

IN THE MATTER OF
PERMANENT VOCATIONAL NURSE
LICENSE NUMBER 108188
ISSUED TO
BRENDA KAY COLEMAN

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BEFORE THE TEXAS
BOARD OF NURSING

ELIGIBILITY AND
DISCIPLINARY COMMITTEE



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 A. Plummer
Executive Director of the Board

ORDER OF THE BOARD

TO: BRENDA KAY COLEMAN
35990 IATAN RD.
WESTON, MO 64098

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 108188, previously issued to BRENDA KAY COLEMAN, 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 April 22, 2014.

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

BRENDA KAY COLEMAN
35990 IATAN RD.
WESTON, MO 64098

Via USPS First Class Mail

Brenda K Coleman
405 A SE Brandon Ct.
Oak Grove, MO 64075



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 108188 §
Issued to BRENDA KAY COLEMAN, §
Respondent § BOARD OF NURSING

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, BRENDA KAY COLEMAN, is a Vocational Nurse holding License Number 108188, 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 June 24, 2013, Respondent was issued a Disciplinary Order by the Missouri State Board of Nursing wherein her license to practice nursing in the State of Missouri was placed on PROBATION for a period of five (5) years. A copy of the Findings of Fact, Conclusions of Law and Order, dated June 24, 2013, is attached and incorporated by reference as part of this Order.

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

CHARGE II.

On or about January 8, 2014, Respondent was issued Decision and Order by the Missouri State Board of Nursing wherein her license to practice nursing in the State of Missouri was REVOKED. A copy of the Findings of Fact, Conclusions of Law and Order, dated January 8, 2014, is attached and incorporated by reference as part of this Order.

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

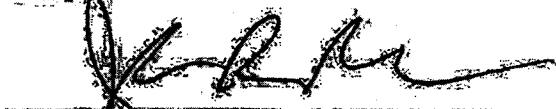
NOTICE IS GIVEN that staff will present evidence in support of the recommended disposition of up to, and including, revocation of Respondent's license/s to practice nursing in the State of Texas pursuant to the Nursing Practice Act, Chapter 301, Texas Occupations Code and the Board's rules, 22 Tex. Admin. Code §§ 213.27 - 213.33. 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.

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.

Filed this 22 day of April, 2014

TEXAS BOARD OF NURSING



- James M. 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: Disciplinary Order of the Missouri State Board of Nursing, dated June 24, 2013
Decision and Order of the Missouri State Board of Nursing, dated January 8, 2014

D/2013.11.19

BEFORE THE STATE BOARD OF NURSING
STATE OF MISSOURI

STATE BOARD OF NURSING,)
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vs.)
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BRENDA COLEMAN,)
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Respondent,)

Case Number 2009-003278
 AHC 10-1322 BN

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DISCIPLINARY ORDER**

This Board filed a complaint with the Administrative Hearing Commission seeking authority to discipline the nursing license of Brenda Coleman. The Administrative Hearing Commission entered a Decision in this matter on April 4, 2013, finding cause for this Board to discipline the nursing license of Brenda Coleman. The Board convened a hearing on June 5, 2013, at its regular meeting in Jefferson City to determine what discipline, if any, should be imposed on Respondent's nursing license.

Respondent appeared by telephone without counsel. The Board was represented by Tina Crow Halcomb. Ian Hauptli acted as legal advisor to the Board. Evidence was adduced, exhibits were received and the matter was taken under advisement. The Board now enters its findings of fact, conclusions of law and disciplinary order in this matter:

FINDINGS OF FACT

1. The State Board of Nursing (Board) is an agency of the State of Missouri created and established pursuant to §335.021 RSMo with the function of executing and enforcing the provisions of Chapter 335 RSMo, the Nursing Practice Act, for the purpose of safeguarding the public health.

2. Brenda Coleman holds a license from this Board as a licensed practical nurse, PN 047183. Respondent's license was current and active at all times relevant herein.

