



CANNON BUILDING
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STATE OF DELAWARE
DEPARTMENT OF STATE

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DIVISION OF PROFESSIONAL REGULATION

PUBLIC MEETING NOTICE:	BOARD OF NURSING Meeting Minutes
DATE AND TIME:	Wednesday, October 10, 2012 at 9:00 a.m.
PLACE:	Cannon Building, Second Floor Conference Room A 861 Silver Lake Blvd., Dover, DE 19904
Minutes Approved:	November 14, 2012

MEMBERS PRESENT

Evelyn Nicholson, President, Public Member
Robert Contino, RN, Vice President, Nurse Educator Member (left the meeting at 11:00 a.m.)
Pamela Tyranski, RN Member
Robert Maddex, Public Member
Harland Sanders, Public Member
Madelyn Nellius, Public Member
Delphos Price, APN Member
Tracy Littleton, LPN Member
Kathy Bradley, LPN Member
Dianne Halpern, RN Member
Lyron Deputy, RN Member
Mary Lomax, Public Member

DIVISION STAFF/DEPUTY ATTORNEY GENERAL PRESENT

Patty Davis-Oliva, Deputy Attorney General
Pamela Zickafoose, Executive Director
Sheryl Paquette, Administrative Specialist III

MEMBERS ABSENT

Gwilliam Hines, RN Member
David Salati, RN Member

ALSO PRESENT

Juli LaBadia, Wilcox and Fetzer
Robert Cannavo
Donna Ramage, DTCC, Stanton Campus
Tammy Paxton, DTCC, Owens Campus
Nancy Henry, DTCC, Owens Campus
Afua Opoku-Debrah
Robin Maracle
Sheila Grant, RN, Hospice Network

Connie Bushy, M. H. Rollins School of Nursing at Beebe Medical Center
Barbara J. Robinson
Greg Morris
Doug Entenman
Maggie Leister
Donald Roberts
One person with un-readable signature

Ms. Nicholson called the meeting to order at 9:03 a.m. The Board introduced themselves to the public.

REVIEW OF MINUTES

The Board reviewed the minutes of the meeting held on September 12, 2012. Ms. Nellius made a motion, seconded by Ms. Littleton, to approve the minutes. By unanimous vote, the motion carried.

ADOPTION OF THE AGENDA

Ms. Nicholson proposed changing agenda item 9.11.3 (Hospice Presentation) to the beginning of the meeting following the adoption of the agenda. She then recommended inserting agenda items 9.11.1 (Newman Clinical Sites) and 9.11.2 (DTCC, Stanton) between items 3.0 and 4.0, due to Dr. Contino's need to leave early for a funeral. Mr. Sanders made a motion to approve the agenda with the move of the aforementioned items, seconded by Mr. Deputy. By unanimous vote, the motion carried.

ACTIVITIES REPORT

Dr. Zickafoose provided the report of the number and types of active licenses as of October 9, 2012.

Total Active Licenses = 19,688

APN = 1,234

RN = 15,610

LPN = 2844

Total permits 38

UNFINISHED BUSINESS

There was no unfinished business for Board review.

COMMITTEE REPORTS

APN Committee – Mr. Price said the committee met on September 25th in the Cannon Building, Dover. He said Town Hall meetings continue to move forward; one at Beebe, one at Bayhealth, one at A.I. DuPont, and one meeting each are coming to Christiana and Nanticoke. Participants in the meetings support the Consensus Model.

AWSAM Committee – Ms. Tyranski said the meeting was canceled due to bad weather conditions. The next meeting is scheduled for October 23rd at 5:00 p.m.

PRESIDENT'S REPORT

Ms. Nicholson reported that the month of September was a quiet month with no emergency hearings and that the Board's Hearing Panel did not meet. It was "business as usual."

EXECUTIVE DIRECTOR'S REPORT

Dr. Zickafoose reminded the Board and the audience that the school annual reports are due December 1st and she would be sending an email to the schools with the revised annual report. Dr. Contino commented that the annual report was revised to reflect "graduation rates" rather than "completion rates."

NEW BUSINESS BEFORE THE BOARD
LICENSEE APPLICATION REVIEWS

By Examination

Marian Fasasi, GPN – Ms. Fasasi graduated from Leads School of Technology on 7/21/12. Her CBC showed disorderly conduct on 11/29/09, an offense listed at Board Rule 15.6. Her letter of explanation said she used poor judgment in having an open container of alcohol in her car. Question #19 was answered with a “yes” and the explanation summary said she knew she couldn’t drink and drive so she put alcohol from a party in her car to take home. Disposition paperwork and two letters of reference were submitted. Ms. Nicholson said documents received showed the police officer gave Ms. Fasasi several breathalyzer tests but did not get a positive reading. Ms. Fasasi requested a blood analysis be done. The blood analysis came back negative as well; therefore, she was charged just with disorderly conduct. Ms. Nellius questioned the DUI charge and Ms. Davis-Oliva confirmed the DUI was withdrawn. Mr. Price made a motion, seconded by Ms. Halpern, to grant a waiver for Ms. Fasasi to sit for the exam. By unanimous vote, the motion carried.

