



MAR 18 2013

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

K. Westray

Kevin Westray, Legal Assistant

GEORGIA BOARD OF NURSING,)
Petitioner)
v.)
TRACY LYNN SWITZER-RENTZ,)
Respondent.)

Docket No: OSAH-PLBD-RN-1323993-92-
Howells

**INITIAL DECISION AND
ORDER GRANTING MOTION FOR SUMMARY DETERMINATION**

The hearing in this matter was held on February 28, 2013 before the undersigned administrative law judge with the Office of Administrative Hearings (“OSAH”). The Georgia Board of Nursing (“Board” or “Petitioner”) requested this hearing to determine whether the Board should impose sanctions upon the license of Tracy Lynn Switzer-Rentz (“Respondent”) to practice as a registered professional nurse in the State of Georgia. On January 18, 2013, the Board filed a Motion for Summary Determination. Given the difficulty in serving Respondent, the undersigned deferred ruling on the Board’s motion until the date of the hearing. Respondent failed to appear at the hearing, did not file a timely request for a continuance, and therefore is in default pursuant to OSAH Rule 30(5). Janet K. Jackson, Senior Assistant Attorney General, represented the Board at the hearing. In lieu of a full evidentiary hearing, the undersigned heard testimony from one witness concerning the attempts to serve Respondent and oral argument on the Board’s pending motion. For the reasons that follow, the Board’s motion for Summary Determination is **GRANTED** and Respondent’s license is **HEREBY REVOKED**.

FINDINGS OF FACT

1.

Respondent has been licensed to practice as a registered professional nurse in the State of Georgia since December 7, 2000 and at all times relevant to this case. (Board Exhibit A.)

2.

On May 26, 2006, Respondent was indicted on six violations of the Georgia Controlled Substances Act for the possession of morphine, meperidine, zolpidem tartrate, propoxyphene napsylate, diazepam, and lorazepam. (Board Exhibit B.)

3.

Respondent entered a plea of guilty on November 3, 2006 to one count of felony possession of meperidine. She was sentenced under the First Offender Act to four years of probation, 120 hours community service, and required to pay a fine in the amount of \$2,500.00. She successfully completed the aforementioned requirements and was discharged without an adjudication of guilt under the Act on July 27, 2010. (Board Exhibit B.)

4.

Respondent failed to notify the Board of her guilty plea and sentencing within ten days as required. In fact, as of the date of the hearing, Respondent still had not notified the Board of her guilty plea and sentencing. (Board Exhibit C; Affidavit of Lisa Durden.)

5.

On December 31, 2012, OSAH first sent the Notice of Hearing and Matters Asserted via certified mail to Respondent's address of record with the Board. The mailing was returned as "Undeliverable/Return to Sender." (See Court File.)

6.

Respondent's last known address on record with the Board is 289 Oak Ridge Drive, Valdosta, Georgia. Since supplying this address, Respondent has not submitted a change of address with the Board. (Testimony of Bobby Martin.)

7.

Bobby Martin, an agent the Secretary of State, unsuccessfully attempted to personally serve Respondent at her last known address of 289 Oak Ridge Drive, Valdosta, Georgia. (Testimony of Bobby Martin.)

8.

Mr. Martin obtained a second possible address for Respondent: 110 West Ann Street, Valdosta, Georgia. Mr. Martin attempted personal service at this address as well, to no avail. (Testimony of Bobby Martin.)

9.

In addition to the attempted personal service, on January 25, 2013, OSAH sent a Notice of Hearing and Matters Asserted via certified mail to 110 West Ann Street, Valdosta, Georgia. The mailing was returned as "Undeliverable as addressed" on or around January 29, 2013. (See Court File.)

10.

Because it was unable to serve Respondent at her last known address, or to otherwise locate her, the Board served the Director of the Professional Licensing Boards Division, on February 12, 2013. (Exhibit D, Notice of Service.)

CONCLUSIONS OF LAW

1.

The Board, as Petitioner in this proceeding, bears the burden of proof in this matter. However, Respondent bears the burden as to any affirmative defenses. Ga. Comp. R. & Regs. r. 616-1-2-.07.

2.

After the Board's diligent efforts to serve Respondent at her address of record and to otherwise locate Respondent, the Board served the Notice of Hearing and Matters Asserted upon the Director of the Professional Licensing Boards Division. Such service is deemed to be service upon the licensee. O.C.G.A. § 43-1-19(k).

