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**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

GEORGIA BOARD OF EXAMINERS OF :  
LICENSED PRACTICAL NURSES, :  
Petitioner, :

  
Kevin Westray, Legal Assistant

v. : Docket No.: OSAH-PLBD-LPN-1452782-

: 151-Howells

LISA ANN ROWLEY, :  
Respondent. :

**INITIAL DECISION**

The hearing in this matter was held on June 30, 2014. The Georgia Board of Examiners of Licensed Practical Nurses (“Board” or “Petitioner”) requested this hearing to determine whether the Board should revoke the license of Lisa Ann Rowley (“Respondent”) to practice as a licensed practical nurse (“LPN”) in the State of Georgia.<sup>1</sup> Janet K. Jackson, Senior Assistant Attorney General, represented the Board. Respondent appeared *pro se*. For the reasons stated below, the Board’s decision to sanction Respondent’s license is **AFFIRMED** and Respondent’s license is hereby **REVOKED**.

**FINDINGS OF FACT**

1.

Respondent has been licensed as an LPN in the State of Georgia since February 11, 2002, and was so licensed at all times relevant to this case. (Exhibit R-1.)

2.

Respondent submitted to the Georgia Board of Nursing (“GBN”) an *Application for Licensure as a Registered Professional Nurse By Examination for U.S. Graduates* (“RN Licensure Application”), dated August 6, 2009. The application was received by the GBN on

<sup>1</sup> Petitioner did not file an answer in response to the Statement of Matters Asserted, as required by Ga. Comp. R. & Regs. 295-4-.02.

August 12, 2009. In the section of the application regarding educational information, Respondent listed Excelsior College in Albany, New York, as the nursing program she had attended. Other than providing the name of a nursing program, however, Respondent did not fill in any other requested educational information, leaving blank the spaces for a date of graduation, the nursing education program code, and the nursing degree conferred. She also left blank the section of the application entitled, *Certification by Nurse Administrator* (the "Certification"), which includes a certification by the Nurse Administrator that the applicant "graduated from [a] state board-approved nursing education program." Instead, Respondent attached a letter to her application, stating that she is a non-traditional "Excelsior College Nursing student" who has completed "all of the course requirements," and is now asking that she be allowed to arrange her "clinical hours via a preceptor." (Exhibit R-2.)

3.

As mandated by the RN Licensure Application, Respondent submitted an official Excelsior College transcript. The transcript indicated an enrollment date of May 21, 2004, but not a graduation date. The transcript also indicated that Respondent failed the clinical performance nursing examination, which Excelsior College Dean, Mary Lee Pollard, corroborated at the hearing. At the hearing, Dean Pollard elaborated that Respondent failed the practical clinical exam, which is conducted in a hospital setting, three times, exhausting the maximum number of attempts allowed by the school. As a result, Respondent was dismissed from the school on May 18, 2009. (Exhibit R-2; Testimony of Dean Pollard.)

4.

In a letter, dated February 8, 2010, the GBN requested additional information needed to process Respondent's RN Licensure Application. In addition to certified court documents and an

explanation regarding her criminal background check, the GBN instructed Petitioner to submit the “Dean’s signature page [that] must be signed by the Nurse Administrator, which is Mary Lee Pollard.” (Exhibit R-3.)

5.

In response to the GBN’s letter, on February 24, 2010, Respondent submitted a Certification, bearing the forged signature of Mary Lee Pollard, falsely certifying that Respondent had graduated from the Excelsior College nursing program. Because the Certification indicated that Excelsior’s nursing program requires students to have passed a clinical competency exam in order to graduate, the implication was that Respondent had achieved the requisite level of clinical competency to practice as an RN. (Exhibit R-4; Testimony of Dean Pollard.)

6.

On May 12, 2010, Dean Pollard informed the GBN that the signature on the Certification was not her own and that Respondent had not, in fact, graduated from the Excelsior College associate degree nursing program. Dean Pollard also informed the GBN that Respondent had been dismissed from the college’s nursing program on May 18, 2009. At the hearing, Dean Pollard testified by video and telephone conference that the Certification bore not only her forged signature, but also contained other errors: an incorrect program code, an incorrect regulatory agency/institution accrediting body, and an incorrect address for the school. (Exhibit R-5; Testimony of Dean Pollard.)