Victoria Maldonado, GN

Ms. Maldonado graduated from Delaware Technical & Community College on 8/4/12. Her CBC showed hindering apprehension on 3/5/06, an offense listed at Board Rule 15.5.15. Her letter of explanation said after an altercation with her baby’s father she was told by police to tell them if he returned to her home. After apologizing to her and moving back in with her, Ms. Maldonado stated she used poor judgment by lying to the police about his whereabouts when they came to her home to arrest him. Disposition paperwork dated August 9, 2006, showed she was sentenced to pay costs of prosecution, pay a fine of \$1,000, and be on probation with the Lebanon County Probation Department for twenty-three months, subject to the rules and regulations they imposed. Six letters of positive reference were submitted. Question #19 was answered with a “yes” and the explanation summary listed “2006 hindering apprehension.” Ms. Nicholson said Ms. Maldonado’s application shows her nursing school entry date as July 2012 and the graduation date was left blank. The records show August 2012 as the date when she graduated. Ms. Halpern stated she had a problem with Ms. Maldonado not filling out the form correctly. Dr. Contino commented the Board wrestles with this issue every month, but if the Board denies the application that would mar Ms. Maldonado’s record for life. Ms. Halpern stated she had no problem with Ms. Maldonado taking the test, and Mr. Price questioned why the application was not rejected. Ms. Nicholson asked the members of the audience associated with nursing schools to speak with their students about filling the application out accurately and completely, and to look over it a second time to be sure it is accurate. The Board discussed this application being incomplete and suggested it be returned to Ms. Maldonado for completion. Ms. Davis-Oliva said other boards send back incomplete applications. Mr. Sanders made a motion, seconded by Mr. Maddex, to return the application for being incomplete and inaccurate. By unanimous vote, the motion carried.

Oran Brown, GPN

Mr. Brown graduated from Delaware Technical & Community College on 7/10/12. His CBC showed criminal possession weapon deface/conceal and criminal possession weapon loaded firearm on 11/24/89; robbery 2nd / aided by another (2 counts) on 1/28/90; and robbery 2nd on 3/27/91. These crimes are listed at Board Rules 15.8 and 15.3.11. His letter of explanation said his convictions were from indiscretions of his youth. Further explanation stated that while incarcerated Mr. Brown attended college, obtained a New York State Apprenticeship for Counseling, became a Resident Director overseeing 40 counselors, and also helped write and complete the curriculum for the Aggression Replacement Training (A.R.T.) program. Disposition paperwork and two positive letters of reference were submitted. Question #19 was answered with a “yes” and the explanation summary listed “armed robbery 2nd degree,” and “criminal possession of weapon.” Mr. Brown’s criminal history was discussed

by the Board members. Ms. Halpern said Mr. Brown left question #11 incomplete. She suggested sending back the application for completion before discussing the criminal charges any further. Ms. Halpern made a motion, seconded by Mr. Maddex, to return the application because it was incomplete. By unanimous vote, the motion carried.

Tiffani Townsend, GPN

Ms. Townsend graduated from Leads School of Technology on 6/26/10. She took her NCLEX-PN Boards on 11/22/10, 5/25/11, and 12/8/11 and was unsuccessful. She submitted a petition to test on June 18, 2012 but her application was outdated; therefore, she submitted a new application on August 6, 2012. A certificate of completion from Kaplan was submitted showing she met the course standards and the course was held from 7/21/12 to 10/11/12. She stated that she had worked for the Rockford Center in Newark, Delaware from 8/2010 to the present, as a Recovery Specialist. Dr. Zickafoose explained that the application form was not outdated; rather, it had been submitted more than a year previously and a more current application was necessary. Ms. Nicholson said Ms. Townsend's name was misspelled on the Kaplan certificate of completion and that no one had signed the certificate. Ms. Nicholson said she had never seen a certificate of completion without an official's signature. She said the certificate shows a date one week after the class started. She wondered how someone could earn a certificate of completion when the class had not yet been completed. Ms. Nicholson said that on application question #6, under 'remedial review work', Ms. Townsend stated, "I have been studying the Kaplan review course practicing 100 questions every day." Below that statement was Ms. Townsend's signature and the date June 9, 2012. Ms. Nicholson said the course didn't start until July 2012. Mr. Price said it is possible Ms. Townsend had taken that course before. Under 'job description' Ms. Townsend wrote 'Recovery Specialist'. Ms. Townsend wrote that she "participates at Rockford Center", and she stated that she participates in treatment planning for mental health by identifying patient problems, needs, and strengths. Ms. Nicholson questioned how someone that is not licensed can have the title of a 'Specialist' and be able to take part in treatment planning for severe mental problems. Ms. Nicholson said this brings into question Ms. Townsend's truthfulness. Ms. Tyranski said she also questioned the basic inconsistencies, the dates, and the additional information that was provided. Ms. Nicholson said that according to the Board's Rules and Regulations, Ms. Townsend is not allowed to take the NCLEX examination without their approval; however, Ms. Townsend's file shows she did take the test and passed on 9/18/12. Upon researching this, Dr. Zickafoose said Ms. Townsend was erroneously approved to take the test by a staff member, and that Ms. Townsend's file was then put before the Board for approval of a license. Since Ms. Townsend had already passed the test, the Board decided to proceed. Dr. Zickafoose stated Ms. Townsend graduated a little over 2 years ago but does not meet the 2 year practice requirement; therefore, she needs a Supervised Practice Plan in order to get her license. Dr. Contino asked if she would get a temporary license if she is approved for a Supervised Practice Plan. Dr. Zickafoose said, "Yes, she will." She further explained that Ms. Townsend will use the temporary license until she meets the requirement of the Supervised Practice Plan, at which time she can get a regular license. Dr. Contino made a motion, seconded by Mr. Deputy, to approve a Supervised Practice Plan requirement. By unanimous vote, the motion carried.