3. Respondent was employed as an LPN at John Knox Village Care Center in Lee's Summit, Missouri at all times relevant herein.

4. On July 9, 2009, John Knox asked Respondent to submit to a controlled substance test while on duty.

5. Respondent tested positive for morphine, oxycodone, propoxyphene, and oxymorphone, all of which are controlled substances pursuant to §195.017.4(1)(a), RSMo. Propoxyphene is a controlled substance per §195.017.4(2) RSMo.

6. Respondent did not have a prescription for any of these drugs at the time of the positive test.

7. On April 4, 2013, the Administrative Hearing Commission issued its Decision finding cause to discipline the licensed practical nursing license of Brenda Coleman pursuant to §335.066.2(1),(5),(12) and (14), RSMo.

8. Respondent's conduct constitutes unlawful possession of a controlled substance and a violation of the drug laws of this state.

9. Respondent's conduct constitutes misconduct in the performance of the functions and duties of a nurse.

10. Respondent's conduct constitutes violation of a professional trust or confidence.

11. The Board does not find Respondent's testimony to be credible or persuasive.

12. The Board finds that this Disciplinary Order is Issued to safeguard the public health.

CONCLUSIONS OF LAW

1. The Board has jurisdiction to discipline Respondent's license pursuant to the provisions of §335.066.2(1), (5), (12) and (14) RSMo, which provides:

2. The Board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit, or license required by sections 335.011 to 335.096 or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

(1) Use or unlawful possession of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by sections 335.011 to 335.096;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by sections 335.011 to 335.096;

(12) Violation of any professional trust or confidence;

(14) Violation of the drug laws or rules and regulations of this state, any other state or the federal government[.]

2. The Board has jurisdiction to discipline Respondent's license pursuant to §335.066.3 RSMo, which provides:

After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds provided in subsection 2 of this section, for disciplinary action are met, the board may, singly or in combination, censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years, or may suspend, for a period not to exceed three years, or revoke the license, certificate, or permit.

3. Section 324.041 RSMo, provides:

For the purpose of determining whether cause for discipline exists under the statutes of any board, commission, or committee within the division of professional registration, any licensee, registrant, permittee, or applicant that tests positive for a controlled substance as defined in chapter 195, is presumed to have unlawfully possessed the controlled substance, as defined in chapter 195, is presumed to have unlawfully possessed the controlled substance in violation of the drug laws or rules and regulations of this state, any other state, or the federal government unless he or she has a valid prescription for the controlled substance. The burden of proof that the controlled substance was not unlawfully possessed in violation of the drug laws or rules and regulations of this state or any other state, or the federal government us upon the licensee, registrant, permittee, or applicant.

4. "[G]rounds for discipline specified in such a professional-licensing statute should be liberally construed to protect the public." Professional licensing statutes are not penal in nature and the "powers conferred upon boards of health to enable them effectively to perform their important functions in safeguarding the public health should receive a liberal construction." *Koetting v. Bd. of Nursing*, 314 S.W.3d 812, 819 (Mo. App. 2010).

ANALYSIS

The Administrative Hearing Commission found that the Board had cause to discipline the licensed practical nursing license of Brenda Coleman for testing positive for controlled substances after a reasonable request to do so from her place of employment. Respondent tested positive for no less than four different controlled substances. The request was made while she was on duty as a nurse. She did not have a prescription for any of these substances. As she admitted in her testimony, [her employer] "can do a drug test anytime at their discretion." She also admitted that the reason the facility was requesting tests of employees was because "drugs were missing." It is of paramount importance that a nurse be sober and unimpaired at all times. Respondent owed a duty to her patient and her employer to handle and administer controlled substances in a safe, lawful, and appropriate manner. Respondent failed to live up to these standards, as the evidence of her positive tests for so many controlled substances shows. The Board does not find her testimony that this was simply "someone else's test" persuasive or credible.

The Board is charged with executing and enforcing the Nursing Practice Act for the purpose of safeguarding the health of the public. The Board therefore finds and concludes that the appropriate level of discipline for the license of Brenda Coleman is probation in order to safeguard the health of the public.

