BEFORE THE TEXAS BOARD OF NURSING

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In the Matter of Vocational Nurse	§	REINSTATEMENT
License Number 144933	§	
issued to PATRICIA ANN MCINTOSH	§	AGREED ORDER

On this day came to be considered by the Texas Board of Nursing, hereinafter referr as the Board, the Petition for Reinstatement of Vocational Nurse License Number 144933, hel PATRICIA ANN MCINTOSH, hereinafter referred to as Petitioner.

An informal conference was held on June 25, 2013, at the office of the Texas Board of Nursing, in accordance with Section 301.464, Texas Occupations Code.

Petitioner appeared in person. Petitioner was notified of her right to be represented by legal counsel and elected to waive representation by counsel. In attendance were Katherine A. Thomas, MN, RN, FAAN, Executive Director; John R. Griffith, Assistant General Counsel; Anthony L. Diggs, MSCJ, Director, Enforcement Division; Peter Marana, Law Clerk; and Carolyn Hudson, Investigator.

FINDINGS OF FACT

1. Prior to institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Petitioner and Petitioner was given an opportunity to show compliance with all requirements of the law for retention of the license(s).

2. Petitioner waived representation by counsel, notice and hearing, and consented to the entry of this Order.

3. Petitioner received a Certificate in Vocational Nursing from Paris Junior College, Paris, Texas, on August 18, 1992. Petitioner was originally licensed to practice vocational nursing in the State of Texas on December 1, 1993.

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TEXAS BOARD OF NURSING
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.
Executive Director of the Board

4. Petitioner's nursing employment history includes:

1993	LVN	Town & Country Home Health Paris, Texas
1993 - 1995	LVN	Central Texas Women's Clinic & Rural Health Clinic Brownwood, Texas
1995 - 1999	LVN	CIGNA Health Care Dallas, Texas
1999 - 2006	LVN	Nurses, Inc. Portland, Oregon
2006 - 2008	LVN	Community Homecare NW Portland, Oregon
2008	LVN	Private Duty Nurse Portland, Oregon
2010 - Present	Not employed in nursing	

5. On January 14, 2011, the Board accepted the voluntary surrender of Petitioner's license to practice vocational nursing in the State of Texas. A copy of the January 14, 2011 Order, Findings of Fact, and Conclusions of Law, is attached and incorporated, by reference, as a part of this Order.

6. On or about January 29, 2013, Petitioner submitted a Petition for Reinstatement of License to practice vocational nursing in the State of Texas.

7. Petitioner presented the following in support of her petition:

7.1. Letter of support, dated January 24, 2013, from Reverend Scot Edmondson, First Baptist Church, Lometa, Texas, states that Petitioner demonstrates strength of character commensurate with a distinctive compassion for others. Reverend Edmondson states that Petitioner is highly regarded in the church and serves with great enthusiasm. Petitioner's disposition is remarkable considering her personal calamity during her time in Oregon. Reverend Edmondson recommends reinstatement of Petitioner's nursing license.

7.2. Letter of support, dated January 11, 2013, from Michael Schultz, M.D., Central Women's Clinic, Brownwood, Texas, states that he has known Petitioner for twenty-four (24) years. Petitioner has been a long time friend and a patient. Dr. Schultz states that Petitioner worked in his office and she made good medical decisions. Petitioner has a great empathy for patients and would do very well working again as a nurse. Dr. Schultz recommends whole

heartily that Petitioner would be given a chance to have her nursing license reinstated.

7.3. Letter of support, dated January 20, 2013, from Tina M. Truax, LPN, states that she has known Petitioner for six (6) years, and they worked together as nurses at Community Home Health. Petitioner was a competent and caring nurse and her skills were impeccable. Petitioner has an excellent work ethic and is honest in her dealings with fellow workers and clients.

7.4. Letter of support, dated January 26, 2013, from Brae D. Jacobson, MA, LPC, states that she has had a warm and reciprocal personal relationship with Petitioner for over ten (10) years. Ms. Jacobson states that Petitioner is a positive and productive part of the community with a solid reputation and caring heart. Ms. Jacobson states that she would not hesitate to allow Petitioner to treat her aging parents as a nursing professional, care-giver, and protective friend. Ms. Jacobson states that she would not fear that Petitioner would take advantage of her aging parents emotionally or financially. Ms. Jacobson recommends reinstatement of Petitioner's nursing license.

7.5. Letter of support, dated January 28, 2013, from Linda Ragsdale, states that several years ago Petitioner worked at Salon 111, San Saba, Texas, as a massage therapist. Ms. Ragsdale states that Petitioner is very professional and knowledgeable in helping her clients. Petitioner is very kind and caring to people of all ages.

7.6. Verification of successful completion of twenty (20) Type I Continuing Education Contact Hours.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.

2. The Board finds that there exists serious risks to public health and safety as a result of impaired nursing care due to intemperate use of controlled substances or chemical dependency.

3. Pursuant to Section 301.467, Texas Occupations Code, the Board may refuse to issue or renew a license, and may set a reasonable period that must lapse before reapplication. Pursuant to 22 TEX. ADMIN. CODE §213.26, the Board may impose reasonable conditions that a Petitioner must satisfy before reissuance of an unrestricted license.

ORDER

IT IS THEREFORE AGREED, subject to ratification by the Texas Board of Nursing, that the petition of PATRICIA ANN MCINTOSH, Vocational Nurse License Number 144933, to practice nursing in the state of Texas, be and the same is hereby GRANTED, AND SUBJECT TO THE

FOLLOWING STIPULATIONS SO LONG AS THE PETITIONER complies in all respects with the Nursing Practice Act, Texas Occupations Code, §301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.1 et. seq. and the stipulations contained in this Order:

IT IS FURTHER AGREED and ORDERED that, while under the terms of this Order, this Order SHALL apply to any and all future licenses issued to Petitioner to practice nursing in the State of Texas.

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

IT IS FURTHER AGREED and ORDERED that while Petitioner's license(s) is/are encumbered by this Order, Petitioner may not work outside the State of Texas pursuant to a nurse licensure compact privilege without the written permission of the State of Texas and the Board of Nursing in the party state where Petitioner wishes to work.

(1) PETITIONER SHALL NOT seek employment or practice nursing for compensation until has completed the following pre-licensure conditions and obtained a license to practice vocational nursing from the Board.

(2) PETITIONER SHALL pay all re-registration fees and be issued a license to practice vocational nursing in the State of Texas, which shall bear the appropriate notation. Said license issued to PATRICIA ANN MCINTOSH, shall be subject to the following agreed post-licensure probation conditions:

(3) PETITIONER SHALL, within one (1) year of relicensure, successfully complete a course in Texas nursing jurisprudence and ethics. PETITIONER SHALL obtain Board approval of the course prior to enrollment only if the course is <u>not</u> being offered by a pre-approved provider. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience shall include nurses. It shall be a minimum of six (6) hours in length. The course's content shall

include the Nursing Practice Act, standards of practice, documentation of care, principles of nursing ethics, confidentiality, professional boundaries, and the Board's Disciplinary Sanction Policies regarding: Sexual Misconduct; Fraud, Theft and Deception; Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. PETITIONER SHALL CAUSE the sponsoring institution to submit a Verification of Course Completion form, provided by the Board, to the Office of the Board to verify PETITIONER'S successful completion of the course. This course shall be taken in addition to any other courses stipulated in this Order, if any, and in addition to any continuing education requirements the Board has for relicensure. *Board-approved courses may be found at the following Board website address: http://www.bon.texas.gov/disciplinaryaction/stipscourses.html.*