By Endorsement

Monifa Branch, LPN

Ms. Branch graduated from Delaware County Technical School in Pennsylvania on 2/16/12. Her CBC showed disorderly conduct on 1/8/06, an offense listed at Board Rule 15.6. Her letter of explanation said she was escorting a person who was causing trouble from a party when police pushed Ms. Branch against their police car. As a result of getting medical attention for a possible injury from this altercation, she stated the police officer felt he had to charge her with disorderly conduct to 'cover himself.' Further explanation stated she is a respectful person. Disposition paperwork and one letter of positive reference were submitted. Question #21 on the application was answered with a "no." A letter dated July 30, 2012 from Ms. Branch stated she answered 'no' because she had forgotten about the

disorderly conduct charge as she was told to pay a fine and didn't think it was on her record. Mr. Sanders said he had a problem with the fact that Ms. Branch said she had 'forgotten' when she filled out the application but remembered the details when she wrote the letter explaining the situation to the Board. Ms. Tyranski said she felt the application was not filled out accurately or completely. Dr. Contino questioned whether she was trying to be deceitful by filling in question #21 incorrectly. Mr. Deputy made a motion, seconded by Ms. Littleton, to propose to deny the application. By unanimous vote, the motion carried.

By Reinstatement

There were no reinstatement applications for Board review.

Advanced Practice Nurse

There were no applications for Board review.

Renewal

There were no renewal applications for Board review.

ASSIGNMENTS/ASSIGNED BOARD CONTACT PERSON

Ms. Tyranski made a motion, seconded by Ms. Bradley, to ratify the following complaint assignments given to the respective Board contact person. By unanimous vote, the motion passed.

11-74-12 Lomax	11-75-12 Halpern	11-76-12 Salati	11-77-12 Tyranski
11-78-12 Hines			

CLOSED COMPLAINTS

Closed complaints do not need a vote; they are for information only to get into the record.

Dismissed by the Attorney General's Office.

11-58-09	11-59-09	11-24-10	11-31-11	11-69-11
11-93-11	11-95-11	11-43-12		

Closed Investigations by the Division of Professional Regulation

11-46-11	11-54-11	11-55-11	11-56-11	11-64-11
11-51-12	11-58-12	11-74-12		

HEARINGS/CONSENT AGREEMENTS – RATIFICATION & SIGNATURE

Consent Agreement(s)

Pamela Tolton - Board members reviewed the consent agreement. Ms. Tolton told the Hospice patient's family they could give the patient the pre-prescribed medication from the Hospice comfort pack, and could repeat the dose in 15 minutes after the first dose. Ms. Tolton was ultimately disciplined for giving these instructions to the family outside the physician giving the order to do so. The Board discussed the fact that the meds were 'pre-prescribed' by the physician and all Ms. Tolton was doing was 'instructing' the family on how to use the comfort pack. The Board felt the reprimand was too harsh. Dr. Contino made a motion, seconded by Mr. Maddex, to reject the consent agreement as it was too severe. After further discussion, Dr. Contino called for a vote. By majority rule, the motion carried with 7 yes votes, 3 no votes, and 1 abstention.

Diane Mavracick –Board members reviewed the consent agreement. Ms. Davis-Oliva read from the consent agreement that Ms. Mavracick admitted that in March 2007 she pre-poured a resident's medication and placed it in a medication cart drawer. She then falsely documented on the MAR to indicate that the medication had been given. It further stated that Ms. Mavracick admitted that she inaccurately recorded a patient or agency record and that she failed to follow the appropriate policies or procedures in the practice situation designed to protect the safety of the patient. The discipline for this consent agreement is a letter of reprimand. Mr. Sanders made a motion, seconded by Ms. Tyranski, to accept the consent agreement. By unanimous vote, the motion carried.

Tobias Cerillo - Board members reviewed the consent agreement. Ms. Davis-Oliva said the Board had previously entered an emergency temporary suspension of Mr. Cerillo's license on August 29, 2012. She said temporary suspensions are only good for 60 days. The parties are requesting that the temporary suspension be extended until resolution of the outstanding criminal charges. Ms. Nellius made a motion, seconded by Dr. Lomax, to accept the consent agreement. By unanimous vote, the motion carried.

Hearing Panel Findings/Decisions/Orders

There were no Hearing Panel Findings/Decisions/Orders this month.

Hearing Officer Recommendations

There were no Hearing Officer Recommendations this month.

DISCIPLINARY HEARINGS

There are no disciplinary hearings scheduled for next week so the Hearing Panel will not meet. A new Hearing Panel will be appointed at the November meeting.

