

IN THE MATTER OF
PERMANENT VOCATIONAL NURSE
LICENSE NUMBER 155827
ISSUED TO
ROSEANN HUNTER

§
§
§
§
§

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.
William C. Thomas
Executive Director of the Board

ORDER OF THE BOARD

TO: Roseann Hunter
177-2 Tank Destroyer
Ft. Hood, TX 76544

During open meeting held in Austin, Texas, on **Tuesday, 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 155827, previously issued to ROSEANN HUNTER, 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 Charges filed April 29, 2014.

Re: Permanent Vocational Nurse License Number 155827
Issued to ROSEANN HUNTER
DEFAULT ORDER - REVOKE

CERTIFICATE OF SERVICE

I hereby certify that on the 25th 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

Roseann Hunter
177-2 Tank Destroyer
Ft. Hood, TX 76544

Via USPS First Class Mail

Roseann Hunter
P.O. Box 2941
Wilkes Barre, PA 18703

Roseann Hunter
63 Kelly Avenue
Wilkes Barre, PA 18705

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 155827	§	
Issued to ROSEANN HUNTER,	§	
Respondent	§	BOARD OF NURSING

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, ROSEANN HUNTER, is a Vocational Nurse holding License Number 155827, 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 2, 2011, Respondent received a Memorandum Order from the Pennsylvania Board of Nursing, wherein she was informed that she was in default for failing to fully undergo a mental and physical examination and that her license would be indefinitely suspended if she failed to file an answer or request a hearing within twenty (20) days. On or about April 15, 2013, Respondent received a Final Order from the Pennsylvania Board of Nursing, wherein her license to practice vocational nursing in the State of Pennsylvania was suspended indefinitely, retroactive to June 22, 2011. A copy of the Memorandum Order from the Pennsylvania Board of Nursing dated June 2, 2011, and a copy of the Final Order from the Pennsylvania Board of Nursing dated April 15, 2013, are 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. 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).

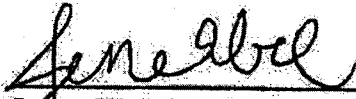
NOTICE IS GIVEN that all statutes and rules cited in these Charges are incorporated as part of this pleading and can be found at the Board's website, www.bon.texas.gov.

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.

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: Memorandum Order from the Pennsylvania Board of Nursing dated June 2, 2011, and Final Order from the Pennsylvania Board of Nursing dated April 15, 2013.

Filed this 29th day of April, 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
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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: Memorandum Order from the Pennsylvania Board of Nursing dated June 2, 2011, and Final Order from the Pennsylvania Board of Nursing dated April 15, 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.

Roseann Thomas, LPN,
Respondent

File No. 10-51-09227
Docket No. 0741-51-2011

Department of State

TRUE AND CORRECT COPY
2011 JUN - 2 2:03:05

CERTIFIED FROM THE RECORD
THIS IS THE DAY OF JUNE 2011

[Signature]
ASST. NOTARY

MEMORANDUM ORDER

AND NOW, this 2nd day of June 2011, the State Board of Nursing (Board), upon consideration of the motion for entry of default and to deem facts admitted and request for entry of default filed by the Commonwealth on May 4, 2011, concerning the Commonwealth's petition for mental and physical examination of Roseann Thomas, LPN¹ (Respondent), license number PN282010, and pursuant to section 16(a)(6) of the Practical Nurse Law² (Act), 63 P.S. § 666(a)(6), and the holding of *Lencovich v. Bureau of Professional and Occupational Affairs*, 829 A.2d 1238 (Pa. Cmwlth. 2003), the Board finds that:

1. On or about February 17, 2011, upon Petition of the Commonwealth, the State Board of Nursing's Probable Cause Screening Committee³ issued an Order compelling Respondent to submit to a mental and physical examination by Roger J. Cadieux, M.D. (Dr. Cadieux). (Motion to enter default and deem facts admitted at ¶¶ 1, 2 and Exhibit A).
2. On or about February 17, 2011, the State Board of Nursing's Probable Cause Screening Committee issued an Order compelling Respondent to submit to a mental and physical examination by Dr. Cadieux on April 28, 2011, at 11:00 a.m. (Motion to deem facts admitted and entry of default at ¶ 5 and Exhibit A).
3. The Commonwealth served a true and correct copy of the Petition, Order and Notice of

¹ Motion to Enter Default and Deem Facts Admitted erroneously lists respondent as RN

² Act of March 2, 1956 (P.L. 1956-1211), as amended, 63 P.S. §§ 651 et seq.