(4) PETITIONER SHALL, within one (1) year of relicensure, successfully complete the course "Sharpening Critical Thinking Skills," a 3.6 contact hour online program provided by the National Council of State Boards of Nursing (NCSBN) Learning Extension. In order to receive credit for completion of this program, PETITIONER SHALL SUBMIT the continuing education certificate of completion for this program to the Board's office, to the attention of Monitoring. This course is to be taken in addition to any continuing education requirements the Board may have for relicensure. *Board-approved courses may be found at the following Board website address: http://www.bon.texas.gov/disciplinaryaction/stipscourses.html.*

IT IS FURTHER AGREED, SHOULD PETITIONER CHOOSE TO WORK AS A NURSE IN TEXAS, PETITIONER WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING A MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING PROBATION CONDITIONS FOR THREE (3) YEARS OF EMPLOYMENT. THE LENGTH OF THE STIPULATION PERIOD WILL BE EXTENDED UNTIL SUCH THIRTY-SIX (36) MONTHS HAVE ELAPSED. PERIODS OF

UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A REGISTERED NURSE (RN) OR A VOCATIONAL NURSE (LVN) LICENSE, AS APPROPRIATE, WILL NOT APPLY TO THIS STIPULATION PERIOD:

(5) PETITIONER SHALL notify all future employers in vocational nursing of this Order of the Board and the stipulations on PETITIONER's license. PETITIONER SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each future employer prior to accepting an offer of employment.

(6) PETITIONER SHALL CAUSE each future employer to submit the Notification of Employment form, which is provided to the Petitioner by the Board, to the Board's office within five (5) days of employment as a vocational nurse.

(7) PETITIONER SHALL be supervised by a Registered Nurse, if licensed as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed as a Licensed Vocational Nurse, who is on the premises. The supervising nurse is not required to be on the same unit or ward as PETITIONER, but should be on the facility grounds and readily available to provide assistance and intervention if necessary. The supervising nurse shall have a minimum of two (2) years experience in the same or similar practice setting to which the PETITIONER is currently working. PETITIONER SHALL work only regularly assigned, identified and predetermined unit(s). PETITIONER SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. PETITIONER SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(8) PETITIONER SHALL CAUSE each employer to submit, on forms provided to the PETITIONER by the Board, periodic reports as to PETITIONER'S capability to practice nursing. These reports shall be completed by the nurse who supervises the PETITIONER. These reports shall be submitted by the supervising nurse to the office of the Board at the end of each three (3) month period for enter the three (3) years of employment as a nurse.

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, all encumbrances will be removed from PETITIONER'S license(s) to practice nursing in the State of Texas and PETITIONER may be eligible for nurse licensure compact privileges, if any.

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PETITIONER'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Reinstatement Agreed Order. I waive representation by counsel. I certify that my past behavior, except as disclosed in my Petition for Reinstatement of Licensure, has been in conformity with the Board's professional character rule. I have provided the Board with complete and accurate documentation of my past behavior in violation of the penal law of any jurisdiction which was disposed of through any procedure short of convictions, such as: conditional discharge, deferred adjudication or dismissal. I have no criminal prosecution pending in any jurisdiction.

I have reviewed this Order. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and any conditions of said Order. I waive judicial review of this Order. I understand that this Order is subject to ratification by the Board. When this Order is ratified, the terms of this Order become effective, and a copy will be mailed to me. I agree to inform the Board of any other fact or event that could constitute a ground for denial of licensure prior to reinstating my license to practice vocational nursing in the state of Texas. I understand that if I fail to comply with all terms and conditions of this Order, my license(s) to practice nursing in the State of Texas will be revoked, as a consequence of my noncompliance.

Signed this 9th day of August, 2013.

PATRICIA ANN MCINTOSH, Petitioner

Sworn to and subscribed before me this 9th day of August, 2013.

SEAL

SHARON COMBS
MY COMMISSION EXPIRES
February 15, 2014

Notary Public in and for the State of Texas

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Reinstatement Agreed Order that was signed on the 9th day of August, 2013, by PATRICIA ANN MCINTOSH, Vocational Nurse License Number 144933, and said Order is final.

Effective this 10th day of September, 2013.

Katherine A. Thomas, MN, RN, FAAN
Executive Director on behalf
of said Board

BEFORE THE TEXAS BOARD OF NURSING

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In the Matter of Vocational Nurse	§	AGREED
License Number 144933	§	
issued to PATRICIA ANN MCINTOSH	§	ORDER

On this day, the Texas Board of Nursing, hereinafter referred to as the Board, accepted the voluntary surrender of Vocational Nurse License Number 144933, issued to PATRICIA ANN MCINTOSH, hereinafter referred to as Respondent. This action was taken in accordance with Section 301.453(c) of the Texas Occupations Code.

Respondent waived representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order.

The Board makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was provided to Respondent and Respondent was given an opportunity to show compliance with all requirements of the law for retention of the license.

2. Respondent waived representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order.

3. Respondent is currently licensed to practice vocational nursing in the State of Texas.

4. Respondent received a Certificate in Vocational Nursing from Paris Junior College, Paris, Texas, on August 18, 1992. Respondent was licensed to practice professional nursing in the State of Texas in December 1, 1993.

5. Respondent's vocational nurse employment history includes:

1993	LVN	Town & Country Home Health Paris, TX

Respondent's vocational nurse employment history continued:

1994	LVN	Cen. Tex. Women's Clinic & Rural Health Clinic Brownwood, TX
1995	LVN	CIGNA Health Care Dallas, TX
1999	LVN	Nurses, Inc. Portland, OR
2006	LVN	Community Homecare NW Portland, OR
2008	LVN	Private Duty Nurse Portland, OR

6. At the time of the incident, Respondent was employed as a licensed vocational nurse providing home health services with Community Home Care, Portland, Oregon.

7. On or about February 10, 2010, the Oregon State Board of Nursing, Portland, Oregon, accepted the voluntary surrender of Respondent's license to practice professional nursing in the state of Oregon. A copy of the Final Order issued by the Oregon State Board of Nursing, Portland, Oregon, on February 10, 2010, is attached and incorporated by reference as part of this Order.

8. In response to the underlying conduct that led to the voluntary surrender of Respondent's Oregon nursing license described in Finding of Fact Number Seven (7), Respondent states she was alleged to have financially exploited a patient under her care. In May 2009, a court revoked the will that gave Respondent some of the patient's property. Respondent signed a settlement with the patient's family to end the matter.

9. Formal Charges were filed on May 4, 2010.

10. Formal Charges were mailed to Respondent on May 12, 2010.

11. Respondent, by her signature to this Order, expresses her desire to voluntarily surrender her license to practice nursing in the State of Texas.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.

2. Notice was served in accordance with law.

3. The evidence received is sufficient to prove a violation of Section 301.452(b)(8), Texas Occupations Code.

4. The evidence received is sufficient cause pursuant to Section 301.453(a), Texas Occupations Code, to take disciplinary action against Vocational License Number 144933, heretofore issued to PATRICIA ANN MCINTOSH, including revocation of Respondent's license to practice nursing in the State of Texas.

5. Under Section 301.453(c), Texas Occupations Code, the Board has the authority to accept the voluntary surrender of a license.

6. Under Section 301.453(d), Texas Occupations Code, as amended, the Board may impose conditions for reinstatement of licensure.