LEGISLATIVE UPDATE

James Collins Memorandum

Ms. Davis-Oliva said this is the time of year the Division of Professional Regulation gets their legislative agenda together. Mr. Collins asks all the boards for any new legislation they would like passed. She said any legislation the Board of Nursing would like to submit must be drafted, along with a supporting memo, and sent to Mr. Collins by 11/17/12. Dr. Zickafoose said Ms. Kay Warren is recommending two bills in her report to the Governor. One of the bills, at Ms. Nicholson's request, is to have the authority for an emergency temporary suspension be signed by the Board's President and the Secretary of State. Dr. Zickafoose said the other bill is for the consensus model. The APN committee is looking at the draft but the committee is not ready to go forward with that one yet. Ms. Davis-Oliva said she will put together a draft for the first bill. Ms. Nicholson explained that when there is a need to hold an emergency hearing to get a temporary suspension of a license, it is sometimes difficult to get a quorum of members for the meeting. If this bill is passed, it would mean temporary suspensions can be approved by the Board President and the Secretary of State and, therefore, the Nursing Board would not need an emergency meeting.

Mr. Sanders said even though this would not be a legislative matter, he would like to see a requirement made for additional CE's attached to letters of reprimand. Ms. Nicholson asked Mr. Sanders if he was recommending having the Board require anyone getting a letter of reprimand as part of a consent agreement to have to earn additional CE's as part of that consent agreement requirement. These required CE's would be in addition to the CE requirements listed under Board Rule 9.0. Mr. Sanders agreed and asked the Board how they felt about this request. Ms. Nicholson said the Board may arrange to discuss this further with the Hearing Officers.

Ms. Nicholson said the Legislative Memo states on the second page, "Lastly, I strongly encourage each Board/Commission to designate a Legislative Committee to advance legislation." Ms. Nellius reminded the Board that a legislative committee was established last year with Mr. Deputy as their chairperson.

Dr. Zickafoose said she is anticipating another piece of legislation which will pertain to the Glucagon issue which was taken out of the school nurse AWSAM bill. She said this will be discussed at the next AWSAM meeting in two weeks.

REVIEW OF COMPLIANCE

None

PRACTICE WITHOUT LICENSURE REVIEWS

Dr. Zickafoose said there was one person that practiced without a license for less than 60 days, so letters were sent to both applicant and the employer.

PRACTICE ISSUES

There were no practice issues for this month.

EDUCATIONAL ISSUES

Neumann University Clinical Sites in DE

Dr. Contino said Neuman University notified the Board that they will continue to use clinical sites in Delaware. He said it is difficult to get clinical sites in Delaware when out-of-state schools use them. All required information was submitted from Neumann University.

DTCC, Stanton – Clinical Request

Dr. Contino said Delaware Technical Community College, Stanton Campus requested to use Affinity Healthcare as a clinical site in Claymont. Required documents were submitted and reviewed by the Practice and Education committee members who unanimously approved this request. Dr. Contino made a motion to approve the clinical request of DTCC, seconded by Mr. Price. By unanimous vote, the motion carried.

Hospice Presentation

Ms. Sheila Grant, CHPN (Certified Hospice and Palliative Nurse) gave a very informative presentation on Hospice and thanked the Board for letting her provide this information. She represents all 5 Hospices in Delaware and is the State Ambassador to the National Hospice and Palliative Care Association. Ms. Grant said she has been serving on the Prescription Drug Action Committee and wanted to give a presentation to show how Hospice is unique and how regulations may, in an unintended way, affect us. She said they are community based and that is like 'home care'. Over the next 5 – 10 years more services are going to be community based.

She explained what they do is broken down into 3 main categories.

- 1) Experts in pain and symptom management.
- 2) Emotional and Practical support for families. This can be through a social worker, a chaplain and a nurse, a nurse's aide, and a variety of other specialists; for instance, home care nurses and physical therapists.
- 3) Family as unit of care (not just the patient). Give assistance with medical decision making; Hospice treats families, too.

Ms. Grant showed a PowerPoint to explain the differences between Hospice and palliative care. She said Hospice is a subset of palliative care. All Hospice workers are doing palliative care, and it is provided by a multi-disciplinary team. In addition, only a few hospitals have palliative care and it is not

in the communities yet in Delaware. The Centers for Medicare and Medicaid Services (CMS) regulates Hospice and mandatory reporting to CMS was implemented in October for Hospice agencies. After her presentation, Mr. Price thanked Ms. Grant and stated that Hospice nurses provide excellent care. Board members agreed and also thanked Ms. Grant for attending the meeting.