³ The Probable Cause Screening Committee consisted of Ann M. Coughlin, RN, MSN, Suzanne Hendricks, L.P.N., and Rafaela Colon, Committee Member.

mental and physical examination upon Respondent by mailing it by certified mail, return receipt requested, and by first class mail, postage prepaid, to Respondent at his address on record with the Board as follows: Roseann Thomas, LPN, PO Box 2941, Wilkes Barre, PA 18703. (Motion to enter default and deem facts admitted at ¶ 2).

4. The Petition, Order and Notice mailed by certified mail, return receipt requested was not claimed by the Respondent as evidenced by the return of Postal Form 3811, Article #7010 2780 0001 7451 0861. (Motion to enter default and deem facts admitted at ¶ 3 and Exhibit B)

5. The Petition, Order and Notice mailed by first class mail, postage prepaid, was not returned to the Commonwealth by the United States Postal Service and is, therefore, presumed to have been delivered to Respondent at Respondent's address on file with the Board and received by Respondent. (Motion to enter default and deem facts admitted at ¶ 4).

6. On April 28, 2011, Dr. Cadieux wrote a letter to the prosecuting attorney indicating that the Respondent did not show up for the scheduled appointment. (Motion to enter default and deem facts admitted at ¶ 6)

Accordingly, it appears that Respondent is in default of failing to submit to the examination, which authorizes the Board to INDEFINITELY SUSPEND Respondent's license to practice practical nursing subject to notice, hearing, adjudication and appeal. The indefinite suspension will become effective unless Respondent files a request for a hearing to challenge the validity of the order compelling the examination or to contest the allegations of the motion to deem facts admitted, along with an answer, within 20 days from the date of this order. If Respondent's license is indefinitely suspended because she fails to request a hearing and file an answer within this time frame, Respondent shall, at reasonable intervals, be afforded an opportunity to demonstrate that she can resume a competent practice of

practical nursing with reasonable skill and safety to patients.

Respondent shall file her request for hearing and answer with Prothonotary, Department of State, One Penn Center, 2601 North Third Street, Harrisburg, PA 17110. A copy of the request for hearing and answer shall be served on the prosecuting attorney identified below and mailed to the address set forth below. To the extent Respondent challenges the validity of the order compelling an examination, Respondent shall file an answer to the petition to compel a mental and physical examination, specifically admitting or denying each allegation of each numbered paragraph of the petition. To the extent Respondent opposes the motion to deem facts admitted, Respondent shall file an answer to the motion to deem facts admitted, specifically admitting or denying each allegation of each numbered paragraph of the motion. A hearing before a hearing examiner shall be scheduled within 30 days of receipt of the request for a hearing and answer. Continuances will only be granted for good cause shown. If any future formal proceedings related to this matter occur, the record developed during the hearing described above may be introduced by the parties subject to appropriate objections. The hearing examiner is directed to issue a proposed adjudication promptly after close of the record. Unless either party files a brief on exceptions under 1 Pa. Code § 35.211 (procedure to except to proposed report), the Board will permit the hearing examiner's proposed adjudication to become final under 1 Pa. Code § 35.226(3) (final orders includes proposed report upon the expiration of the time provided for an appeal to or review by the agency head without the appeal or review having been initiated). Nothing herein shall be construed as prohibiting the Commonwealth from bringing charges pursuant to provisions of the Act that the Commonwealth determines are warranted.