7. Any subsequent reinstatement of this license will be controlled by Section 301.453(d), Texas Occupations Code, and 22 TEX. ADMIN. CODE §213.26-.29, and any amendments thereof in effect at the time of the reinstatement.

ORDER

NOW, THEREFORE, IT IS AGREED and ORDERED that the VOLUNTARY SURRENDER of Vocational License Number 144933, heretofore issued to PATRICIA ANN MCINTOSH, to practice nursing in the State of Texas, is accepted by the Texas Board of Nursing.

In connection with this acceptance, the Board imposes the following conditions:

1. RESPONDENT SHALL NOT practice vocational nursing, use the title "vocational nurse" or the abbreviation "LVN" or wear any insignia identifying herself as a vocational nurse or use any designation which, directly or indirectly, would lead any person to believe that RESPONDENT is a vocational nurse during the period in which the license is surrendered.

2. RESPONDENT SHALL NOT petition for reinstatement of licensure until: one (1) year has elapsed from the date of this Order.

3. Upon petitioning for reinstatement, RESPONDENT SHALL satisfy all then existing requirements for relicensure.

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

RESPONDENT'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Agreed Order. I waive representation by counsel. I have reviewed this Order. I neither admit nor deny the violation alleged herein. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and any conditions of said Order, to avoid further disciplinary action in this matter. I waive judicial review of this Order. I understand that this Order becomes final when accepted by the Executive Director at which time the terms of this Order become effective and a copy will be mailed to me.

Signed this 5 day of Jan., 20 11.

PATRICIA ANN MCINTOSH, Respondent

Sworn to and subscribed before me this 5th day of January, 20 11.

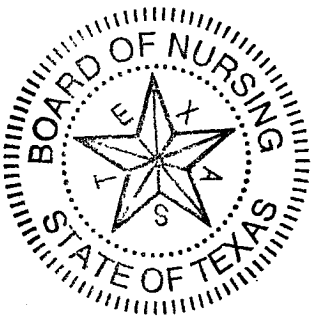
SEAL

OFFICIAL SEAL
NOTARY PUBLIC - OREGON
COMMISSION NO. 458423
MY COMMISSION EXPIRES OCTOBER 27, 2014

Notary Public in and for the State of Oregon
County of Washington

WHEREFORE, PREMISES CONSIDERED, the Executive Director on behalf of the Texas Board of Nursing does hereby accept the voluntary surrender of Vocational Nurse License Number 144993, previously issued to PATRICIA ANN MCINTOSH.

Effective this 14th day of January, 2011.



Katherine A. Thomas, MN, RN
Executive Director on behalf
of said Board

BEFORE THE OREGON
STATE BOARD OF NURSING

In the Matter of Patricia Ann McIntosh, LPN	)	FINAL ORDER
License No. 096005209LPN	)	Case No. 09-235

The Oregon State Board of Nursing (Board) is the state agency responsible for licensing, regulating and disciplining certain health care providers, including Licensed Practical Nurses, in the State of Oregon. Patricia Ann McIntosh (Licensee) is a Licensed Practical Nurse in the State of Oregon.

This Matter was considered by the Board on February 10, 2010. The issue for the Board was whether to approve the Stipulation signed by Licensee on February 9, 2010 and so dispense with this Matter pursuant to ORS 183.417(3).

Upon review of the Stipulation and the agency file in this Matter, the Board finds that reasonable factual and legal grounds exist to support approval of the Stipulation. It is hereby

ORDERED that the Stipulation signed by Licensee on February 9, 2010 be approved and by this reference incorporated herein, and it is further

ORDERED that the Board accept the Stipulation for Voluntary Surrender of Patricia Ann McIntosh's Licensed Practical Nurse License and that the Stipulation for Voluntary Surrender be adopted.

DATED this 10 day of February, 2010

Patricia Markesino RN

Patricia Markesino, RN
Board President

COPY

BEFORE THE BOARD OF NURSING
OF THE STATE OF OREGON

In the Matter of Patricia Ann McIntosh, LPN	)	STIPULATION FOR VOLUNTARY SURRENDER
License No.: 096005209LPN	)	Case No.: 09-235

Patricia Ann McIntosh, hereinafter referred to as "Licensee" is a Licensed Practical Nurse (LPN) in the State of Oregon. Licensee endorsed her license from Texas in 1996.

On December 17, 2008, the Board received a complaint that Licensee had financially exploited a patient under her care that had recently died.

Patient WC had hired an unlicensed, live-in caregiver in September of 2007. Licensee worked for a nursing agency that provided nurses to regularly visit WC's home, including Licensee. Licensee states that she initially met WC while on-assignment in April or May of 2007. WC's wife passed away in July of 2007.

Licensee stated that she got to know WC during her visits and, in March or April of 2008, she attended WC's 91st birthday party at his home and brought her daughter and granddaughter along.

Licensee said that during the time she worked with WC, he repeatedly approached her about being his live-in caregiver because he wanted a nurse so he could stay in his home. She initially declined, then said she would "think about it". She told him in May of 2008 that she would accept his offer to be his live-in caregiver and that her husband was "fine" with it.

WC subsequently fired his existing live-in caregiver and Licensee moved into WC's home on May 26, 2008. That day, WC lost consciousness and was transported to the hospital via ambulance. Hospital staff wanted to keep WC overnight. During his stay in the hospital, Licensee states that WC asked her to get a pen and paper because he "wanted to make some changes" to his will and wanted her to write those changes down. Licensee states that she argued with WC that she did not want to do it, but he insisted so she did what she was asked.

WC's original will was executed in 1974, leaving his entire estate to his wife. This will did not change until a codicil was executed in 1997 that made FJ, WC's stepson, the sole beneficiary of WC's estate should his wife pre-decease him, which she did. FJ became sole beneficiary and personal representative of WC's estate in July of 2007.

The document produced in Licensee's handwriting on May 26, 2008 stated that:

- FJ would no longer be named as Executor of the estate and that there was no replacement at that time
- In the event of his death, he wished for his body to be donated to science and his remains cremated.
- That in the event of his passing, Licensee, Licensee's daughter and Licensee's granddaughter shall remain at his physical address for six months at no rental charge and when the home was sold, LPN would have first option to purchase
- That $50,000 be given to Licensee and if Licensee passes, it shall be given to Licensee's daughter and granddaughter.
- The remainder of his estate be given to Meals on Wheels

Upon returning from the hospital stay, WC contacted his long-time attorney Mr. Winfree. There were some communication issues, but Mr. Winfree visited WC at his home on June 2, 2008. During their meeting, Mr. Winfree asked WC how long Licensee had been there and WC told him "a couple of months" although it had been about a week. WC denied that he was being influenced.

On June 23, 2008, the new will was signed with the same specifications as were written at the hospital. The same day, Mr. Winfree had WC sign a durable Power of Attorney to allow Mr. Winfree to monitor WC's finances. Mr. Winfree stated he felt this was important because he was uncomfortable with the situation between WC and Licensee given the short amount of time she had been there.

Sometime between June 23, 2008 and July 3, 2008, WC had a pacemaker placed in order to attempt to improve his quality of life.

On July 9, 2008, WC contacted Mr. Winfree and said he wanted to make more changes to his will as soon as possible. He said he wanted to leave his entire estate to Licensee and wanted to revoke the Power of Attorney in favor of Winfree to make Licensee his Power of Attorney. The same day, LPN contacted Mr. Winfree's office to confirm receipt of WC's message but Mr. Winfree was on vacation at that time.