Excelsior College – Online Courses

Dr. Zickafoose added this to the amended agenda because she received a complaint two days ago from an LPN in California claiming that Excelsior college students should not be allowed to sit for the RN exam in Delaware. Excelsior is a college that has all online programs. They have LPN to RN courses, an Associate Degree RN program, and Master's programs. She said she talked to the office credentialing employee and confirmed that Delaware does accept Excelsior graduates; even though they don't have any clinical experience, we allow them to sit for the exam. If these students pass the exam, they get licensed in Delaware. The credentialing employee said she had an Excelsior applicant right now. Dr. Zickafoose said she got a copy of the applicant's transcript from Excelsior which showed this applicant took four exams: Nursing Concepts I, II, III, IV and got C's in all those; NURX-205, 206, 207 and 299 and got C's, a B, and a Pass; the rest of the classes were transferred in from Jackson State Community College, Jacksonville State University. She took a Lifespan Development Psychology exam and got an 'A'; and other numerous courses as well. Dr. Zickafoose said she looked at the courses on the website to see if they contained any clinical components and she said she could not find any. She said she couldn't find any 200 level courses, only 400 – 600 level courses were listed with no descriptions. She explained she researched further to see about the CPNE Exam mentioned in the complaint. According to the Excelsior website, they have an online conference to be completed in 4-weeks, called Clinical Practice Nursing Skills. Dr. Zickafoose read the description of the 4-week online course. Students then meet for a weekend in person to test on the skills from the online course. Students must pass the CPNE exam to be eligible for graduation. Ms. Halpern stated she hired an Excelsior graduate who went to a site in New York for a weekend to test on clinical skills; the test is very stringent and difficult to pass. The Board's Rules and Regulations currently state a minimum 200 hour LPN and 400 hour RN clinical requirement. Mr. Price made a motion, and Ms. Bradley seconded the motion, to refer this issue to the Practice & Education committee for review and recommendations. By unanimous vote, the motion carried.

LICENSURE ISSUES

Dr. Zickafoose stated she was asked by a prosecuting DAG to see if the Board would approve a new rule that nurses could hold only one active license: LPN or RN. Board members briefly discussed that being eligible to hold both licenses allows nurses more mobility and access to employment; however, it does present a liability issue. Some members felt this was more of an organizational issue. Ms. Nicholson commented it was important in disciplinary cases to discipline both licenses. Members asked how many Boards of Nursing allow dual LPN and RN active licenses. Dr. Zickafoose will contact other state Boards of Nursing to determine if this is common practice. Mr. Price made a motion, seconded by Ms. Nellius, to add this item to the November agenda as unfinished business. By unanimous vote, the motion carried.

NCSBN

Dr. Zickafoose reported that Sheryl Paquette and Jennifer Childers will be attending the NCSBN Operations Conference in Chicago on November 8-9, 2012.

LICENSEE RATIFICATION

Mr. Price made a motion, seconded by Ms. Littleton, to ratify the licensee list. By unanimous vote, the motion carried.

PUBLIC COMMENT

Ms. Tammy Paxton commented that schools do go over student applications for completeness and accuracy. In addition, the schools send the official transcript that has the dates in question including the month and year of entry and graduation. Ms. Nancy Henry informed the Board that the LPN refresher course at DTCC Owens campus received over 40 phone calls but only 2 students registered for the course. They stated it was a financial burden costing \$1,950 with 80 hours of clinical and 64 hours of theory. There is no financial aid available for refresher courses. Ms. Connie Bushey commented that allowing nurses to maintain both licenses is beneficial in today's job market.

NEXT SCHEDULED MEETING

November 14, 2012 - 9:00 a.m.
861 Silver Lake Blvd., Cannon Building, Conference Room A, Dover, DE 19904.

ADJOURNMENT

The meeting adjourned at 2:10 p.m.

Respectfully Submitted,

A handwritten signature in black ink that reads "Pamela C. Zickafoose". The signature is written in a cursive, flowing style.

Pamela C. Zickafoose, EdD, MSN, RN, NE-BC, CNE
Executive Director, Delaware Board of Nursing

HEARING MINUTES

HEARING – Douglas Entenman

The Delaware Board of Nursing held a hearing on October 10, 2012, at 11:11 a.m. in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Suite 203, Dover, Delaware.

PRESENT: Evelyn Nicholson, Harland Sanders, Mary Lomax, Dianne Halpern, Bob Maddex, Pam Tyranski, Tracy Littleton, Madelyn Nellius, Lyron Deputy, Kathy Bradley

RECUSED: Delphos Price

EXCUSED: Gwelliam Hines, David Salati, Robert Contino

PURPOSE: Lift Suspension

PRESIDING: Evelyn Nicholson, President

BOARD STAFF: Pamela Zickafoose, Executive Director of Nursing
Sheryl Paquette, Administrative Specialist III

DEPUTY ATTORNEY GENERAL FOR THE BOARD: Patricia Davis-Oliva, DAG

DEPUTY ATTORNEY GENERAL FOR THE STATE:

RESPONDENT: Douglas Entenman

COUNSEL FOR THE RESPONDENT: Greg Morris

WITNESSES FOR THE STATE: Dr. Pamela Zickafoose

WITNESSES FOR THE RESPONDENT: Margaret Leister, CADC, Certified Prevention Specialist, Specializing in addictions

COURT REPORTER PRESENT: Juli LaBadia, Wilcox and Fetzer

TIME STARTED: 11:11 a.m.

The recorder took verbatim testimony. The Board members introduced themselves. Ms. Davis Oliva described the reason for the hearing and confirmed Mr. Entenman was present for the hearing.