If a request for hearing and answer are not filed within the time period set forth above,

Respondent's license will be **SUSPENDED INDEFINITELY** effective June 22, 2011, (20 days after the date of mailing of this order as indicated below) and a final adjudication and order to that effect will be issued by the Board.

**BUREAU OF PROFESSIONAL
AND OCCUPATIONAL AFFAIRS**


KATIE TRUE
ACTING COMMISSIONER

Respondent's address:

Prosecuting attorney:

Board counsel:

Date of Mailing:

BY ORDER:

STATE BOARD OF NURSING


JOSEPH J. NAPOLITANO, PhD, MPH, CRNP
CHAIRPERSON

Roseann Thomas, LPN
PO Box 2941
Wilkes Barre, PA 18703

Michael J. Gennett, Esquire

Roberta L. Silver, Esquire

June 22, 2011

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

BEFORE THE STATE BOARD OF NURSING

COMMONWEALTH OF PENNSYLVANIA,
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

v.

ROSEANN THOMAS, L.P.N.

DOCKET NO. 0741-51-2011
FILE NO. 10-51-09227

FINAL ADJUDICATION AND ORDER

KATIE TRUE, COMMISSIONER
BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS

KRISTIN MALADY, RN, BSN, VICE CHAIR
STATE BOARD OF NURSING

2601 North Third Street
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649

TRUE AND CORRECT COPY
CERTIFIED FROM THE RECORD
THIS 28th DAY OF JAN. AD. 2014

Rhonda Dikes
ASST. PROTHONOTARY

JPS

HISTORY

This matter comes before the State Board of Nursing (Board) following the Board's issuance of a Memorandum Order on November 13, 2012. The matter commenced on June 2, 2011, when the Commonwealth presented a Petition for a mental and physical examination (Petition) of Roseann Thomas, L.P.N.¹ (Respondent), to the Board's Probable Cause Screening Committee.² The Petition alleged that there was probable cause to believe that Respondent was unable to practice practical nursing with reasonable skill and safety to patients by reason of mental or physical illness or condition or physiological or psychological dependence upon alcohol, hallucinogenic or narcotic drugs or other drugs which tend to impair judgment or coordination, pursuant to Section 16(a)(6) of the Practical Nurse Law³ (Law), Act of March 2, 1956, P.L. 1956-1211, *as amended*, 63 P.S. § 666(a)(6).

¹ The Motion to Enter Default and Deem Facts Admitted erroneously listed Respondent as RN. The Memorandum Order corrected this reference.

² The members of the Probable Cause Screening Committee were Ann M. Coughlin, R.N., M.S.N., Suzanne Hendricks, BSBH, L.P.N., and Rafaela Colon. Ms. Colon is no longer a member of the Board.

³ Section 16(a)(6) of the Law provides as follows:

Section 16. Refusal, Suspension or Revocation of licenses.

- (a) The Board may refuse, suspend or revoke any license in any case where the Board shall find that

(6) Is addicted to alcohol or is addicted to hallucinogenic or narcotic drugs or other drugs which tend to impair judgment or coordination, so long as such dependence shall continue, or if he or she has become mentally incompetent. In enforcing this clause, the Board shall, upon probable cause, have authority to compel a licensee to submit to a mental or physical examination as designated by it. After notice, hearing, adjudication and appeal as provided for in section 17, failure of a licensee to submit to such examination when directed shall constitute an admission of the allegations against him or her unless failure is due to circumstances beyond his or her control, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A licensee affected under this paragraph shall at reasonable intervals be afforded an opportunity to

On February 17, 2011, the Committee issued an Order compelling Respondent to submit to a mental and physical examination (Order) with Roger J. Cadieux, M.D. (Dr. Cadieux) on April 28, 2011, at 11:00 a.m. On February 25, 2011, the Commonwealth served Respondent with the Petition, Order and Notice of Mental and Physical Examination (Notice) by first class mail, postage prepaid, and by certified mail, return receipt requested, at Respondent's address on file with the Board: P.O. Box 2941, Wilkes Barre, PA 18703.