DISCIPLINARY ORDER

1. The Missouri State Board of Nursing enters its Order and places the nursing license of Respondent, Brenda Coleman, PN 047183, on **PROBATION** for a period of five (5) years on the following terms and conditions:

notifying the Board within ten (10) working days of such a change. This form is located at <http://pr.mo.gov/boards/nursing/Change-Form.pdf>

- B. Licensee shall provide a copy of this Order to any current employer and to any potential employer. Licensee shall provide a copy of this Order to her current employer as soon as she receives it and no later than during her next work shift or her employer's next working day, whichever is sooner. In addition, Licensee shall provide a copy of this Order to any potential employer prior to acceptance of any offer of employment.
- C. Licensee shall cause an evaluation, using the form supplied by the Board, from each and every employer to be completed for the Board at least quarterly, with due dates to be determined by the Board. The evaluation form shall be completed by Licensee's supervisor within a four-week period prior to the date it is due. If Licensee ends employment with an employer, Licensee shall, in addition, request that a final evaluation form from that supervisor to be submitted to the Board within a six-week period following the last day of employment. This evaluation shall be an evaluation of Licensee's job performance and shall be sent to: State Board of Nursing, ATTN: Discipline Administrator, P.O. Box 656, Jefferson City, Missouri 65102. The preferred method of submitting the evaluation is that the evaluation is sent directly by the employer. The Licensee may submit the form to the Board; however, Board staff may verify with the employer the authenticity of the evaluation submitted by Licensee. This form may be found at <http://pr.mo.gov/nursing-monitoring.asp>
- D. If Licensee is not employed at any time during the period of discipline, Licensee shall instead submit a form "Statement of Unemployment" stating the period(s) of unemployment. This form is located on the Board of Nursing Website at the address provided in paragraph C above.
- E. Licensee shall execute any release or provide any other authorization necessary for the Board to obtain records of Licensee's employment during the period covered by this Order.

EMPLOYMENT RESTRICTIONS

- A. Licensee may not serve on the administrative staff, as a member of the faculty or as a preceptor at any school of professional or practical nursing.
- B. Licensee shall only work as a nurse where there is on-site supervision by someone with the authority to send Licensee home. Licensee shall not work in home health care, hospice or durable medical equipment.

GENERAL REQUIREMENTS

- A. Respondent/Licensee shall meet with the Board or its professional staff at such times and places as required by the Board. The Board shall provide Licensee with notice of the dates, times and locations of regularly scheduled meetings at the time this executed Order is provided to Licensee. If Licensee does not receive notice of the dates, times and locations of her regularly scheduled meeting with the Board within one (1) month after the effective date of this Order, Licensee shall contact the Board office at: Missouri State Board of Nursing, P.O. Box 656, Jefferson City, Missouri 65102, or by telephone at: (573) 751-0681. In addition to these regularly scheduled meetings, Licensee shall meet with the Board or its professional staff at any other time, as required by the Board.
- B. Licensee shall meet in person with the Board's Discipline Administrator to review the terms and conditions of the probation at such date, time and place as designated by the Board's Discipline Administrator.
- C. Licensee shall submit documents showing compliance with the requirements of this Order to the Board when requested and within the time limit the Board requests.
- D. Licensee shall inform the Board within ten (10) working days of any change of home address or home telephone number.
- E. Licensee shall not violate the Nursing Practice Act, Chapter 335 RSMo, as amended, shall renew her license within five (5) working days and shall not allow her license to lapse. Licensee may place her license on inactive or retired status. The conditions of discipline will continue to apply if the license is inactive or retired.
- F. Licensee shall bear all costs of complying with this Order.
- G. Licensee shall obey all federal, state and local laws, and all rules and regulations governing the practice of nursing in this state.
- H. Licensee is responsible for insuring that all quarterly reports due pursuant to these conditions are submitted to the Board on a quarterly basis.