On July 10, 2008, WC was taken to the ER for shortness of breath. A note from the visit indicated that WC requested CPR, defibrillation and intubation but he would not want prolonged mechanical ventilation. Another note indicated there was a "long discussion with his nurse and healthcare POA, Patricia McIntosh". At this time, Mr. Winfree was still legally WC's Power of Attorney.

On July 12, 2008, Licensee signed WC into Hospice care. The Hospice admission papers were all signed by Licensee, indicating that WC was unable to sign due to "debility". LPN also signed the papers representing that she was Power of Attorney for WC and that she would be named WC's Power of Attorney on Monday when the attorney was back in town. DNR (Do Not Rescucitate) was checked on the form although WC made it clear the night before at the ER that he wished to have CPR, defibrillation and intubation.
On July 14, 2008, Mr. Winfree returned from vacation and met with WC. Mr. Winfree was extremely concerned about WC's sudden changes and while discussing his concerns with WC,

Licensee entered the room unannounced, stating she overheard their conversation on a baby monitor. She and Mr. Winfree exchanged words and Licensee left the room. After this meeting, Mr. Winfree consulted with other attorneys and decided that he could not draft the requested will.

Licensee stated that after Mr. Winfree refused to draft the changes, another attorney came to WC's home in July of 2008 to discuss the estate plan but also refused to draft it.

On July 17, 2008, WC visited his primary care physician, Dr. Coodley. During this visit, WC stated that he was not ready to stop aggressive treatment. Dr. Coodley noted during this visit "I don't think he needs to be on hospice, nor do I think he qualifies, as it is not clear that he has only 6 months to live, nor does he have a clear terminal illness". Based on this meeting, Dr. Coodley discharged WC from hospice, however, WC's hospice records do not show that he was ever discharged from their care.

On July 24, 2008, a hospice nurse asked Licensee whether WC was still interested in hospice and she replied that she strongly felt he was still interested.

On August 5, 2008, WC contacted Mr. Harper, another attorney. Mr. Harper met WC for the first time on August 6, 2008. He made subsequent visits on August 7, 11, 12 and 13.

On August 12, 2008, WC visited Dr. Coodley and complained that he was having respiratory distress in the mornings in response to the Roxinol he had been prescribed. Dr. Coodley indicated that it was unclear whether the Roxinol was helping WC's anxiety or helping with some failure.

On August 13, 2008, Mr. Harper met with WC. A Joint Property Agreement (JPA) and another will were executed. The JPA purported to transfer to Licensee outside of probate all of WC's property upon his death. Licensee signed this document. On the same day, WC signed a Bill of Sale transferring his personal property to Licensee as joint tenants, a deed transferring his home to Licensee as joint tenants and a request to make Licensee a joint owner of his brokerage account. WC also sent a letter to Seattle Northwest Securities making his account joint with Licensee. The new will left Licensee all of WC's property and, if Licensee passed away before him, it would go to Licensee's husband. WC placed conditions on the gift to Patricia McIntosh; she would not collect anything if she was not providing care for him when he died. David Harper states that this was his idea, not hers. Patricia McIntosh was made aware of WC's change in his estate plan, but states that she did not participate in the planning itself.

On August 19, 2008, WC signed a "Consent for Use of My Whole Body Upon My Death" donating his body to BioGift. The consent form was signed as witnessed by Licensee on the same day, but Licensee's husband was the other witness and signed it on September 4, 2008.

From September 15, 2008 to September 23, 2008, there were communications between Dr. Coodley's office and Hospice doctor's office because WC's appointments kept getting cancelled

with Dr. Coodley, Dr. Coodley was unable to speak with WC and he did not feel it appropriate to sign the Hospice forms until he could speak with WC.

On September 23, 2008, a hospice nurse faxed Dr. Coodley's office stating that WC was not willing to visit Dr. Coodley and wanted his care transferred to the hospice doctor. In response, Dr. Coodley expressed his concerns that the hospice doctor should speak directly with WC to ensure that hospice was really what WC wanted and that he was hesitant about a conflict of interest given that Licensee was in a position where she was to gain financially from WC's death.

On September 24, 2008, Licensee reported to hospice that WC had improved and did not want an after-hours visit. The same day, WC's stepson and his wife left on a vacation to Europe. The stepson attempted to see WC but Licensee informed him that she was ill so he should not come by the house.

On September 25, 2008, WC died shortly before midnight.

On October 1, 2008, Licensee contacted WC's stepson and his wife via email regarding Licensee's passing. They emailed back the same day indicating that it would be some time before they returned home to see to the tasks as WC's executor.

On October 8, 2008, Licensee emailed them stating "I want to be forthright in telling you that [WC] has left the house to myself and [my husband]. Due to this I have sought legal counsel. You can contact him with any questions or concerns you may have".

Shortly after WC's death, LPN liquidated WC's bank and securities accounts worth in excess of $450,000 and was living off the money as of the date of her personal interview with Board staff, February 18, 2009. Licensee was also in possession of WC's home, worth about $450,000.

On May 20, 2009, a court ruled that Licensee exercised undue influence over WC and revoked the will that gave her WC's property. An injunction was entered to restrain her from using any additional funds from any of the accounts. The matter was settled with the family prior to entry of any findings and entry of any judgment, and mutual releases were exchanged with the estate and any family members.

WHEREAS by the above actions, Licensee is subject to disciplinary action pursuant to violations of **ORS 678.111 (1)(f) and OAR 851-045-0070(1)(n); (2)(h) and** (4)(b) which provide as follows:

ORS 678.111 Causes for denial, revocation or suspension of license or probation, reprimand or censure of licensee. In the manner prescribed in ORS chapter 183 for a contested case:
(1) Issuance of the license to practice nursing, whether by examination or by indorsement, of any person may be refused or the license may be revoked or suspended or the licensee may be placed on probation for a period specified by the Oregon State Board of Nursing and subject to such condition

as the board may impose or may be issued a limited license or may be reprimanded or censured by the board, for any of the following causes:

(f) Conduct derogatory to the standards of nursing.

Conduct Derogatory to the Standards of Nursing Defined
851-045-0070

Nurses, regardless of role, whose behavior fails to conform to the legal standard and accepted standards of the nursing profession, or who may adversely affect the health, safety, and welfare of the public, may be found guilty of conduct derogatory to the standards of nursing. Such conduct shall include, but is not limited to, the following:

(1) Conduct related to the client's safety and integrity:

(n) Failing to maintain professional boundaries with a client.

(2) Conduct related to other federal or state statute/rule violations:

(h) Using the nurse client relationship to exploit the client by gaining property or other items of value from the client either for personal gain or sale, beyond the compensation for nursing services.

(4) Conduct related to achieving and maintaining clinical competency:

(b) Failing to conform to the essential standards of acceptable and prevailing nursing practice. Actual injury need not be established.

Licensee does not admit or deny the above violations and wishes to cooperate with the Board in resolving the present disciplinary problem. She has elected to voluntarily surrender her Practical Nurse license.

THEREFORE, the following will be proposed to the Oregon State Board of Nursing and is agreed to by Licensee:

That the voluntary surrender of the Licensed Practical Nurse license of Patricia Ann McIntosh be accepted. Ms. McIntosh agrees that she will not seek re-licensure in the State of Oregon.

Licensee agrees that she will not practice as a Licensed Practical Nurse in the State of Oregon from the date of signature on this Stipulation.

Licensee understands that this Stipulation will be submitted to the Board of Nursing for their approval and is subject to the Board's confirmation.