Respondent did not attend the mental and physical examination with Dr. Cadieux on April 28, 2011. On May 4, 2011, the Commonwealth filed a Motion to Enter Default and Deem Facts Admitted (Motion). Respondent did not respond to the Commonwealth's Motion. On June 2, 2011, the Board issued a Memorandum Order (Memorandum) finding Respondent in default for failing to fully undergo the mental and physical examination and notifying Respondent that her license would be indefinitely suspended if she failed to file an Answer or request a hearing within 20 days. Respondent did neither.

The Board, absent the Probable Cause Screening Committee, now issues this Adjudication and Order in final resolution of this matter.

demonstrate that he or she can resume a competent practice of practical nursing with reasonable skill and safety to patients.

63 P.S. §666(a)(6).

FINDINGS OF FACT

1. Respondent holds a practical nursing license in the Commonwealth of Pennsylvania, license number PN282010. (Board records)

2. Respondent's license would have expired on June 30, 2012, but has been indefinitely suspended as of June 22, 2011 pursuant to the Board's June 2, 2011 Memorandum Order. (Board records)

3. Respondent's last known address on file with the Board is P.O. Box 2941, Wilkes Barre, PA 18703. (Board records)

4. Respondent tested positive on a post-offer, pre-employment drug screen for marijuana. (Paragraph 4, Petition)

5. On February 17, 2011, the Commonwealth submitted a Petition, Order and Notice to the Board's Probable Cause-Screening Committee requesting that Respondent be ordered to submit to a mental and physical examination. (Paragraph 1, Memorandum; Exhibit A, Motion)

6. On February 17, 2011, an Order was issued directing Respondent to submit to a mental and physical examination by Dr. Cadieux on April 28, 2011, at 11:00 a.m. (Paragraphs 1-2, Memorandum; Exhibit A, Motion)

7. On February 25, 2011, the Commonwealth served a true and correct copy of the Petition, Order and Notice upon Respondent by mailing it to her via the United States Postal Service (USPS) by certified mail, return receipt requested and by first class mail, postage prepaid to her address on file with the Board: P.O. Box 2941, Wilkes Barre, PA 18703. (Paragraph 2, Memorandum; Paragraph 3, Motion; Exhibit A, Motion)

8. The USPS returned the certified mailing of the Petition, Order and Notice, Form 3811, Article Number 7010 2780 0001 7451 0861 marked "unclaimed." (Paragraph 4, Memorandum; Paragraph 3, Motion; Exhibit B, Motion)

9. The first class mailing to the Wilkes Barre address was not returned. (Paragraph 5, Memorandum; Paragraph 4, Motion)

10. Respondent failed to attend the April 28, 2011 examination with Dr. Cadieux and has not contacted either Dr. Cadieux or the Commonwealth. (Paragraph 7, Memorandum; Paragraphs 6-7, Motion; Exhibit C, Motion).

11. The Commonwealth served the Motion upon Respondent at her Wilkes Barre address on May 4, 2011, by mailing it by first class mail, postage prepaid. (Docket no. 0741-51-2011).

12. On June 2, 2011, the Board issued a Memorandum Order, granting the Commonwealth's Motion. (Memorandum Order, Docket No. 0741-51-2011).

13. The Memorandum Order was mailed to the Wilkes Barre postal box address. (Memorandum Order, Docket No. 0741-51-2011).

14. The USPS returned the Memorandum Order mailed to the Wilkes Barre postal box address marked "Box Closed Unable to Forward." (Docket No. 0741-51-2011)

15. On June 23, 2011, the Memorandum Order was again mailed to Respondent at 63 Kelly Avenue, Wilkes Barre, PA 18705-3331, an address obtained via a Lexis search. (Docket No. 0741-51-2011)

16. The USPS returned the Memorandum Order mailed to Kelly Avenue address marked "Moved Left No Address Unable to Forward." (Docket No. 0741-51-2011)

17. On August 25, 2012, a Notice concerning the Memorandum Order was published in the *Pennsylvania Bulletin*. (42 Pa.B. 5611)

18. The Memorandum Order notified Respondent that if she did not file an Answer or request for a hearing to challenge the validity of the order compelling the examination or to contest the allegations of the Motion within 20 days from the date of the order her license would be indefinitely suspended. (Memorandum Order, Docket No. 0741-51-2011)

19. Respondent did not file an Answer, request a hearing, or respond to the Memorandum Order or Notice. (Docket No. 0741-51-2011).

CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondent in this matter. (Findings of Fact Nos. 1-2).
2. Respondent has been afforded reasonable notice of the requirement that she submit to a mental and physical examination, including the possibility of licensure suspension for failure to comply, and has been afforded an opportunity to be heard in accordance with the Administrative Agency Law, 2 Pa.C.S. § 504. (Findings of Fact Nos. 7, 17-18).
3. In that Respondent tested positive on a post-offer, pre-employment drug screen for marijuana and failed to undergo the mental and physical examination ordered by the Board, Respondent is subject to discipline under Section 16(a)(6) of the Law, 63 P.S. § 666(a)(6), for being unable to practice practical nursing with reasonable skill and safety to patients by reason of mental or physical illness or condition or physiological or psychological dependence upon alcohol, hallucinogenic or narcotic drugs or other drugs which tend to impair judgment or coordination, so long as such dependence shall continue. (Findings of Fact Nos. 4 and 10).

DISCUSSION

Due Process

Respondent did not file an Answer contesting the allegations of the Motion or challenging the validity of the Order compelling her to undergo a mental and physical examination despite having been given a chance to do so. Under the foregoing circumstances, the Board must first determine whether Respondent has been afforded the appropriate due process to permit it to render a final decision based on the merits of the case.

If Respondent is made sufficiently aware of the charges against her and the procedures by which she can defend herself, then due process rights are protected. *Clark v. Department of Public Welfare*, 427 A.2d 712 (Pa. Cmwlth 1981); *Celane v. Insurance Commissioner*, 415 A.2d 130, 132 (Pa. Cmwlth. 1980). See also, *Gutman v. State Dental Council and Examining Board*, 463 A.2d 114 (Pa. Cmwlth. 1983).

Section 33.31 of the General Rules of Administrative Practice and Procedure, 1 Pa. Code §331.31, authorizes service by mail. "Notice of administrative action which is mailed to the interested party's last known address has been found to be reasonable notice." *Kobylski v. Milk Marketing Board*, 516 A.2d 75 (Pa. Cmwlth. 1986), citing *Yarbrough v. Department of Public Welfare*, 478 A.2d 956 (Pa. Cmwlth. 1984). Respondent is deemed in default and relevant facts stated in the order may be deemed admitted, if Respondent fails to file an answer within the time provided in the Order to Show Cause. 1 Pa. Code §35.37. See also, *Kinnlry v. Professional Standards and Practices Commission*, 678 A.2d 1230 (Pa. Cmwlth. 1986).

In this case, Respondent was repeatedly notified of the charge against her as well as the procedure to challenge that charge. The charge that Respondent was unable to practice practical nursing with reasonable skill and safety to patients by reason of mental or physical illness or condition or physiological or psychological dependence upon alcohol, hallucinogenic or narcotic drugs or other drugs which tend to impair judgment or coordination was contained in the Petition, Order, Notice and Memorandum Opinion. The Commonwealth made a good faith effort to notify Respondent of the charge against her by serving her with the Petition, Order and Notice by first class and certified mail, return-receipt requested, at Respondent's address on file with the Board. The Motion and Memorandum were mailed to that address as well. The certified copy of the Petition, Order, and Notice were returned as "unclaimed." The first class copy was not returned. Since the first class copies of the Petition, Order, Notice were not returned by the USPS, service by first class mail is properly presumed. *Kobylski, supra*. Further, the Board achieved service of the Memorandum Order having published it in the *Pennsylvania Bulletin* on August 25, 2012.

