

2.

In or about January 1999, Respondent entered into a Consent Order with the Board as a result of her obtaining controlled substances for personal use by prescription fraud. Under the terms of the Consent Order, Respondent's license was placed on probation for four years with certain terms and conditions, including continued drug treatment, personal quarterly reports, and quarterly reports from her treatment counselor and employer. 1999 Consent Order, State's Exhibit 2.

3.

In or about July 2003, Respondent entered into a second Consent Order as a result of violations of her Consent Order of 1999. Specifically, the Board received an unfavorable report from one of Respondent's employers, and then the Board failed to receive personal reports and employer reports from 2001 and 2002. In addition, Respondent relapsed and entered treatment at the Windwood Center and The Harbin Clinic. Respondent's license was placed on probation for two years with certain terms and conditions. 2003 Consent Order, State's Exhibit 3.

4.

In or about March 2006, Respondent relapsed and re-entered treatment for chemical dependency, and in or about January 2009, pursuant to the results of a Board-ordered mental/physical examination which was positive for opiate abuse and depressive disorder, Respondent entered into a third Consent Order. The Consent Order placed her license on probation for five years with terms and conditions which included the following:

- (a) Submission of quarterly reports from herself, her employer, and her aftercare counselor, and;
- (b) Payment of a \$1000.00 fine in monthly installments of \$100, the last of which was due in November 2009.

2009 Consent Order, State's Exhibit 4.

5.

In each of these Consent Orders, Respondent was notified that failure to submit personal quarterly reports and other non-compliance with the Consent Orders would subject Respondent's license to further sanction or revocation. 1999 Consent Order, State's Exhibit 2 at 6-7; 2003 Consent Order, State's Exhibit 3 at 5-6; 2009 Consent Order, State's Exhibit 4 at 5-6.

6.

Since March 2010, Respondent has not submitted any personal report, employer report or treatment reports. James Cleghorn Affidavit, State's Exhibit 5.

7.

Before March 2010, Respondent did not file all of the reports required by her Consent Order, and many she did file were not timely. James Cleghorn Affidavit, State's Exhibit 5.

8.

While Respondent completed payment of her fine on February 10, 2011, she did not complete her payments by November, 2009 as required by the Consent Order. James Cleghorn Affidavit, State's Exhibit 5.

STANDARD OF LAW

On a motion for summary determination, the moving party must show by supporting affidavits or other probative evidence that there is no genuine dispute as to any material facts such that the moving party is entitled to a determination in his favor as a matter of law. OSAH Rule 616-1-2-.15(1). Once the moving party presents probative evidence supporting its motion, the opposing party must produce probative evidence, by affidavit or otherwise, showing that there is a genuine issue of material fact. OSAH Rule 616-1-2-

.15(3). The Respondent failed to respond to Petitioner's motion for summary determination.

ARGUMENT AND CITATION OF AUTHORITY

I. Respondent's Violations of the 2009 Consent Order Support Revocation of Her License by the Board.

Respondent's multiple violations of the 2009 Consent Order provide grounds for revocation of her license by Petitioner. O.C.G.A. § 43-1-19(a)(8) (professional licensing board can discipline licensees or revoke their license for "violat[ing] a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree or license reinstatement"). Respondent was notified in each of her Consent Orders that non-compliance would provide grounds for revocation of her license, and the Board is further authorized to revoke Respondent's license for these violations by O.C.G.A. § 43-1-19(d). See O.C.G.A. § 43-1-19(d) (board may "revoke any license" if a licensee violates subsection (a)); 1999 Consent Order, State's Exhibit 2 at 6-7; 2003 Consent Order, State's Exhibit 3 at 5-6; 2009 Consent Order, State's Exhibit 4 at 5-6.

Respondent violated the 2009 Consent Order every time she failed to file a timely report. 2009 Consent Order, State's Exhibit 4. Many of her reports before March 2010 were late or missing and she did not file a single report after that date. James Cleghorn Affidavit, State's Exhibit 5. In addition, Respondent failed to pay her fine by the required date. 2009 Consent Order, State's Exhibit 4; James Cleghorn Affidavit, State's Exhibit 5.

Under O.C.G.A. § 43-1-19(a)(8), any one of these multiple violations of the Consent Order is sufficient, standing alone, to support the disciplinary action against Respondent's

license to practice as a registered professional nurse. Under O.C.G.A. § 43-1-19(d), that disciplinary action can include revocation of Respondent's license.

Therefore, Respondent's violations support the Board's revocation of her license.

II. Respondent's Opiate Abuse Shows An Inability To Practice Nursing With Reasonable Safety and Supports Revocation of Her License by the Board.

Respondent's decade-long use of drugs provides grounds for revocation of her license by Petitioner. O.C.G.A. § 43-26-11(2)(A) (board can revoke a license or discipline licensee who "displayed an inability to practice nursing. . . with reasonable skill and safety due to. . . use of alcohol, drugs, narcotics, chemicals, or any other type of material"); see also O.C.G.A. § 43-1-19(a)(10).

Respondent has obtained controlled substances for personal use by prescription fraud, tested positive for opiate abuse and repeatedly relapsed into drug use after entering treatment. 1999 Consent Order, State's Exhibit 2; 2003 Consent Order, State's Exhibit 3; 2009 Consent Order, State's Exhibit 4. Her use of drugs places her patients in danger and is prima facie evidence of an inability to practice nursing with reasonable skill and safety. See O.C.G.A. § 43-26-11(2)(A); see also O.C.G.A. §§ 43-1-19(a)(10),(d).

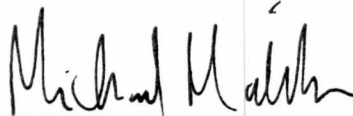
In addition, the Board has allowed her three opportunities to continue to practice nursing under treatment and reporting plans. 1999 Consent Order, State's Exhibit 2; 2003 Consent Order, State's Exhibit 3; 2009 Consent Order, State's Exhibit 4. Respondent's repeated relapses and failure to provide any personal, employer report or treatment reports since March 2010, however, show she remains unable to safely practice nursing. Id.; James Cleghorn Affidavit, State's Exhibit 5.

Therefore, Respondent's drug use supports the Board's revocation of her license to practice as a registered professional nurse.

CONCLUSION

Petitioner's undisputed Motion for Summary Determination is granted. Petitioner is authorized to revoke Respondent's license to practice nursing as a registered professional nurse as provided in O.C.G.A. § 43-1-19(d)(5) and O.C.G.A. § 43-26-11.

August 26, 2013.

A handwritten signature in black ink, appearing to read "Michael Malihi", written over a horizontal line.

MICHAEL MALIHI
Administrative Law Judge

Shoshana

CERTIFIED MAIL

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public.

RE: MELANIE ROBIN NICHOLSON WALKER, Respondent

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