Licensee understands that by signing this Stipulated Agreement she waives the right to an administrative hearing. She acknowledges that no promises, representations, duress or coercion have been used to induce her to sign this Stipulation.

Licensee has read the Stipulation, understands the Stipulation completely, and freely signs the Stipulation

DATED this 9th day of February, 2010

Patricia Ann McIntosh, LPN

FOR THE BOARD OF NURSING OF THE STATE OF OREGON

Linda Fisher-Lewis
Program Manager
Investigations Division

Oregon
Theodore R. Kulongoski, Governor

State Board of Nursing
17938 SW Upper Boones Ferry Road
Portland, Oregon 97224-7012
(971) 673-0685
Fax: (971) 673-0684
Oregon.BN.INFO@state.or.us
www.oregon.gov/OSBN

July 7, 2009

Patricia McIntosh
3421 Forest Gale Dr.
Forest Grove, OR 97116

Carole King
Cartwright & Associates
1000 SW Broadway St., Suite 1750
Portland, OR 97205

Re: Case No. 09-235

Ms. McIntosh and Ms. King:

This letter acknowledges your request for hearing pursuant to the Notice of Proposed Revocation of Practical Nurse License. We are hereby sending this matter to the Office of Administrative Hearings, and that office will assign an Administrative Law Judge to hear the case.

The first step in the hearings process is to hold a pre-hearing conference. The Office of Administrative Hearings will be contacting you for your availability for this conference call.

Enclosed, please find a copy of the Hearing Referral Form.

Sincerely,

Patricia Harmon

Patricia Harmon
Investigations and Compliance Assistant
971-673-0687

Enclosure
Cc: Lucy Garcia, Office of Administrative Hearings
Tom Cowan, Assistant Attorney General

For OAH Use Only
Date Rcvd. _____
Assigned Case No. _____

OFFICE OF ADMINISTRATIVE HEARINGS
PHONE: (503) 947-1637 OR (503) 947-1579

HEARING REFERRAL FORM

(Instructions are on page 2)

Required Case Information

Agency Name: OREGON STATE BOARD OF NURSING	Referral Date: 7/7/09
Name of Person Submitting Form: PATRICIA HARMON	Phone: 971-673-0687
Agency Case No: 09-235	Case Type: NOTICE OF PROPOSED REVOCATION OF PRACTICAL NURSE LICENSE
Date of document or action from which hearing is requested: 7/2/2009	
Has this case been previously referred? Yes ☐ No ☒	

Identify the following parties with full name, address and phone number:

1. Party requesting hearing: Patricia McIntosh	**Phone: 503-707-6227**
Address: 3421 Forest Gale Dr. Forest Grove, OR 97116	
Email: patriciaamcintosh@comcast.net	
2. Representative of requestor: Carole King	**Phone:503-226-0111**
Address: Cartwright & Associates 1000 SW Broadway St., Suite 1750 Portland, OR 97205	
Email: cking@cartwrightandassociates.com	
3. Agency representative for hearing: Thomas Cowan, Sr. Assistant Attorney General	**Phone:** 503-947-4520
Address: Department of Justice 1162 Court Street NE Salem, OR 97301-4096	
Email: thomas.cowan@doj.state.or.us	
4. Agency contact (if different from question 3): Patricia Harmon 17938 SW Upper Boones Ferry Rd. Portland, OR 97224	**Phone: 971-673-0687**
5. What is the expected length of the hearing? 1 day	
6. Is the hearing to be set and notice mailed by your Agency? Yes ☐ No ☒ If yes, contact us regarding the date and location, if necessary, to ensure that we have an ALJ available. Date: Time:	

7. If the hearing is to be set and notice mailed by the Office of Administrative Hearings answer a) and)b.

a) Would you like the OAH to mediate this dispute. Yes ☐ No ☒ .

b) Give date and time scheduling preferences, requirements or restrictions. **Contact Legal Secretary**

8. What issue(s) do you want stated in the notice of hearing?

9. Does the notice of hearing require certified mailing? Yes ☒ No ☐

10. May we conduct the hearing by telephone? Yes ☐ No ☒

11. If hearing must be in person, will your agency provide the location? Yes ☒ No ☐

Location: 17938 SW Upper Boones Ferry Rd.
Portland, OR 97224

(STREET ADDRESS, CITY, ROOM NO.)

12. Does this case require : Proposed Order ☒ Final Order ☐

13. Will the agency or the ALJ issue a final order by default? Agency ☒ ALJ ☐

14. Does the order require certified mailing? Yes ☐ No ☒

Location:

(STREET ADDRESS, CITY, ROOM NO.)

Please provide a copy of your hearing notice with this transmittal

PLEASE BE SURE YOU HAVE FILLED THIS FORM OUT COMPLETELY BEFORE SUBMITTING.

Instructions:

This is the Office of Administrative Hearings referral form. This form, together with the charging document, request for hearing and any other documents necessary, is to be completed and sent to the Office of Administrative Hearings every time you wish to refer a case for hearing. We will use the information both for scheduling cases and for collecting statistical data.

Please send the completed referral form to:

US MAIL
OFFICE OF ADMINISTRATIVE HEARINGS
PO BOX 14020
SALEM OR 97309-4020

SHUTTLE
OFFICE OF ADMINISTRATIVE HEARINGS
4600 25TH AVE NE STE 140
SALEM OR 97301

FAX NUMBER: (503) 947-1923
E-MAIL: EMP.OAHREFERRAL@STATE.OR.US

BEFORE THE BOARD OF NURSING
OF THE STATE OF OREGON

In the Matter of **Patricia Ann McIntosh, LPN**	)	**NOTICE OF PROPOSED REVOCATION OF PRACTICAL NURSE LICENSE**
License No. 096005209LPN	)	**Case No. 09-235**

To: Patricia McIntosh, LPN

The Oregon State Board of Nursing (Board) proposes to revoke your practical nursing license on the following grounds:

I

You were licensed as a Practical Nurse by endorsement on December 2, 1996.

On or between May 26, 2008 and September 26, 2008, you financially exploited; violated patient boundaries and/or failed to respect the dignity of a patient under your care, WC.

On or between March 1, 2008 and October 1, 2008, you failed to conform to the essential standards of acceptable and prevailing nursing practice by signing to a joint property agreement with client WC, signing onto WC's bank accounts and/or accepting gifts from WC above your compensation.

On or about July 14, 2008, you failed to conform to the essential standards of acceptable and prevailing nursing practice and/or or committed patient boundary violations when you listened in on a conversation your client WC was having with his attorney and subsequently interrupted their conversation as a direct result of this behavior.

On or about July 12, 2008, you inappropriately stated on WC's Hospice records that WC was unable to sign due to "debility" although this was not true.

You told WC's family member, FJ, that you were ill with the Norovirus and not to come by to see WC due to this so he and his family members would not become ill prior to leaving for their vacation. This was not true and WC died while they were on vacation.

II

The above conduct constitutes conduct derogatory to the standards of nursing, and by the above actions you are subject to discipline pursuant to violations of ORS 678.111 (1)(f) & (g) and OAR 851-045-0070(1)(n); (2)(a) & (h); (4)(b) & (8)(a) which read as follows:

678.111 Causes for denial, revocation or suspension of license or probation, reprimand or censure of licensee. In the manner prescribed in ORS chapter 183 for a contested case:
(1) Issuance of the license to practice nursing, whether by examination or by indorsement, of any person may be refused or the license may be revoked or suspended or the licensee may be placed on probation for a period specified by the Oregon State Board of Nursing and subject to such condition as the board may impose or may be issued a limited license or may be reprimanded or censured by the board, for any of the following causes:

(f) Conduct derogatory to the standards of nursing.