3.

As of the date of this hearing, Respondent has not notified the Board of a change in her address. Board Rule 410-1-.02(5) requires licensees to notify the Board of a change of address within thirty days of such change. Ga. Comp. R. & Regs. 410-1-.02(5). Accordingly, Petitioner has violated Board Rule 410-1-.02(5).

4.

The Board has the statutory authority to impose disciplinary action against Respondent's license pursuant to the Georgia Registered Professional Nurse Practice Act, Georgia Code Sections 43-26-1, *et seq.*; the rules of the Georgia Board of Nursing, Title 410 of the Rules and Regulations of the State of Georgia; and the statutory provisions related to grounds for disciplinary actions by professional licensing boards found at Georgia Code Section 43-1-19.

5.

The Board asserts essentially three grounds to revoke Respondent's Registered Professional Nurse's license. The first is her failure to notify the Board of her felony conviction within ten days under Georgia Code Section 43-1-27. The second is her failure to report a conviction involving controlled substances within ten days under Georgia Code Section 16-13-111. The third is the fact that she was arrested, charged, sentenced, and afforded first offender treatment for a felony offense under Georgia Code Section 43-1-19(a)(4).

6.

Georgia Code Section 43-1-27 requires licensees convicted of felonies to report their conviction within ten days of the conviction. The statute states:

Any licensed individual who is convicted under the laws of this state. . . of a felony as defined in paragraph (3) of subsection (a) of Code Section 43-1-19 shall be required to notify the appropriate licensing authority of the conviction within ten days of the conviction. The failure of a licensed individual to notify the appropriate licensing authority of a conviction shall be considered grounds for revocation of his or her license.

O.C.G.A. § 43-1-27.

7.

Likewise under Georgia Code Section 16-13-111(a), Respondent was required to report her conviction for possession of a controlled substance to the Board within ten days. The statute states:

Any licensed individual who is convicted under the laws of this state . . . involving the . . . possession of a controlled substance . . . shall notify the appropriate licensing authority of the conviction within ten days following the conviction.

O.C.G.A. § 16-13-111(a). Under Georgia Code Section 16-13-111(c), "[t]he failure of a licensed individual to notify the appropriate licensing authority of a conviction as required in subsection (a) of this Code section shall be considered grounds for revocation of his or her license." O.C.G.A. § 16-13-111(c).

8.

Georgia Code Section 43-1-19 empowers the Board to revoke the license of a licensee who has “[b]een arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, where[] [f]irst offender treatment without adjudication of guilt pursuant to the charge was granted.” O.C.G.A. § 43-1-19(a)(4). Thus, the Board may revoke a license when a licensee has been sentenced for a felony and afforded first offender treatment, regardless of whether the licensee reports the offense to the Board.

9.

The Superior Court of Lowndes County granted Respondent first offender treatment following her plea of guilty to one count of possession of meperidine. Respondent’s guilty plea and first offender treatment are grounds for revocation under Georgia Code Section 43-1-19(a)(4). Further, her guilty plea and first offender treatment is considered a conviction for purposes of Georgia Code Section 16-13-111. O.C.G.A. § 16-13-110(a)(2) (the term “conviction” as used in sections 16-13-111(a) and (c) includes the acceptance of a guilty plea and the “affording of first offender treatment by a court of competent jurisdiction.”). Her failure to report her conviction for a felony controlled substance offense is grounds for revocation under Georgia Code Section 16-13-111(c).

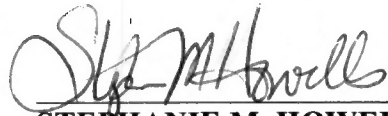
10.

The Board has established sufficient grounds to sanction Respondent’s license. O.C.G.A. §§ 43-1-19(a)(4), 16-13-111(c). Furthermore, given the Respondent’s unknown whereabouts and the lack of any information regarding Respondent’s sobriety, the undersigned concludes that protection of the public warrants revocation of Respondent’s license.

DECISION

Accordingly, for the foregoing reasons, this Tribunal finds that Respondent's license to practice as a registered professional nurse in the State of Georgia should be **REVOKED**.

SO ORDERED this 18th day of March, 2013.



STEPHANIE M. HOWELLS
Administrative Law Judge