

Certified True Copy

By J. P. Douglas
Virginia Board of Nursing



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COMMONWEALTH of VIRGINIA / A BD OF NURSING

David E. Brown, D.C.
Director

Department of Health Professions
Perimeter Center
9960 Mayland Drive, Suite 300
Henrico, Virginia 23233-1463

www.dhp.virginia.gov
TEL (804) 367-4400
FAX (804) 527-4475

March 9, 2017

Loriann Surdow-Stewart, R.N.
49 Middle Island Ave
Medford, NY 11763

DUPLICATE COPY
VIA FIRST CLASS MAIL

DATE 3/9/17

RE: License Number: 0001-254596
Case Number: 178925

Dear Ms. Surdow-Stewart:

Pursuant to Virginia Code § 54.1-2409, you are hereby given notice that your license to practice professional nursing in the Commonwealth of Virginia has been mandatorily suspended by the enclosed Order entered March 8, 2017. You are hereby advised that you may not practice professional nursing or hold yourself out as a licensed professional nurse unless and until the Board of Nursing has notified you in writing that your license has been reinstated. Please return your license to Jay P. Douglas, Executive Director of the Virginia Board of Nursing ("Board"), at the above address, immediately upon receipt of this letter.

You may apply to the Board for reinstatement of your license, and you shall be entitled to a formal administrative hearing not later than the next regular meeting of the Board after the expiration of 60 days from the Board's receipt of your reinstatement application. The reinstatement of your license shall require the affirmative vote of three-fourths of the members of the Board present at the hearing. The reinstatement application can be found at www.dhp.virginia.gov/Nursing.

If you have any questions about this matter, you can contact me at (804) 367-4474 or anne.joseph@dhp.virginia.gov.

Sincerely,

Anne Joseph, Deputy Director
Administrative Proceedings Division

cc: Jay P. Douglas, Executive Director, Board of Nursing
Enclosures

BEFORE THE VIRGINIA DEPARTMENT OF HEALTH PROFESSIONS

IN RE: LORIANN SURDOW-STEWART, R.N.
License Number: 0001-254596
Case Number: 178925

ORDER OF MANDATORY SUSPENSION


In accordance with Virginia Code § 54.1-2409, I, David E. Brown, D.C., Director of the Virginia Department of Health Professions, received and acted upon evidence that the Delaware Board of Nursing suspended the license of Loriann Surdow-Stewart, R.N., to practice professional nursing in the State of Delaware. A certified copy of the Final Board Order is attached hereto as Commonwealth's Exhibit 1.

WHEREUPON, by the authority vested in the Director of the Department of Health Professions pursuant to Virginia Code § 54.1-2409, it is hereby ORDERED that the license of Loriann Surdow-Stewart, R.N., to practice professional nursing in the Commonwealth of Virginia is hereby SUSPENDED.

Upon entry of this Order, the license of Loriann Surdow-Stewart, R.N., will be recorded as suspended and no longer current and valid. Should Loriann Surdow-Stewart, R.N., seek reinstatement of her license pursuant to Virginia Code § 54.1-2409, she shall be responsible for any fees that may be required for the reinstatement of the license prior to issuance of the license to resume practice.

This Order shall be applicable to Ms. Surdow-Stewart's multistate licensure privilege, if any, to practice professional nursing in the Commonwealth of Virginia.

Pursuant to Virginia Code § 2.2-4023 and § 54.1-2400.2, the signed original of this Order shall remain in the custody of the Department of Health Professions as a public record and shall be made available for public inspection or copying on request.




David E. Brown, D.C., Director
Virginia Department of Health Professions

ENTERED:

3/8/17

CERTIFICATION OF DUPLICATE RECORDS

I, David E. Brown, D.C., Director of the Department of Health Professions, hereby certify that the attached Final Board Order entered January 25, 2017, regarding Loriann Surdow-Stewart, R.N., is a true copy of the records received from the Delaware Board of Nursing.



David E. Brown, D.C.

Date: 3/8/17

Certified True Copy

Rosara M. Williams

Delaware Division of Professional Regulation
OF NURSING

BEFORE THE DELAWARE BOARD

RE: LORIANN SURDOW, R.N.

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LICENSE NO.: L1-0044820

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FINAL BOARD ORDER

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ORDER

WHEREAS, the duly appointed hearing officer has filed the attached written report in which the officer finds that a preponderance of the evidence submitted indicates that Loriann Surdow failed to comply with the Board's rules and regulations pertaining to the post-renewal random audit which requires selected licensees to supply sufficient evidence of both: 1) the completion of hours of CE during the renewal period (October 1, 2013 – September 30, 2015), including three hours in substance abuse; and completion of 400 hours of work as a nurse in the last 2 years or 1,000 hours of work as a nurse in the last 5 years. Ms. Surdow was licensed by endorsement in March of 2014 after the commencement of the renewal period, as such she was only required to complete 15 CEs during the 2013-2015 renewal period;

WHEREAS, the duly appointed hearing officer recommends the license of Ms. Surdow be disciplined as she did not provided proof of having completed any of the requisite CE contact hours during the renewal period. In addition, upon renewal, she falsely attested to having completed all 15 contact hours, and to date has not made-up the deficient substance abuse CEs;

WHEREAS, pursuant to 29 *Del. C.* § 8735(v)(1)d, the hearing officer has found that Ms. Surdow's failure to produce evidence of completion of the requisite CEs during the renewal period constitutes a violation of Board rules 9.2.2.3.1 and 10.4.2.27;