(g) Violation of any provision of ORS 678.010 to 678.445 or rules adopted thereunder.

Conduct Derogatory to the Standards of Nursing OAR 851-045-0070
Nurses, regardless of role, whose behavior fails to conform to the legal standard and accepted standards of the nursing profession, or who may adversely affect the health, safety and welfare of the public, may be found guilty of conduct derogatory to the standards of nursing. Such conduct shall include, but is not limited to, the following:

Conduct Derogatory to the Standards of Nursing Defined
851-045-0070
Nurses, regardless of role, whose behavior fails to conform to the legal standard and accepted standards of the nursing profession, or who may adversely affect the health, safety, and welfare of the public, may be found guilty of conduct derogatory to the standards of nursing. Such conduct shall include, but is not limited to, the following:
(1) Conduct related to the client's safety and integrity:

(n) Failing to maintain professional boundaries with a client.

(2) Conduct related to other federal or state statute/rule violations:

(a) Abusing a client. The definition of abuse includes, but is not limited to, intentionally causing physical or emotional harm or discomfort, striking a client, intimidating, threatening or harassing a client, wrongfully taking or appropriating money or property, or knowingly subjecting a client to distress by conveying a threat to wrongfully take or appropriate money or property in a manner that causes the client to believe the threat will be carried out.

(h) Using the nurse client relationship to exploit the client by gaining property or other items of value from the client either for personal gain or sale, beyond the compensation for nursing services.

(4) Conduct related to achieving and maintaining clinical competency:

(b) Failing to conform to the essential standards of acceptable and prevailing nursing practice. Actual injury need not be established.

(8) Conduct related to the client's family:

(a) Failing to respect the rights of the client's family regardless of social or economic status, race, religion or national origin.

The foregoing is grounds to revoke your Practical Nurse license in the State of Oregon.

Dated this 19 day of June 2009

FOR THE BOARD OF NURSING OF THE STATE OF OREGON

Linda Fisher-Lewis
Program Manager
Oregon State Board of Nursing

Notice of Hearing Rights and Exhibit A attached.

OPPORTUNITY FOR HEARING AND RIGHT TO COUNSEL

You are entitled to a hearing before the Board as provided by the Administrative Procedures Act ORS Chapter 183, as amended. You are entitled to be represented by an attorney at the hearing.

If you desire a hearing, you must make a written request for a hearing within **twenty (20)** days of the date this Notice is mailed to you. Your written request for a hearing must include:

1. An admission or denial of each factual matter alleged in the Notice.
2. A statement of any affirmative defense(s) you may have.

Except for good cause, factual matters alleged in the Notice and not denied in the answer, shall be presumed admitted. Failure to raise a particular defense in the answer shall be considered a waiver of such defense. New matters alleged in the answer (affirmative defenses) shall be presumed to be denied by the agency. Evidence shall not be taken on any issue not raised in the Notice and answer.

Failure to request a hearing within **twenty (20)** days will constitute a waiver of hearing and the Board of Nursing will consider this proposed sanction at its earliest convenience and make a decision no later than its next regularly scheduled meeting, JULY 17, 2009.

If you do not request a hearing, the Board will designate the agency file as part of the record in this case.

OTHER PROCEDURAL MATTERS REGARDING HEARINGS

You have the right to also be advised of other procedural matters regarding Board hearings which are set forth in **Exhibit A** attached to this Notice.

Dated this 19 **day of** Jan, **2009**

FOR THE BOARD OF NURSING OF THE STATE OF OREGON

Linda Fisher-Lewis
Program Manager
Compliance, Investigation & Practice

Notice of Contested Case Rights and Procedures

Pursuant to ORS 183.413(2), you are entitled to be informed of the following:

1. **Time and place of hearing.** In the event you choose to request a hearing you will receive notice from the Office of Administrative Hearings of the time, date and place of the hearing once the hearing is scheduled.
2. **Issues to be considered at hearing.** The issues to be considered at hearing are the issues which are set forth in the notice issued by the Oregon Board of Nursing (Board) entitled Notice of Proposed Revocation of Practical Nurse License, dated June 19, 2009, and those issues related to the Notice and properly before the administrative law judge will also be considered at hearing. You have the right to respond to all issues properly before the administrative law judge and to present evidence and witnesses on those issues.
3. **Authority and jurisdiction for hearing.** The matter set for hearing is a contested case. The hearing will be conducted as provided in Chapters 183 and 678 of the Oregon Revised Statutes, the administrative rules of the Board, found in OAR Chapter 851, and the Attorney General's Office of Administrative Hearing Rules found in OAR Chapter 137-003-0501 to 137-003-0700.
4. **Right to attorney.** You may be represented by an attorney at the hearing. Parties are ordinarily and customarily represented by counsel. You are not required to be represented by counsel. If you are not represented at the hearing and during the hearing you determine that representation by an attorney is necessary, you may request a recess to allow you the opportunity to secure the services of an attorney. The administrative law judge will decide whether to grant such a request. The Board will be represented by an attorney. Legal aid organizations may be able to assist a party with limited financial resources.
5. **Administrative Law Judge.** The person presiding at the hearing is known as an administrative law judge (ALJ). The ALJ will rule on all matters that arise at the hearing, subject to Board consideration of matters transmitted for Board decision under OAR 137-003-0635 or matters subject to Board review under OAR 137-003-0640 or OAR 137-003-0570. The ALJ will be assigned by the Chief ALJ from the Office of Administrative Hearings (OAH). The OAH consists of employees of, and independent contractors with, the Chief ALJ. The ALJ does not have authority to make a final independent determination. The final determination will be made by the Board.
6. **Discovery.** Discovery is permitted in this proceeding. Discovery is permitted as provided in OAR 137-003-0570, OAR 137-003-0572, OAR 137-003-0573, and OAR 851-001-0005. You must first ask the Board to provide you with copies of documents or other information relevant to this proceeding. If you are not satisfied with the response of the Board, you may ask the ALJ to order production of the information you seek in accordance with applicable rules.
7. **Witnesses.** A witness must testify under oath or affirmation to tell the truth. The Board or ALJ will issue subpoenas for witnesses on your behalf upon a showing that their testimony is relevant to the case and is reasonably needed by you to establish your position. If you are represented by an attorney, your attorney may

issue subpoenas for attendance of witnesses at hearing. Payment of witness fees and mileage to the person subpoenaed is your responsibility.

8. **Order of evidence.** A hearing is similar to a court proceeding but is less formal. Its general purpose is to determine the facts and whether the Board's proposed action is appropriate. The order of presentation of evidence is normally as follows:
    a. Testimony of witnesses and other evidence of the Board in support of its proposed action.
    b. Testimony of your witnesses and your other evidence.
    c. Rebuttal evidence by the Board and by you.
9. **Burden of presenting evidence.** The burden of presenting evidence in support of an allegation or position rests upon the proponent of the allegation or position. If you have the burden of proof on an issue, or if you intend to present evidence on an issue in which the Board has the burden of proof, you should approach the hearing prepared to present the testimony of witnesses, including yourself, and other evidence that will support your position. All witnesses are subject to cross-examination and also to questioning by the ALJ.
10. **Admissible evidence.** Relevant evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs is generally admissible and generally will be received. Evidence that is irrelevant, immaterial or unduly repetitious may be excluded. Hearsay evidence is often admissible. The fact that it is hearsay generally affects how much reliance the ALJ will place on it in reaching a decision.