7.

The May 12, 2010 meeting minutes of the GBN in Macon, Georgia, includes the following note in reference to Respondent’s RN Licensure Application: “Smith moved to deny

eligibility for NCLEX-RN based on falsification of application submitted, refer to LPN Board, refer to the Office of Inspector General for consideration of criminal prosecution and flag the system. Flynn seconded the motion and it carried with Thigpen abstaining.” (Exhibit R-6; Testimony of Jim Cleghorn, Executive Director, Georgia Board of Examiners of Licensed Practical Nurses.)

8.

On October 20, 2010, an accusation was issued against Respondent in the Superior Court of Bibb County, Georgia, for one count of Forgery in the First Degree, pursuant to O.C.G.A. § 16-9-1, for knowingly forging Mary Lee Pollard’s signature on the Certification submitted to the GBN. While Respondent avers she was never arrested on the forgery charge, she pleaded guilty to the offense on February 7, 2012, and was sentenced under the First Offender Act to two years’ probation, a \$500 fine, and 200 hours of community service. She has since successfully completed the terms of her probation. (Exhibit R-7; Testimony of Respondent.)

9.

Respondent asserts that she did not initially set out to deceive the GBN. Instead, she believed that she could qualify for the RN licensure examination by virtue of completing a certain number of clinical hours. However, she admitted that, subsequently, in a bout of “poor judgment,” she forged Dean Pollard’s signature on the Certification. Respondent has since apologized for her actions and stated that she will never again act in such a manner. She also submitted a letter from Dupont Kirk Cheney Jr., her former criminal defense attorney, attesting to her good character. Although Respondent recognized that her actions justify a sanction, she requested leniency in the form of an alternative to a license revocation in consideration of the fact that she is the sole income provider for her family. (Testimony of Respondent.)

## CONCLUSIONS OF LAW

1.

Because the Board seeks to sanction Respondent's LPN license, it bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

### **A. Authority to Sanction a License**

2.

The Board has the authority to sanction an LPN license pursuant to (1) the general statutory provision for the discipline of professional licenses, Georgia Code section 43-1-19, and (2) the specific statutory provision for the discipline of LPN licenses, Georgia Code section 43-26-40. In disciplining an applicant or licensee, the Board may take any of the following actions:

- (1) Refuse to grant or renew a license to an applicant;
- (2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;
- (3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;
- (4) Limit or restrict any license as the board deems necessary for the protection of the public;
- (5) Revoke any license;
- (6) Condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct;
- (7) Impose a fine not to exceed \$500.00 for each violation of a law, rule, or regulation relating to the licensed business or profession; or
- (8) Impose on a licensee or applicant fees or charges in an amount necessary to reimburse the professional licensing board for the administrative and legal costs incurred by the board in conducting an investigative or disciplinary proceeding.

O.C.G.A. § 43-1-19(d); *see also* O.C.G.A. § 43-26-40 (authority to refuse, revoke, or discipline a license). The Board may also place a license on probation. O.C.G.A. § 43-1-19(e).

*a. Conviction of a felony or crime of moral turpitude*

3.

The aforementioned statutory provisions contain numerous subsections that would authorize the sanctioning of a license by means of revocation under the circumstances of this case. First, Georgia law gives the Board the authority to revoke an LPN's license upon the conviction of a felony or crime of moral turpitude. O.C.G.A. §§ 43-26-40(a)(1), (d); 43-1-19(a)(3)–(4). Forgery in the First Degree is both a felony and a crime of moral turpitude. O.C.G.A. §§ 16-1-3 (felony includes crimes punishable by imprisonment of more than 12 months), 16-9-2(a) (“A person who commits the offense of forgery in the first degree shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 15 years.”); *Hinely v. State*, 275 Ga. 777, 781 (2002) (forgery is a crime of moral turpitude). A conviction for purposes of professional licensure includes the receipt of “[f]irst offender treatment without adjudication of guilt.” O.C.G.A. § 43-1-19(a)(4). In addition, the presence of a court order of first offender treatment for a crime constitutes “conclusive evidence of arrest and sentencing for such crime.” *Id.* Thus, contrary to Respondent's argument, it matters not that Respondent was never physically arrested.

*b. Fraud or deceit in obtaining a license*

4.