EMPLOYMENT REQUIREMENTS

- A. Licensee shall keep the State Board of Nursing informed of her current place of employment and of any changes in her place of employment by

- C. Licensee shall not work in a healthcare-related position for a temporary employment agency or as a healthcare related independent contractor.
- D. Licensee shall not carry narcotic keys or have access to controlled substances contained within automated dispensing devices for the first 24 months of probation.
- E. Licensee shall not administer, possess, dispense or otherwise have access to controlled substances for the first 24 months of probation.

DRUG SCREENS

- A. Licensee shall contract with the Board approved third-party administrator (TPA) to schedule random witnessed screening for alcohol and other drugs of abuse. The frequency and method of such screenings shall be at the Board's discretion. The screenings may be conducted on urine, breath, blood or hair. The random screens shall be at the expense of Licensee.
- B. Within twenty (20) working days of the effective date of this agreement, Licensee shall complete the TPA's contract and submit the completed contract to the TPA.
- C. The Licensee's failure to comply with Licensee's contract with the TPA shall constitute a violation of the terms of discipline.
- D. Licensee shall call the TPA each day of the week, including weekends, holidays, and each day that the Licensee is on vacation, between the hours of 5:00 a.m. and 4:00 p.m. C.S.T.
- E. Failure to call the TPA every day as described in Paragraph D above between the hours of 5:00 a.m. and 4:00 p.m. C.S.T. shall constitute a violation of the terms of discipline.
- F. If selected by the TPA, Licensee shall submit to drug and alcohol screening prior to a collection site closing for business on the day that Licensee is selected to be tested. Licensee shall report to the collection site in sufficient time as to allow a collection site adequate time to retrieve the sample prior to the close of its business hours.
- G. Failure to timely submit to drug and alcohol screening by the end of the business day of the collection site when selected by the TPA shall constitute a violation of the terms of discipline.

- H. It is Licensee's responsibility to assure that lab personnel observe all urine specimen collections. If the urine specimen collection is not observed, the Board, in its discretion, may consider the results to be invalid.
- I. During the disciplinary period, Licensee shall abstain completely from the use or consumption of alcohol in any form, including over the counter products. The presence of any alcohol whatsoever in any biological sample obtained from the Licensee, regardless of the source, shall constitute a violation of Licensee's discipline.
- J. During the disciplinary period, Licensee shall abstain completely from the personal use or possession of any controlled substance or other drug for which a prescription is required, unless use of the drug has been prescribed by a person licensed to prescribe such drug and with whom Licensee has a bona-fide relationship as a patient. Such prescribed drug shall only be consumed as directed and only for the condition for which it was prescribed. Licensee shall not consume hemp, poppy seeds or any product or by-product containing the same. Licensee shall not ingest or consume synthetic drugs/cannabinoids or bath salts.
- K. Licensee shall show this Order to any healthcare professional prescribing a prescription for Licensee and inform the healthcare professional of Licensee's drug(s) of choice and/or any drugs Licensee has abused.
- L. Upon request, Licensee shall execute a medical release authorizing the Board to access all records pertaining to Licensee's condition, treatment and prescription(s) maintained by the healthcare professional that prescribed the controlled substance.
- M. The presence of any controlled substance or other drug requiring a prescription whatsoever in any biological sample obtained from the Licensee for which Licensee does not hold a valid prescription or was not consumed for the purpose for which it was prescribed shall constitute a violation of Licensee's discipline.
- N. If Licensee receives a prescription for a controlled substance or any other drug, Licensee shall have the prescribing healthcare professional fill out and send to the Board Office a prescription identification form the same day the controlled substance or other drug is prescribed. Licensee shall inform each healthcare professional who prescribes a controlled substance or other drug of each and every prescription Licensee received sixty (60) days prior to obtaining the new prescription. All such prescriptions shall be listed on the prescription identification form.