Ms. Davis Oliva said Mr. Entenman was previously found to have violated 24 Delaware Code 19.22.a.2, a.4, a.7, and a.8. He was convicted of a crime substantially related to the practice of nursing. He was found to be habitually intemperate or addicted to the use of habit-forming drugs and his nursing license had been suspended in the state of Pennsylvania. As a disciplinary sanction that order provided that Mr. Entenman's license was to be suspended for a period of two years, he was to receive counseling for his addiction and abuse, he was to report on his treatment to the Board, and his license could be re-issued only upon a further hearing initiated at his request by written application in accordance with the Board's Rules. By email dated September 19, 2012 Mr. Entenman sought to have his license re-instated by the Board. This is the hearing on that request. The Board is in receipt of an email dated

April 23, 2012 from the Assistant Public Defender from the state of Pennsylvania confirming both that office and the office of probation do not oppose Mr. Entenman's termination of supervision of his criminal probation. Ms. Davis Oliva marked that as Respondent's exhibit #1. She marked as the Board's exhibit #1, a copy of Mr. Entenman's email to the Board, dated April 23, 2012, seeking reinstatement of his license; a copy of the May 12, 2012 order of the Board; and the treatment status reports supplied to the Board by Mr. Entenman during the course of his suspension. Ms. Davis Oliva called Mr. Morris to testify. Mr. Morris said he had read the submitted documents explaining why Mr. Entenman requested the hearing. He said he didn't feel he needed to add anything more; however, he placed into evidence the testimony from Mr. Entenman, as well as testimony from Mr. Entenman's counselor, Ms. Margaret Leister. Mr. Morris called Ms. Leister to testify. Ms. Leister was sworn in. Upon Mr. Morris' interview of the witness, Ms. Leister testified she is self-employed and has contracted with ADR since 2007. She said she is a CADDC, a certified prevention specialist, and a licensed clinical dependency professional for the State of Delaware, specializing in addictions. Ms. Leister gave her credentials as part of her testimony and said she has been in this field for the past 15 years. When Mr. Morris asked her what involvement she has had with Mr. Entenman, Ms. Leister explained that on 8/3/10 Mr. Entenman came to her office, filled out an application, and explained his situation to her. She said Mr. Entenman was set up with random urine screenings; meaning he would not have screenings every time he came to her office, but rather she would call him 'randomly' in to test. She further stated that Mr. Entenman came into her office for counseling weekly, then every two weeks, etc. Ms. Leister said Mr. Entenman has been extremely compliant. His entire goal was to get his nursing license back. She said during the time he was seeing her for counseling he was very depressed. She said her assessment was that Mr. Entenman understands it will be a lifetime battle and he needs to be cautious with the decisions he makes. Mr. Sanders asked when Mr. Entenman had his last urine screen and Ms. Leister said February 2012. Ms. Halpern asked if he has kept in contact with her since the Board's decision. Ms. Leister said the last date they met was September 10, 2012. She said he has faithfully kept his appointments each month and has made phone calls between sessions. Mr. Maddex asked how long Mr. Entenman had met with her, and she said from August 3, 2010 until September 10, 2012. Ms. Leister was excused at 11:25 am.

Mr. Morris showed Mr. Entenman an email from 2012. Mr. Entenman confirmed that he had prepared the email on his own. Mr. Morris asked when he prepared the email if it was his belief that he was submitting reasons why he should be reinstated and Mr. Entenman answered, "Yes." Mr. Entenman said he had spoken to Dr. Zickafoose and discussed his compliance with the Board's order, and said she suggested he send a letter documenting what had happened over the past years until the present, and to request a hearing before the Board. Mr. Morris asked Mr. Entenman to tell the Board what has transpired since he received the Board's order. Mr. Entenman said he built a support network for himself, which he didn't have before. He said seven years has been a long journey. He was asked when he first had a problem with drugs and he said June 2006. When asked if he has had any relapses since June 2006, Mr. Entenman replied, "No." Mr. Morris asked him to explain the impact counseling had on him, and Mr. Entenman said he learned, "not to manipulate life." He talked about jobs he held during this period, and also explained he has held licenses in other states but said they are currently inactive. Mr. Entenman was asked whether or not reports were submitted on his behalf to the Board and he stated Ms. Leister submitted those reports every 6 months from 2010. He said she sent 10 reports on his behalf over the past two years.

Mr. Entenman said his Pennsylvania license was automatically suspended for four years in 2005, but he was eligible to get it back a couple years ago. He said his Florida license was never suspended; however, it was reprimanded. He said he chose to stay in Delaware after his divorce for the sake of his children. Mr. Entenman said he hasn't had to report for probation in 3 years. He said his probation is still on the books; however, when he went back to court he was told there would be no objection to it being closed out. He further explained though that the original judge has since retired, and the current

sitting judge will not reverse the order. Mr. Entenman said he plans on making the request again in December.

Mr. Entenman was asked why the Board should consider reinstating his license. He explained that healthcare and nursing have been his profession since he was 18 years old. He said he acknowledges that no one else had a role in the decisions he made; however, after six years he feels he has shown himself to be a good person and he believes he has a lot to offer the profession. Mr. Sanders reiterated that his counselor, Ms. Leister, stated that she was treating him for depression. Mr. Entenman said in 2005 he was having problems with depression, but over the past five years has learned coping skills. He said he does not take any medication at all. Ms. Halpern asked if he is still on the books in Pennsylvania and the determination is 1½ years from today he will be cleared. Mr. Entenman said, "Yes." He said he works the program and goes to NA regularly. Mr. Entenman stated the issues he had were family issues and not professional ones, although he said he took his behavior into the profession. Ms. Halpern stated he had been a CRNA and asked if he is reinstated if that is what he intends to do again. Mr. Entenman said he had been waiting for the Board to make their decision. He said he will go back to work in whatever form he is allowed. Ms. Nellius asked him how he will become current in his studies. Mr. Entenman said he had completed CEU's over the past 2 years and also entered into the University of Delaware's refresher program, which ended last month (September 2012). Ms. Halpern asked if he had paperwork on this and Mr. Entenman said he didn't because he hadn't done the clinical proponent of it yet. There were no other questions or evidence to present.