Having determined that Respondent was provided with sufficient notice of the charge against her, the Board is also satisfied that the record reflects that Respondent was repeatedly provided with an opportunity to challenge the charge and defend herself. Beginning with the Notice and Order, Respondent was advised that because there was probable cause to believe that she was unable to practice nursing she was required to undergo a pre-scheduled mental and physical examination. Further, she was repeatedly advised that if she failed to comply with the examination Order the allegations in the

Petition would be deemed admitted and she may be subject to discipline. Specifically,

Paragraph 8⁴ of the Order advised:

Respondent's failure to comply with this Order, except for circumstances beyond Respondent's control, shall constitute an admission of the allegations set forth in the Commonwealth's Petition to Compel Mental and Physical Examination, upon which a default and final Order may be entered without the presentation of testimony or other evidence. Such final Order may result in the State Board of Nursing taking disciplinary or corrective action against Respondent including license suspension, the imposition of a civil penalty of up to \$10,000 per violation, and the costs of investigation.

(Paragraph 5, Order) The last paragraph of the Notice advised:

Respondent's failure to submit to the above-scheduled examination, or to a rescheduled examination as agreed to by the Commonwealth's prosecuting attorney and George E. Woody, M.D., shall constitute an admission of the allegations set forth in the Commonwealth's Petition to Compel Mental and Physical Examination, upon which a default and final Order may be entered without the presentation of testimony or other evidence, and may result in the State Board of Nursing taking disciplinary or corrective action against Respondent as authorized by the Practical Nurse Law including the imposition of a civil penalty.

(Notice) Similarly, Paragraph 6 of the Petition, citing to Section 16(a)(6) of the Act, 63 P.S. § 666(a)(6), advised Respondent that failure to submit to the examination would constitute an admission without the taking of testimony or the presentation of evidence which would subject her to discipline.

In its Memorandum, the Board delineated in great detail the procedure by which Respondent could challenge the validity of the Order and/or contest the allegations of the Motion, the mechanics of the hearing process as well as the penalty for inaction. Specifically, it advised:

Accordingly, it appears that Respondent is in default of failing to complete the examination, which authorizes the Board to INDEFINITELY SUSPEND Respondent's license to practice practical nursing subject to notice, hearing,

⁴ The Order contains a typographical error referring to Paragraph 8 as the second "5."

adjudication and appeal. The indefinite suspension will become effective unless Respondent files an Answer, specifically admitting or denying each allegation of each numbered paragraph of the petition/Motion to challenge the validity of the order compelling the examination or to contest the allegations of the Motion to Deem Facts Admitted and Entry of Default, along with a request for a hearing, within 20 days from the date of this order....

Respondent shall file her Answer and request for hearing with Prothonotary, Department of State, 2601 North Third Street, Harrisburg, PA 17110. A copy of the Answer and request for hearing shall be served on the prosecuting attorney identified below and mailed to the address set forth below.... A hearing before a hearing examiner shall be scheduled within 30 days of receipt of the request for a hearing and answer. Continuances will only be granted for good cause shown. If any future formal proceedings related to this matter occur, the record developed during the hearing described above may be introduced by the parties subject to appropriate objections.

After the hearing and close of the record, the hearing examiner shall issue a proposed adjudication. Unless either party files a brief on exceptions under 1 Pa. Code § 35.211 (procedure to except to proposed report), the hearing examiner's proposed adjudication will become final under 1 Pa. Code § 35.226(3) (final orders includes proposed report upon the expiration of the time provided for an appeal to or review by the agency head without the appeal or review having been initiated). Nothing herein shall be construed as prohibiting the Commonwealth from bringing charges pursuant to provisions of the Act that the Commonwealth determines are warranted.

If a request for hearing and answer are not filed within the time period set forth above, Respondent's license will be **SUSPENDED INDEFINITELY** effective June 22, 2011, (20 days after the date of mailing of this order as indicated below) and a final adjudication and order to that effect will be issued by the Board.