**REQUIREMENTS REGARDING CHEMICAL DEPENDENCY
TREATMENT AND REHABILITATION**

- A. Licensee shall, within six (6) weeks from the effective date of this agreement, undergo a thorough evaluation for chemical dependency performed by a licensed chemical dependency professional. The chemical dependency professional shall submit to the Board evidence that he or she is licensed or certified in the treatment of chemical dependency. Licensee shall show this agreement to the chemical dependency professional before the evaluation is performed.
- B. Licensee shall have the chemical dependency professional send the results of the evaluation directly to the State Board of Nursing, ATTN: Discipline Administrator, P.O. Box 656, Jefferson City, Missouri 65102 or by fax to (573) 522-2143 within ten (10) working days after the evaluation is complete.
- C. Each written evaluation shall include:
1. A description of the tests performed and test results;
 2. Discussion of relevant clinical interview findings/interpretations;
 3. Specification of DSM IV diagnosis/es, and discussion of appropriate treatment recommendations/plan.
 4. Discussion of appropriate treatment recommendations/plan. If there is no diagnosis requiring treatment, this should be specified in the evaluation.

IF TREATMENT IS RECOMMENDED

- A. Licensee shall follow any recommendations for treatment made by the chemical dependency professional.
- B. Licensee shall execute a medical release or other appropriate release which shall remain in effect for the entire period covered by this agreement authorizing the State Board of Nursing to obtain records of Licensee's treatment for chemical dependency. Licensee shall not take any action to cancel this release. Licensee shall take any and all steps necessary to continue the release in effect and shall provide a new release when requested.
- C. Licensee shall cause an update of treatment evaluation from the chemical dependency professional to be submitted to the Board at least quarterly, with due dates to be determined.

- (1) The update shall be submitted using a form prescribed by the Board and shall be sent by the chemical dependency professional addressed to: State Board of Nursing, ATTN: Discipline Administrator, P.O. Box 656, Jefferson City, Missouri 65102.
 - (2) The update shall include an evaluation of Licensee's current progress and status related to the treatment recommendations/plan and Licensee's current prognosis and treatment recommendations/plan.
- D. If a twelve-step program or other support group attendance is recommended, Licensee shall submit evidence of weekly (or recommended) attendance at Alcoholics Anonymous, Narcotics Anonymous or other support group meetings to the Board at such times as required by the Board, but not less than quarterly. The documentation shall be on forms provided by the Board and shall include the date and name of the meeting and shall bear a signature or abbreviated signature of another person verifying attendance.
- E. If the treatment of Licensee is successfully completed at any time during the period covered by this agreement, Licensee shall cause the chemical dependency professional to submit a letter of final evaluation/summary which includes a statement that Licensee has successfully completed treatment and indicates whether Licensee should continue in a 12-step program. If continuance in a 12-step program is recommended, Licensee shall comply with terms of documentation as outlined in Paragraph D.

CONTINUING EDUCATION

- A. Licensee shall complete the following classes offered at <http://learningext.com/groups/b06e8bc419/summary>:
- Righting a Wrong-Ethics and Professionalism in Nursing (3.0 hours)
 - Professional Accountability and Legal Liability for Nurses (5.4 hours)
 - Missouri Nursing Practice Act (2.0 hours)
 - Disciplinary Actions: What Every Nurse Should Know (4.8 hours)
- B. Specific information regarding these classes will be provided by the Discipline Administrator at Licensee's initial meeting with the Board.
- C. Licensee shall submit proof of completion of these classes to the Board during the first six months of the disciplinary period.
- D. Failure to obtain the required contact hours by the due date shall constitute a violation of the terms of discipline.

2. The State of Missouri is a member of the Nurse Licensure Compact. Pursuant to the Compact, while on probation within the home state, a licensee loses his/her multi-state privileges. Therefore, the Licensee may not work outside the State of Missouri pursuant to a multistate licensure privilege without written permission of the Missouri State Board of Nursing and the Board of Nursing in the party state where the Licensee wishes to work.