    There are four kinds of evidence:
    a. Knowledge of the Board or ALJ. The Board ALJ may take "official notice" of facts based on the Board's or ALJ's knowledge in a specialized field. This includes notice of general, technical or scientific facts. The Board or ALJ may also take "official notice" of a fact that is not subject to reasonable dispute in that it is generally known or is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. You will be informed if the Board or ALJ takes "official notice" of any fact and you will be given an opportunity to contest any fact so noticed.
    b. Testimony of witnesses. Testimony of witnesses, including you, who have knowledge of the facts, may be received in evidence.
    c. Writings. Written documents including letters, maps, diagrams and other written material may be received in evidence.
    d. Experiments, demonstrations and similar means used to prove a fact. The results of experiments and demonstrations may be received in evidence.
11. **Objections to evidence.** Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on one of the following grounds:
    a. The evidence is unreliable;
    b. The evidence is irrelevant or immaterial and has no tendency to prove or disprove any issue involved in the case;

c. The evidence is unduly repetitious and duplicates evidence already received.

12. **Continuances.** There are normally no continuances granted at the end of the hearing for you to present additional testimony or other evidence. However, if you can show that the record should remain open for additional evidence, the ALJ may grant you additional time to submit such evidence.
13. **Record.** A record will be made of the entire proceeding to preserve the testimony and other evidence for appeal. This may be done by use of a tape or digital recorder or court reporter. The record is generally not transcribed, unless there is an appeal to the Court of Appeals. However, you may obtain a copy of the recording upon payment of the cost of making a copy of the recording. If a court reporter is used, you may obtain a transcript or a copy of the court reporter's transcript upon payment of a transcription fee or other fee that the parties may agree upon.
14. **Proposed Order and Exceptions.** The ALJ will issue a proposed order in the form of findings of fact, conclusions of law and recommended Board action. You will be provided with a copy and you will be given an opportunity to make written objections, called "exceptions," to the ALJ's recommendations. You will be notified when exceptions to the proposed order must be filed. If you request oral argument before the Board, you will be notified when you may appear and make oral argument to the Board on your exceptions.
15. **Final Order.** The Board will render the final order in this case. The Board may modify the proposed order issued by the ALJ. If the Board modifies the proposed order in any substantial manner, the Board in its order will identify the modification and explain why the Board made the modification. The Board may modify a proposed finding of "historical" fact only if the proposed finding is not supported by a preponderance of the evidence in the record.
16. **Appeal.** If you wish to appeal the final order, you must file a petition for review with the Oregon Court of Appeals within 60 days from the date the final order is served upon you pursuant to ORS 183.482.

/BONNCCRP

BEFORE THE BOARD OF NURSING
OF THE STATE OF OREGON

In the Matter of Patricia Ann McIntosh, LPN	)	**NOTICE OF PROPOSED REVOCATION OF PRACTICAL NURSE LICENSE**
License No. 096005209LPN	)	**Case No. 09-235**

To: Patricia McIntosh, LPN

The Oregon State Board of Nursing (Board) proposes to revoke your practical nursing license on the following grounds:

I

You were licensed as a Practical Nurse by endorsement on December 2, 1996.

On or between May 26, 2008 and September 26, 2008, you financially exploited; violated patient boundaries and/or failed to respect the dignity of a patient under your care, WC.

On or between March 1, 2008 and October 1, 2008, you failed to conform to the essential standards of acceptable and prevailing nursing practice by signing to a joint property agreement with client WC, signing onto WC's bank accounts and/or accepting gifts from WC above your compensation.

On or about July 14, 2008, you failed to conform to the essential standards of acceptable and prevailing nursing practice and/or or committed patient boundary violations when you listened in on a conversation your client WC was having with his attorney and subsequently interrupted their conversation as a direct result of this behavior.

On or about July 12, 2008, you inappropriately stated on WC's Hospice records that WC was unable to sign due to "debility" although this was not true.

You told WC's family member, FJ, that you were ill with the Norovirus and not to come by to see WC due to this so he and his family members would not become ill prior to leaving for their vacation. This was not true and WC died while they were on vacation.

II

The above conduct constitutes conduct derogatory to the standards of nursing, and by the above actions you are subject to discipline pursuant to violations of ORS 678.111 (1)(f) & (g) and OAR 851-045-0070(1)(n); (2)(a) & (h); (4)(b) & (8)(a) which read as follows:

678.111 Causes for denial, revocation or suspension of license or probation, reprimand or censure of licensee. In the manner prescribed in ORS chapter 183 for a contested case:
(1) Issuance of the license to practice nursing, whether by examination or by indorsement, of any person may be refused or the license may be revoked or suspended or the licensee may be placed on probation for a period specified by the Oregon State Board of Nursing and subject to such condition as the board may impose or may be issued a limited license or may be reprimanded or censured by the board, for any of the following causes:

(f) Conduct derogatory to the standards of nursing.

(g) Violation of any provision of ORS 678.010 to 678.445 or rules adopted thereunder.

Conduct Derogatory to the Standards of Nursing OAR 851-045-0070
Nurses, regardless of role, whose behavior fails to conform to the legal standard and accepted standards of the nursing profession, or who may adversely affect the health, safety and welfare of the public, may be found guilty of conduct derogatory to the standards of nursing. Such conduct shall include, but is not limited to, the following:

Conduct Derogatory to the Standards of Nursing Defined
851-045-0070
Nurses, regardless of role, whose behavior fails to conform to the legal standard and accepted standards of the nursing profession, or who may adversely affect the health, safety, and welfare of the public, may be found guilty of conduct derogatory to the standards of nursing. Such conduct shall include, but is not limited to, the following:
(1) Conduct related to the client's safety and integrity:

(n) Failing to maintain professional boundaries with a client.

(2) Conduct related to other federal or state statute/rule violations:

(a) Abusing a client. The definition of abuse includes, but is not limited to, intentionally causing physical or emotional harm or discomfort, striking a client, intimidating, threatening or harassing a client, wrongfully taking or appropriating money or property, or knowingly subjecting a client to distress by conveying a threat to wrongfully take or appropriate money or property in a manner that causes the client to believe the threat will be carried out.

(h) Using the nurse client relationship to exploit the client by gaining property or other items of value from the client either for personal gain or sale, beyond the compensation for nursing services.

(4) Conduct related to achieving and maintaining clinical competency:

(b) Failing to conform to the essential standards of acceptable and prevailing nursing practice. Actual injury need not be established.

(8) Conduct related to the client's family:

(a) Failing to respect the rights of the client's family regardless of social or economic status, race, religion or national origin.

The foregoing is grounds to revoke your Practical Nurse license in the State of Oregon.

Dated this 19 day of June 2009

FOR THE BOARD OF NURSING OF THE STATE OF OREGON

Linda Fisher Lewis
Program Manager
Oregon State Board of Nursing

Notice of Hearing Rights and Exhibit A attached.

OPPORTUNITY FOR HEARING AND RIGHT TO COUNSEL

You are entitled to a hearing before the Board as provided by the Administrative Procedures Act ORS Chapter 183, as amended. You are entitled to be represented by an attorney at the hearing.

If you desire a hearing, you must make a written request for a hearing within **twenty (20)** days of the date this Notice is mailed to you. Your written request for a hearing must include:

1. An admission or denial of each factual matter alleged in the Notice.
2. A statement of any affirmative defense(s) you may have.