*(Memorandum)(Emphasis omitted).

Despite being advised of the consequences of failing to obtain the examination and being provided with specific information about her due process rights, Respondent failed to Answer the Motion or challenge the validity of the Order. In light of the foregoing, the Board is satisfied that Respondent has been provided with notice and an opportunity to be heard.

Analysis

The facts deemed admitted provide substantial evidence that Respondent is unable to practice practical nursing with reasonable skill and safety to patients by reason of mental or physical illness or condition or physiological or psychological dependence upon alcohol, hallucinogenic or narcotic drugs or other drugs which tend to impair judgment or coordination. Respondent tested positive on a post-offer, pre-employment drug screen for marijuana and failed to undergo her ordered examination with Dr. Cadieux.

The Board is permitted to make reasonable inferences based upon the outlined deemed admitted facts. *Shrader v. Bureau of Professional and Occupational Affairs*, 673 A.2d 1 (Pa. Cmwlth. 1995) In that Respondent tested positive for marijuana in her pre-employment drug screen combined with her failure to undergo the ordered mental/physical examination, the inference reasonably deduced in this case is that that Respondent is unable to practice practical nursing with reasonable skill and safety to patients by reason of mental or physical illness or condition or physiological or psychological dependence upon alcohol, hallucinogenic or narcotic drugs or other drugs which tend to impair judgment or coordination. As such, the Board is authorized to discipline Respondent pursuant to Section 16(a)(6) of the Act, 63 P.S. § 666(a)(6).

Sanction

In determining the appropriate sanction, the Board considers, as paramount, its duty to protect the public from practitioners that cannot safely practice. Respondent's actions constitute sufficient evidence that Respondent cannot practice practical nursing with reasonable skill and safety to patients. The public can only be protected by the Board's issuing an order indefinitely suspending Respondent's license until such time as she submits to a drug and alcohol evaluation by a Board-approved provider and

demonstrates at a hearing that she can resume a competent practice of practical nursing with reasonable skill and safety to patients. In any petition for reinstatement, Respondent shall also verify that she has not practiced nursing during the period of her suspension and completed the administrative requirements for reinstatement of her license.

Accordingly, the Board enters the following order:

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

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs

v.

Roseann Thomas, L.P.N.,
Respondent

File No. 10-51-09227
Docket No. 0741-51-2011

FINAL ORDER

AND NOW, this 15th day of April 2013, the State Board of Nursing, upon consideration of the entire record in this matter, including the Findings of Fact, Conclusions of Law and Discussion, and in accordance with the memorandum order issued June 2, 2011, **ORDERS** that Respondent's license to practice nursing, license no. PN282010, be **SUSPENDED INDEFINITELY**, retroactive to June 22, 2011.

Respondent may petition for reinstatement of her license after completing a drug and alcohol evaluation by a PHMP-approved provider, submitting a verification of non-practice and completing applicable administrative requirements. In a formal hearing on her petition, Respondent must demonstrate that she can resume the competent practice of practical nursing with reasonable skill and safety to patients.

If Respondent has not already done so, within 10 days of the effective date of this order, Respondent shall surrender the wall certificate, registration certificate, wallet card, and other licensure documents by forwarding them to the following address: State Board of Nursing, Board Counsel, P.O. Box 2649, Harrisburg, PA 17105-2649.

Failure to comply with this order may result in additional disciplinary action.

This order shall be effective immediately.

BY ORDER:

**BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS**

STATE BOARD OF NURSING


**KATIE TRUE
COMMISSIONER**


**KRISTIN MALADY, RN, BSN
VICE CHAIRPERSON**

Respondent:

Roseann Thomas, L.P.N.
PO Box 2941
Wilkes Barre, PA 18703

Service by Publication

Prosecuting attorney:

Michael J. Gennett, Esquire

Board counsel:

Judith Pachter Schulder, Esquire

Date of Mailing:

April 15 2013

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