3. The Board will maintain this Order as an open and public record of the Board as provided in Chapters 339, 610 and 620, RSMo. The Board will report this Order to data banks, other appropriate entities and in its newsletter. This is a disciplinary action against Respondant's license. The original of this document shall be kept in the Board's file and its contents shall be disclosed to the public upon proper request.

ENTERED THIS 20 DAY OF JUNE, 2013.

STATE BOARD OF NURSING


Lori Scheidt
Executive Director

BEFORE THE STATE BOARD OF NURSING
STATE OF MISSOURI

STATE BOARD OF NURSING,)		
)		
Petitioner,)		
vs.)	Case Number	2009-003278
)		AHC 10-1322 BN
BRENDA COLEMAN,)		
)		
Respondent,)		

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DISCIPLINARY ORDER**

This Board filed a complaint with the Administrative Hearing Commission seeking authority to discipline the nursing license of Brenda Coleman. The Administrative Hearing Commission entered a Decision in this matter on April 1, 2013, finding cause for this Board to discipline the nursing license of Brenda Coleman. Following a disciplinary hearing on June 5, 2013, the Board issued a Findings of Fact, Conclusions of Law and Disciplinary Order (Order) on June 24, 2013. Pursuant to that Order, Respondent's license was placed on probation for a period of five (5) years.

On November 12, 2013, a complaint was filed alleging that Respondent had violated certain terms and conditions of the Order. The Board convened a hearing December 6, 2013, at its regular meeting in Jefferson City to determine whether Respondent had violated the Order and what action, if any, the Board should take if Respondent had, in fact, violated the Order.

Respondent, though duly notified of the time and place of the hearing, failed to appear in person or by counsel. The Board was represented by Rodney Massman. Ian Hauptli acted as legal advisor to the Board. Evidence was adduced, exhibits were

received and the matter was taken under advisement. The Board now enters its findings of fact, conclusions of law and disciplinary order in this matter:

FINDINGS OF FACT

1. The State Board of Nursing (Board) is an agency of the State of Missouri created and established pursuant to §335.021 RSMo with the function of executing and enforcing the provisions of Chapter 335 RSMo, the Nursing Practice Act, for the purpose of safeguarding the public health.
2. Brenda Coleman holds a license from this Board as a licensed practical nurse, PN 047183. Respondent's license was current and active at all times relevant herein.
3. Brenda Coleman has failed to plead or otherwise defend against the action initiated upon a properly pled writing and upon proper notice by the Board that a probation violation hearing was scheduled against her on December 6, 2013, at 8:30 a.m. to determine the appropriate level of discipline, if any, to be assessed against the license of Brenda Coleman for her violations of the Order.
4. Respondent was properly served on November 21, 2013 with notice of the disciplinary hearing before the Board.
5. Following a disciplinary hearing on June 5, 2013, the Board issued a Findings of Fact, Conclusions of Law and Disciplinary Order (Order) on June 24, 2013. Pursuant to that Order, Respondent's license was placed on probation for a period of five (5) years.
6. In accordance with the terms of the Order, Respondent was required to contract with the Board-approved third party administrator (TPA), currently National

Toxicology Specialists, Inc. (NTS), to schedule random witnessed screening for alcohol and other drugs of abuse, the frequency and method of which shall be at the Board's discretion. Within twenty (20) working days of the effective date of the Order, Respondent was required to complete the TPA's contract and submit the completed contract to the TPA.

7. Respondent did not complete the contract process with NTS by July 23, 2013.

8. In accordance with the terms of the Order, Respondent was required to meet with representatives of the Board at such times and places as required by the Board. Respondent was advised by a letter sent by United Postal Service to attend a meeting with the Board's representative on July 24, 2013. Respondent did not attend the meeting or contact the Board to reschedule the meeting.

9. In accordance with the terms of the Order, Respondent was required to undergo a thorough evaluation for chemical dependency performed by a licensed chemical dependency professional and have the evaluation submitted to the Board by August 5, 2013. The Board did not receive a chemical dependency evaluation by the due date of August 5, 2013.