Mr. Morris said he contacted Barbara Gadbois, DAG, who was the attorney who prosecuted the complaint against Mr. Entenman. He said he mentioned to her that Mr. Entenman was returning to have his license reinstated. Mr. Morris asked what her position would be on him getting his license back and Mr. Morris said Ms. Gadbois' response was that she would not have any opposition to it.

Off the record at 11:43 am. The Board reviewed the Exhibits, deliberated, and sought the advice of counsel.

FINAL ORDER: Ms. Nellius made a motion, seconded by Ms. Littleton, that the RN license for Mr. Entenman be reinstated on probation for a period of 18 months. During the term of the probation Mr. Entenman is to inform his employers that he is on probation and notify the Executive Director of all of his employment. During the term of the probation Mr. Entenman shall undergo random drug screenings on a monthly basis for the first 3 months following the date of this order. Thereafter, Mr. Entenman should continue to undergo random drug screens on at least a quarterly basis. Any violations of the terms of this probation will be immediately reported to the Board by the Executive Director and will be viewed as grounds for further disciplinary action. Mr. Entenman's CRNA license shall remain suspended and he may petition this Board to reinstate that license at the conclusion of his 18 month probationary period. At the time of that petition, the Board will require evidence of compliance with the terms of his probation. By majority rule, the motion carried with 1 abstention.

HEARING MINUTES

HEARING – Robert Cannavo

The Delaware Board of Nursing held a hearing on October 10, 2012, at 1:00 p.m. in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Suite 203, Dover, Delaware.

PRESENT: Evelyn Nicholson, Harland Sanders, Mary Lomax, Dianne Halpern, Bob Maddex, Pam Tyranski, Tracy Littleton, Madelyn Nellius, Lyron Deputy, Kathy Bradley, Delphos Price

RECUSED:

EXCUSED: Gwelliam Hines, David Salati, Robert Contino

PURPOSE: Propose to Deny

PRESIDING: Evelyn Nicholson, President

BOARD STAFF: Pamela Zickafoose, Executive Director of Nursing
Sheryl Paquette, Administrative Specialist III

DEPUTY ATTORNEY GENERAL FOR THE BOARD: Patricia Davis-Oliva, DAG

DEPUTY ATTORNEY GENERAL FOR THE STATE:

RESPONDENT: Robert Cannavo

COUNSEL FOR THE RESPONDENT: Donald Roberts

WITNESSES FOR THE STATE: Dr. Pamela Zickafoose

WITNESSES FOR THE RESPONDENT:

COURT REPORTER PRESENT: Juli LaBadia, Wilcox and Fetzer

TIME STARTED: 1:00 p.m.

The recorder took verbatim testimony. The Board members introduced themselves. Ms. Nicholson stated that at the meeting of April 11, 2012 the Board proposed to deny licensure by endorsement to Mr. Robert Cannavo with the right of the applicant to request a hearing. Ms. Davis-Oliva said the Board previously reviewed Mr. Cannavo's application for licensure and found that he did not meet the statutory qualifications for licensure in that he had a criminal conviction of a crime substantially related to the practice of nursing: being in contempt of violating a restraining order in December 2011. This is a crime substantially related to the practice of nursing pursuant to Board Rule 15.5.36. Further, in completing the application for licensure, Mr. Cannavo answered the question, "Have you ever been convicted of or entered a plea of guilty or *nolo contendere* (no contest) to any felony, misdemeanor or any other criminal offense, including any offense for which you have received a pardon, in any jurisdiction?" by indicating "No." By letter dated April 18, 2012, Mr. Cannavo was notified of this Board's

proposal to deny. He has timely requested a hearing and the hearing is now. Ms. Davis Oliva further explained the Board may waive the disqualification for licensure if it finds at the conclusion of the hearing that the granting of the waiver will not endanger the public's health, safety, or welfare; that Mr. Cannavo has not been convicted of a felony sexual offense; and that he is capable of practicing nursing in a competent and professional manner.