Except for good cause, factual matters alleged in the Notice and not denied in the answer, shall be presumed admitted. Failure to raise a particular defense in the answer shall be considered a waiver of such defense. New matters alleged in the answer (affirmative defenses) shall be presumed to be denied by the agency. Evidence shall not be taken on any issue not raised in the Notice and answer.

Failure to request a hearing within **twenty (20)** days will constitute a waiver of hearing and the Board of Nursing will consider this proposed sanction at its earliest convenience and make a decision no later than its next regularly scheduled meeting, JULY 17, 2009.

If you do not request a hearing, the Board will designate the agency file as part of the record in this case.

OTHER PROCEDURAL MATTERS REGARDING HEARINGS

You have the right to also be advised of other procedural matters regarding Board hearings which are set forth in **Exhibit A** attached to this Notice.

Dated this 19 **day of** June, **2009**

FOR THE BOARD OF NURSING OF THE STATE OF OREGON

Linda Fisher-Lewis
Program Manager
Compliance, Investigation & Practice

Notice of Contested Case Rights and Procedures

Pursuant to ORS 183.413(2), you are entitled to be informed of the following:

1. **Time and place of hearing.** In the event you choose to request a hearing you will receive notice from the Office of Administrative Hearings of the time, date and place of the hearing once the hearing is scheduled.
2. **Issues to be considered at hearing.** The issues to be considered at hearing are the issues which are set forth in the notice issued by the Oregon Board of Nursing (Board) entitled Notice of Proposed Revocation of Practical Nurse License, dated June 19, 2009, and those issues related to the Notice and properly before the administrative law judge will also be considered at hearing. You have the right to respond to all issues properly before the administrative law judge and to present evidence and witnesses on those issues.
3. **Authority and jurisdiction for hearing.** The matter set for hearing is a contested case. The hearing will be conducted as provided in Chapters 183 and 678 of the Oregon Revised Statutes, the administrative rules of the Board, found in OAR Chapter 851, and the Attorney General's Office of Administrative Hearing Rules found in OAR Chapter 137-003-0501 to 137-003-0700.
4. **Right to attorney.** You may be represented by an attorney at the hearing. Parties are ordinarily and customarily represented by counsel. You are not required to be represented by counsel. If you are not represented at the hearing and during the hearing you determine that representation by an attorney is necessary, you may request a recess to allow you the opportunity to secure the services of an attorney. The administrative law judge will decide whether to grant such a request. The Board will be represented by an attorney. Legal aid organizations may be able to assist a party with limited financial resources.
5. **Administrative Law Judge.** The person presiding at the hearing is known as an administrative law judge (ALJ). The ALJ will rule on all matters that arise at the hearing, subject to Board consideration of matters transmitted for Board decision under OAR 137-003-0635 or matters subject to Board review under OAR 137-003-0640 or OAR 137-003-0570. The ALJ will be assigned by the Chief ALJ from the Office of Administrative Hearings (OAH). The OAH consists of employees of, and independent contractors with, the Chief ALJ. The ALJ does not have authority to make a final independent determination. The final determination will be made by the Board.
6. **Discovery.** Discovery is permitted in this proceeding. Discovery is permitted as provided in OAR 137-003-0570, OAR 137-003-0572, OAR 137-003-0573, and OAR 851-001-0005. You must first ask the Board to provide you with copies of documents or other information relevant to this proceeding. If you are not satisfied with the response of the Board, you may ask the ALJ to order production of the information you seek in accordance with applicable rules.
7. **Witnesses.** A witness must testify under oath or affirmation to tell the truth. The Board or ALJ will issue subpoenas for witnesses on your behalf upon a showing that their testimony is relevant to the case and is reasonably needed by you to establish your position. If you are represented by an attorney, your attorney may

issue subpoenas for attendance of witnesses at hearing. Payment of witness fees and mileage to the person subpoenaed is your responsibility.

8. **Order of evidence.** A hearing is similar to a court proceeding but is less formal. Its general purpose is to determine the facts and whether the Board's proposed action is appropriate. The order of presentation of evidence is normally as follows:
    a. Testimony of witnesses and other evidence of the Board in support of its proposed action.
    b. Testimony of your witnesses and your other evidence.
    c. Rebuttal evidence by the Board and by you.
9. **Burden of presenting evidence.** The burden of presenting evidence in support of an allegation or position rests upon the proponent of the allegation or position. If you have the burden of proof on an issue, or if you intend to present evidence on an issue in which the Board has the burden of proof, you should approach the hearing prepared to present the testimony of witnesses, including yourself, and other evidence that will support your position. All witnesses are subject to cross-examination and also to questioning by the ALJ.
10. **Admissible evidence.** Relevant evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs is generally admissible and generally will be received. Evidence that is irrelevant, immaterial or unduly repetitious may be excluded. Hearsay evidence is often admissible. The fact that it is hearsay generally affects how much reliance the ALJ will place on it in reaching a decision.

    There are four kinds of evidence:
    a. Knowledge of the Board or ALJ. The Board ALJ may take "official notice" of facts based on the Board's or ALJ's knowledge in a specialized field. This includes notice of general, technical or scientific facts. The Board or ALJ may also take "official notice" of a fact that is not subject to reasonable dispute in that it is generally known or is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. You will be informed if the Board or ALJ takes "official notice" of any fact and you will be given an opportunity to contest any fact so noticed.
    b. Testimony of witnesses. Testimony of witnesses, including you, who have knowledge of the facts, may be received in evidence.
    c. Writings. Written documents including letters, maps, diagrams and other written material may be received in evidence.
    d. Experiments, demonstrations and similar means used to prove a fact. The results of experiments and demonstrations may be received in evidence.
11. **Objections to evidence.** Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on one of the following grounds:
    a. The evidence is unreliable;
    b. The evidence is irrelevant or immaterial and has no tendency to prove or disprove any issue involved in the case;

c. The evidence is unduly repetitious and duplicates evidence already received.

12. **Continuances.** There are normally no continuances granted at the end of the hearing for you to present additional testimony or other evidence. However, if you can show that the record should remain open for additional evidence, the ALJ may grant you additional time to submit such evidence.
13. **Record.** A record will be made of the entire proceeding to preserve the testimony and other evidence for appeal. This may be done by use of a tape or digital recorder or court reporter. The record is generally not transcribed, unless there is an appeal to the Court of Appeals. However, you may obtain a copy of the recording upon payment of the cost of making a copy of the recording. If a court reporter is used, you may obtain a transcript or a copy of the court reporter's transcript upon payment of a transcription fee or other fee that the parties may agree upon.
14. **Proposed Order and Exceptions.** The ALJ will issue a proposed order in the form of findings of fact, conclusions of law and recommended Board action. You will be provided with a copy and you will be given an opportunity to make written objections, called "exceptions," to the ALJ's recommendations. You will be notified when exceptions to the proposed order must be filed. If you request oral argument before the Board, you will be notified when you may appear and make oral argument to the Board on your exceptions.
15. **Final Order.** The Board will render the final order in this case. The Board may modify the proposed order issued by the ALJ. If the Board modifies the proposed order in any substantial manner, the Board in its order will identify the modification and explain why the Board made the modification. The Board may modify a proposed finding of "historical" fact only if the proposed finding is not supported by a preponderance of the evidence in the record.
16. **Appeal.** If you wish to appeal the final order, you must file a petition for review with the Oregon Court of Appeals within 60 days from the date the final order is served upon you pursuant to ORS 183.482.

/BONNCCRP