10. Pursuant to the terms of Respondent's probation in the Order, Respondent was to submit an employer evaluation from every employer or, if Respondent was unemployed, a statement indicating the periods of unemployment.

11. The Board did not receive an employer evaluation or statement of unemployment by the documentation due date of September 14, 2013.

12. The Board finds that this Disciplinary Order is issued to safeguard the public health.

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this proceeding, pursuant to the Order, §324.042 RSMo and §335.066.2 RSMo, to determine whether Respondent has violated terms of the Order.

2. Section 324.042 RSMo, provides:

~~Any Board, commission, or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant, or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to a settlement. The board, commission, or committee may impose as additional discipline any discipline it would be authorized to impose in an initial disciplinary hearing.~~

3. Respondent violated the terms of discipline set forth in the Order as described in the Findings of Fact.

4. The Order, §324.042 RSMo, and §335.066.2 RSMo allow the Board to take such disciplinary action that the Board deems appropriate for failure to comply with the terms of the Order.

5. "[C] grounds for discipline specified in such a professional-licensing statute should be liberally construed to protect the public." Professional licensing statutes are not penal in nature and the "powers conferred upon boards of health to enable them effectively to perform their important functions in safeguarding the public health should receive a liberal construction," *Koetting v. Bd. of Nursing*, 314 S.W.3d 812, 819 (Mo. App. 2010).

ANALYSIS

Respondent violated the terms of the Disciplinary Order issued by the Board. Respondent failed to contract with NTS to schedule random screenings for drug and alcohol testing, failed to meet with a representative of the Board as required, failed to undergo a thorough chemical dependency evaluation and submit proof of the evaluation to the Board, and Respondent failed to submit an employer evaluation or statement of unemployment by the documentation due date. Because of these failures by the Respondent, the Board cannot fulfill its statutory obligation to protect the public.

Respondent has failed to comply with the terms and conditions of her probation. Being able to understand and follow directions and requirements are an important function of being a nurse. Understanding and following probationary proceedings are similar to understanding and following physician orders for patient care. A nurse is required to read and follow orders in order to care for patients as ordered by a treating physician. Respondent's carelessness in handling the requirements of her probation calls into question whether Respondent can safely and effectively practice as a nurse. If Respondent will not follow the terms and conditions of her probation, it is unlikely she will follow physician orders or properly document in patient charts.

Respondent did not appear for the hearing and offered no mitigating evidence to the Board regarding the Probation Violation Complaint or as to the appropriate level of discipline the Board should impose.

The Board is charged with executing and enforcing the Nursing Practice Act for the purpose of safeguarding the health of the public. The Board therefore finds and

concludes that the appropriate level of discipline for the license of Brenda Coleman is **REVOCA**TION in order to safeguard the health of the public.

DECISION AND ORDER

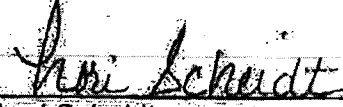
1. It is the decision of the Missouri State Board of Nursing that Respondent has violated the terms of the Order. Respondent's license is, therefore, subject to further disciplinary action.

2. The Missouri State Board of Nursing enters its Order and **REVOKES** the nursing license and the privilege to practice, if any, in the State of Missouri of Respondent, Brenda Coleman, PN 047183. It is further **ORDERED** that while Respondent's license is encumbered by this Order, Respondent may not work outside the State of Missouri pursuant to a multistate licensure privilege without the written permission of the State of Missouri and the Board of Nursing in the party state where Respondent wishes to practice nursing.

3. The Board will maintain this Order as an open and public record of the Board as provided in Chapters 335, 610 and 620, RSMo. The Board will report this Order to data banks, other appropriate entities and in its newsletter. This is a disciplinary action against Respondent's license. The original of this document shall be kept in the Board's file and its contents shall be disclosed to the public upon proper request.

ENTERED THIS 8th DAY OF JANUARY, 2014.

STATE BOARD OF NURSING



Lori Scheidt

Executive Director