Mr. Donald Roberts, attorney for Mr. Cannavo, said there is little to dispute here. He said what is in question is the charge against Mr. Cannavo in New Jersey. He stated Mr. Cannavo had no prior disciplinary actions with his Delaware or Pennsylvania licenses; and, in fact, was reinstated in Pennsylvania at the time he was denied in Delaware. Mr. Roberts stated this issue stemmed from an unhealthy domestic relationship between Mr. Cannavo and his child's mother. As recently as August there was a hearing at Family Court, whereby, Judge Allen Cooper said he was not even sure what the New Jersey 'protection from abuse' order was all about, nor why it was issued. Mr. Roberts said this has caused Mr. Cannavo considerable problems in Delaware with getting his license reinstated. He said he, himself, does not know if Mr. Cannavo has a criminal conviction in New Jersey or not, and no one in New Jersey can verify it for him. Mr. Roberts explained that the mother of Mr. Cannavo's child had been withholding visitation for over 2 years now; therefore, Mr. Cannavo had a third party contact the mother of the child. Even though this was permitted by the protection from abuse order, Mr. Cannavo was arrested. A criminal arrest was the result of that; however, Mr. Roberts said documents showed the matter was sent to Family Court. He further stated that in New Jersey Family Court does not have criminal jurisdiction; so it was Mr. Cannavo's understanding that when he was in Family Court, he was found to have violated contempt as a civil violation, not a criminal violation. Mr. Roberts pointed out that on the bottom of the court document it said that Mr. Cannavo was charged with "section 2c:29-9 Contempt," under the New Jersey statutes. Mr. Roberts said this means the person is usually charged with a disorderly conduct offense. He said under the Board of Nursing's Rules and Regulations 15.5.36 disorderly conduct is not an offense that prohibits Mr. Cannavo from getting his license. Mr. Roberts concluded by stating there is nothing in dispute as to what the records say, but more regarding what the records actually mean.

Mr. Cannavo was sworn in. Mr. Roberts asked him if there was an existing PFA order against him with his child's mother. Mr. Cannavo stated, "Yes." He was asked if he was arrested for a violation of that order, and did he have to go to court, to both of which he stated, "Yes." Mr. Cannavo said the case was transferred from Superior Court to Family Court before he even went to court. Mr. Roberts asked him if it was his understanding that Family Court handles civil cases, and Mr. Cannavo said, "Yes." Mr. Roberts asked him if he had a court hearing and if he was convicted, both questions of which Mr. Cannavo answered, "Yes." When asked what he received as a penalty, Mr. Cannavo said he received a \$250 fine. Mr. Roberts asked Mr. Cannavo if he was told by the judge it was a civil matter, and he responded, "Yes." Mr. Cannavo was asked if he ever intended to hide this matter from the Board and he said, "No." Mr. Cannavo explained he thought it was a civil matter. Mr. Roberts presented an FBI rap sheet stating that Mr. Cannavo was arrested but it did not show that he was convicted. It also stated that his case was sent to Family Court. When asked to confirm this information, Mr. Cannavo stated that it was correct. Mr. Cannavo was asked by Mr. Roberts if he was aware the Nursing Board would receive this document. Mr. Cannavo stated that at the time when he was fingerprinted at the beginning of November he hadn't gone to court yet, so he didn't know what was going to happen. He said he thought it was just a civil matter and was scheduled for Family Court for December. Mr. Roberts asked Mr. Cannavo if he was still having problems with his child's mother and he said, "No." He also was asked if he had any prior disciplinary actions against his license, and he said, "No." Mr. Cannavo said his Pennsylvania license was reinstated and active until October 2013. Mr. Cannavo said he would like the Delaware Nursing Board to allow reinstatement of his license so he can work and live in Delaware. He said he currently has an offer from St. Francis Hospital but they are waiting on reinstatement of his license.

Ms. Nicholson questioned Mr. Cannavo about the dates of employment he listed on his application. She said he listed 10/2008 to 7/2011 as his employment dates; however, his employer said he started in 7/2009. Mr. Cannavo stated he started in 10/2008 but was laid off in 2/2009. He said even though he was laid off he still worked part-time, but then went back full-time. He said he assumed that is why they listed 7/2009 as the start date. Ms. Nicholson then asked him why he did not include a letter of explanation with his application. Mr. Cannavo asked her what she was referring to, and she said that she was referring to a letter of explanation regarding his offenses. Mr. Cannavo said he sent in everything that was requested of him. Ms. Nicholson asked again whether or not he had sent in a letter explaining to the Board what he had explained today. Mr. Cannavo said he did not. Mr. Roberts asked if there was something sent to Mr. Cannavo requesting that he send a letter. Ms. Nicholson said it is usual office procedure that the applicant is requested to send a letter explaining why they answered 'No' to question #21. She said when the Board then considers the request they have that letter of explanation. Mr. Roberts said he had a letter from September 2012 that stated the Board proposed to deny Mr. Cannavo's request; but the letter does not request an explanation. He said he does not feel Mr. Cannavo was sent a request for an explanation. He said that every time Mr. Cannavo was sent a request by the Board, he complied and sent in what was requested. Ms. Davis Oliva read a letter to Mr. Cannavo from the Credentialing staff person dated 11/17/2011. She said the letter points out his criminal charges, among other things, but does not request a letter of explanation.

Mr. Sanders asked Mr. Cannavo when he filled out his application, to which he replied, "5/2011." Mr. Roberts pointed out that there was no disposition until after the application was sent into the Nursing Board. Mr. Sanders asked if the charge was filed but not resolved, and the answer was "Yes." Mr. Cannavo said when he filed the application he didn't believe his was a criminal offense. Ms. Nellius asked if when he answered 'no' did he believe he was being truthful. Mr. Cannavo said, "Yes, I was under the impression that I had not been convicted." Ms. Nellius asked if he was under the impression his case was in Family Court, and he replied, "Yes."

Off the record at 1:32 pm. The Board reviewed the Exhibits, deliberated, and sought the advice of counsel.

FINAL ORDER: Mr. Price made a motion, seconded by Mr. Deputy, that the Board grants licensure by endorsement to Mr. Robert Cannavo. By unanimous vote, the motion carried.