional's license shall be suspended or revoked but enforcement of that suspension or revocation *may be stayed for the length of time the professional remains in the program and makes satisfactory progress, complies with the terms of the agreement, and adheres to any limitations on his practice imposed by the Board to protect the public..* (Emphasis added.)

The hearing examiner finds the recommendation of the Commonwealth adheres most closely with the Board's legislative mandate and the totality of the evidence in this matter. The Board's statutory duty can only be carried out if a respondent adheres to the requirements of the Board in its orders or consent agreements and the Board enforces its order when violations are proven. While the hearing examiner and ultimately the Board may sympathize with Respondent's difficulties that sympathy cannot override the Board's primary purpose of public protection.

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<sup>5</sup> Act of May 22, 1951, P.L. 317, *as amended*, added by Act of December 20, 1985, P.L. 409, § 11, *as amended*, 63 P.S. § 224.1.

Although Respondent is not eligible to participate in the PHMP while her license is suspended, she may be eligible to continue to participate in the PNAP. Respondent is strongly encouraged to renew her participation in the PNAP.

Accordingly, based upon the above findings of fact, conclusions of law and discussion, the following proposed order shall issue:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
STATE BOARD OF NURSING

Commonwealth of Pennsylvania,  
Bureau of Professional and  
Occupational Affairs

v.

Patricia Ann Herbert, R.N.,  
Respondent

Docket No. 0099-51-13  
File No. 12-51-08967

PROPOSED ORDER

AND NOW, this 31<sup>st</sup> day of July 2013, in accordance with the foregoing findings of fact, conclusions of law and discussion, it is ORDERED, as to the license to practice professional nursing of Respondent, Patricia Ann Herbert, R.N., license no. RN573372L, that the January 24, 2013 Preliminary Order of the Probable Cause Screening Committee of the State Board of Nursing, shall become the Final Order, and that Respondent's license shall remain INDEFINITELY SUSPENDED for a period of no less than THREE YEARS, retroactive to January 24, 2013.

No sooner than January 24, 2015, Respondent shall be eligible to petition the Board for reinstatement of her license to practice professional nursing. As part of any petition for reinstatement, Petitioner shall state her sobriety date. Respondent must submit to the Board satisfactory evidence that she is able to practice nursing with reasonable skill and safety to patients and has completed at least three years of rehabilitation and continuous sustained recovery. Documentation of such recovery shall include, but is not limited to, all of the following:

(a) An evaluation and assessment from a treatment provider approved by the Professional Health Monitoring Program indicating that Respondent is fit to safely practice as a nurse. Respondent may obtain the names of Board-approved treatment providers by contacting the Professional Health Monitoring Program at 1-800-554-3428 (inside Pennsylvania) or 717-783-4857 (outside Pennsylvania), P.O. Box 10569, Harrisburg, PA 17105-0569.

(b) Periodic and random drug and alcohol screening indicating the lack of illicit substances, the last screen to be completed no more than 30 days prior to the petition for reinstatement;

(c) Records of continued counseling, if necessary;

(d) Support group attendance at a frequency of at least two meetings per week;

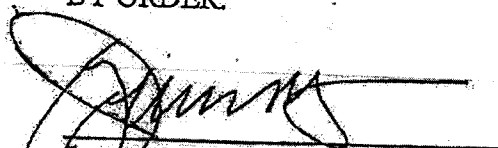
(e) A current Criminal History Record Information (a/k/a "Criminal Record Check") from the state-wide governmental agencies of all states where Respondent has resided since the suspension, compiled no more than three months prior to the petition for reinstatement; and

(f) A signed verification that Respondent has not practiced nursing since the suspension.

Prior to reinstatement, Respondent must prove at a formal hearing before the Board or its designee that Respondent is capable of practicing as a professional nurse with reasonable skill and safety to patients.

This Proposed Order shall be effective as a Final Order in accordance with 1 Pa. Code §35.226(a)(3) unless a Brief on Exceptions is filed within 30 days in accordance with 1 Pa. Code §35.211 or the State Board of Nursing initiates a review within 40 days in accordance with 1 Pa. Code § 35.226(a)(2).

BY ORDER:

  
Joyce McKeever  
Hearing Examiner

*Prosecuting Attorney:*

Paul J. Jarabeck, Esquire  
Commonwealth of Pennsylvania  
GOVERNOR'S OFFICE OF GENERAL COUNSEL  
Department of State  
P.O. Box 2649  
Harrisburg, PA 17105-2649

*Respondent:*

John L. McLaughlin, Esquire  
Marks, McLaughlin, & Dennehy  
12 West Market Street  
Danville, PA 17821

*Date of mailing:* 8/1/13



## NOTICE

### **SERVICE OF PROPOSED REPORT:**

The foregoing is the proposed report issued in this matter by a Hearing Examiner for the Department of State, in accordance with the General Rules of Administrative Practice and Procedure at 1 Pa. Code §35.207.

### **EXCEPTIONS TO PROPOSED REPORT:**

Any participant who wishes to appeal all or part of the Hearing Examiner's proposed report to the Board must file exceptions in the form of a *Brief on Exceptions* with the Prothonotary of the Department of State within 30 days after the date of mailing shown on this proposed report in accordance with the General Rules of Administrative Practice and Procedure at 1 Pa. Code §§35.211-214.

The *Brief on Exceptions* shall contain a short statement of the case, a summary of the appealing party's position, the grounds for filing exceptions to the proposed report, and the argument in support of the appealing party's position with citations to the record and legal authority. The appealing party may also include proposed findings of fact and conclusions of law.

In the event any participant files exceptions, the Board may substitute its findings for those of the Hearing Examiner, and /or may impose a greater or lesser sanction than that imposed by the Hearing Examiner without regard to the relief requested or the position argued by any party, and without hearing additional argument or facing additional evidence.

Failure to file a *Brief on Exceptions* within the time allowed under the General Rules of Administrative Practice and Procedure at 1 Pa. Code §§35.211-214 shall constitute a waiver of all objections to the proposed report.

### **FILING AND SERVICES:**

An original and three (3) copies of the *Brief on Exceptions* shall be filed with:

Prothonotary  
2601 North Third Street  
P. O. Box 2649  
Harrisburg, PA 17105-2649

Copies of the *Brief on Exceptions* must also be served on all participants to the proceeding.

Briefs on Exceptions must be received for filing by the Prothonotary within the time limits specified herein. Date of receipt by the Office of Prothonotary and not date of deposit in the mail is determinative.

NOTICE

The attached Adjudication and Order represents the final agency decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a Petition for Review with that Court within 30 days after the entry of the order in accordance with the Pennsylvania Rules of Appellate Procedure. See Chapter 15 of the Pennsylvania Rules of Appellate Procedure entitled "Judicial Review of Governmental Determinations," Pa. R.A.P 1501 - 1561. Please note: An order is entered on the date it is mailed. If you take an appeal to the Commonwealth Court, you must serve the Board with a copy of your Petition for Review. The agency contact for receiving service of such an appeal is:

Board Counsel  
P.O. Box 2649  
Harrisburg, PA 17105-2649

The name of the individual Board Counsel is identified on the Order page of the Adjudication and Order.

RECEIVED OCT 1 1985