Second, subsection 43-1-19(a)(2) authorizes the Board to revoke a license when a licensee “practiced fraud or deceit or intentionally made any false statement in obtaining a license to practice the licensed business or profession.” Although Respondent did not initially

set out to deceive the GBN, she intentionally submitted a forged document in an effort to obtain an RN license.

*c. Denial of another professional license*

5.

Third, the Board has the authority to revoke or otherwise discipline Respondent's LPN license upon a finding that she "was denied a license by any lawful licensing authority." O.C.G.A. § 43-26-40(a)(2); *see also* O.C.G.A. § 43-1-19(a)(5) ("was denied a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings.") Here, the GBN, in a meeting on May 12, 2010, voted to deny Respondent's application for licensure as a registered professional nurse by examination.<sup>2</sup>

*d. Unethical or deceptive behavior*

6.

Fourth, the Board can revoke a license when a licensee acts unethically or deceptively, even if the conduct did not "result[] in actual injury to any person." O.C.G.A. § 43-26-40(a)(3). Similarly, Georgia Code section 43-1-19(a)(6) authorizes revocation of a professional license where the licensee has engaged in behavior that is "indicative of bad moral character or untrustworthiness," regardless of whether the conduct resulted in actual harm to anyone. Here, by committing the crime of forgery, Respondent acted unethically in an attempt to deceive the GBN.

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<sup>2</sup> Both at the time of the May 2010 vote and at the time of this hearing on June 30, 2014, the Georgia Board of Nursing was a distinct professional licensing board from the Georgia Board of Examiners of Licensed Practical Nurses. *See* H.B. 332, 152nd Gen. Assemb., Reg. Sess. (Ga. 2013). Effective July 1, 2014, the Georgia Board of Examiners of Licensed Practical Nurses is no longer extant; the Georgia Board of Nursing has been restructured and is now responsible for the licensure of LPNs and RNs. *Id.*

*e. Violation of professional licensing law*

7.

Fifth, the Board has the authority to revoke a license, pursuant to subsection 43-1-19(a)(8), when a licensee or applicant “[v]iolated a statute, law, or any rule or regulation of this state . . . [which] relates to or in part regulates the practice of a business or profession licensed under [Title 43], when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule.” *See also* O.C.G.A. § 43-26-40(a)(4) (violated statute “relat[ing] to or in part regulat[ing] the practice of nursing”). Here, by submitting a forged document to the GBN, Respondent violated Georgia Code Sections 43-1-19(a)(2) and 43-1-19(a)(6), which regulate the nursing profession. Further, given the nature and seriousness of the offense, Petitioner knew or should have known that her actions violated professional licensing laws.

**B. Appropriate Sanction**

8.

The Board seeks to revoke Respondent’s LPN license and, as addressed above, is authorized to do so under the circumstances of this case. O.C.G.A. §§ 43-1-19(a), (d), 43-26-40(a). Nevertheless, because the Board has discretion in the choice of sanction, Respondent argued for—but did not present sufficient mitigating evidence to support—a lesser sanction.<sup>3</sup> *See* O.C.G.A. § 43-1-19(d) (discretion in choice of sanction); *In re Sinowski*, 290 Ga. 303, 305 (2011) (when range of sanctions for misconduct, consider mitigating and aggravating factors). Thus, in the absence of strong mitigating evidence, the undersigned concludes that the appropriate sanction is revocation of Petitioner’s LPN license. Respondent’s actions call into

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<sup>3</sup> Other than a letter from her criminal defense attorney and her own testimony, Petitioner presented no evidence in mitigation of her misconduct.

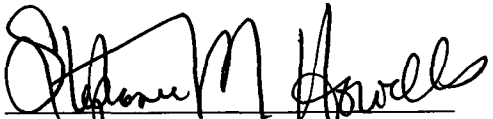


question her character and raise concerns that Respondent might jeopardize the health and safety of patients if her own interests conflicted with patients' needs.

**DECISION**

Accordingly, for the foregoing reasons, the Board's decision to sanction Respondent's license to practice as a licensed practical nurse in the State of Georgia is **AFFIRMED** and Respondent's LPN license is **REVOKED**.

**SO ORDERED THIS 18<sup>th</sup> day of July, 2014.**

  
STEPHANIE M. HOWELLS  
Administrative Law Judge