WHEREAS, as a result of this conclusion of law, the hearing officer has recommended that Ms. Surdow's license be suspended until such time that she provides proof of completion of 15 acceptable continuing education contact hours, including three in substance abuse; these CEs

will be applied to the current biennial period and shall be in addition to, and not in lieu of the 30 CEs required for renewal in 2017; and Ms. Surdow be subject to audit in 2017;

WHEREAS, Ms. Surdow was notified of the recommendation of the hearing officer pursuant to 29 *Del. C.* § 8735(v)(1)(d) and submitted no comments, arguments, or exceptions to the same;

WHEREAS, the Board finds that the recommended discipline of the hearing officer is appropriate given Ms. Surdow's lack of any acceptable or valid reason for failing to comply with the Board's regulations regarding obtaining CE hours. The Board is charged with ensuring that only competent persons practice nursing in the State of Delaware in order to properly protect the public. 24 *Del. C.* § 1922. To ensure competency, the Board requires all licensees renew their licenses biennially, and comply with the rules and regulations promulgated by the Board. 24 *Del. C.* § 1918(a) and (b). The failure to comply with the Board's rules regarding CE and contact hours is a failure to maintain the minimal assurance of competency promulgated by this Board to assure the people of Delaware that a nurse possessing a Delaware license will practice in a safe, competent manner. Therefore, the Board finds that it cannot allow any nurse to continue to practice in blatant violation of the CE rules, as the Board cannot assure the citizenry that the practice will be safe and competent. In order to fulfill its essential obligation—safeguarding life and health through the general administration and supervision of the education, examination, licensing and regulation of professional and practical nursing—the Board finds it must discipline Ms. Surdow's license;

THEREFORE, the hearing officer report and recommendation is entered as an Order of this Board, and the following discipline imposed:

1. Ms. Surdow's license shall be suspended immediately upon the date of this Order; and

2. Ms. Surdow's license shall remain suspended until she completes 15 continuing education contact hours, including three acceptable continuing education contact hours in the subject of substance abuse and submits certificates of completion or other documentary evidence that she has done so, and submits a completed Verification of Nursing Employment form;
3. The 15 credits set forth in paragraph two shall be in addition to and not in lieu of any CEs required for the 2015-2017 renewal;
4. Ms. Surdow's license will be audited at the time of the next renewal in 2017;
5. This is a public disciplinary order and will be reported to the National Practitioner Data Bank and is a public document pursuant to the Freedom of Information Act. Failure to comply with a Board Order may result in additional discipline.

IT IS SO ORDERED this 25th day of January, 2017.

DELAWARE BOARD OF NURSING



Pamela Tyransky, RN, Board President
Pursuant to 29 Del. C. § 10128(g)

Date Mailed: 01/26/2017

APPEAL RIGHTS

29 Del. C. § 10142 provides:

- (a) Any party against whom a case decision has been decided may appeal such decision to the [Superior] Court.
- (b) The appeal shall be filed within 30 days of the day the notice of the decision was mailed.
- (c) The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record.
- (d) The court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.

Date Mailed: 01/26/2017

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BEFORE THE DELAWARE BOARD OF NURSING

In the Matter of:

Loriann Surdow
Lic. No. L1-0044820

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Rule to Show Cause

RECOMMENDATION OF CHIEF HEARING OFFICER

Nature of the Proceedings

The Delaware Board of Nursing has conducted an audit of a random number of its licensees in order to determine whether those selected had acted in compliance with Board continuing education regulations during the license renewal period October 1, 2013-September 30, 2015. Loriann Surdow, an active licensee of the Board, was selected for audit. When Ms. Surdow failed to respond to audit notices requesting that she provide evidence of continuing education hours completed by her during that period, and when she further failed to provide verification of her nursing employment, this Rule to Show Cause hearing was scheduled in order to provide her with an opportunity to show cause why her license should not be disciplined on account of those deficiencies.

An open hearing was convened on due notice on November 16, 2016 at 1:40 p.m. in the offices of the Division of Professional Regulation, 861 Silver Lake Blvd., Dover DE. Ms. Surdow failed or refused to attend the hearing. All witnesses testified under oath or affirmation. A registered court reporter was present who made a stenographic record of the proceedings. This is the recommendation of the undersigned hearing officer after due consideration of all relevant evidence.

Summary of the Evidence

Ms. Tracy Wirick, a paralegal employed in the Administrative Hearing Unit of the Division of Professional Regulation, testified first. One of her duties in that role is to schedule and prepare and send out notices of hearings before Division hearing officers. She prepared and mailed the notice of this hearing to Ms. Surdow on October 25, 2016. A copy of the notice was admitted as Administrative Hearing Unit Exhibit 1 ("AHU X1").

Ms. Wirick prepared and mailed the notice to Ms. Surdow in the normal course of Division business. The notice was sent by First Class mail to the last and most current physical address reported by Ms. Surdow to the Board as the place where she would receive official communications regarding her nursing license. Ms. Wirick drew that Medford NY address from a licensee data base maintained by the Board and the Division for that purpose. The First Class mailing of AHU X1 was not returned to her office by the Postal Service as undeliverable within a reasonable period after it was mailed. Hence, a legal presumption arises that Ms. Surdow in fact received the mailing.

The notice was also emailed to Ms. Surdow at the last and most current email address which she had reported to the Board. That emailing did not result in a return message to the Hearing Unit that it was undelivered or undeliverable. A copy of the transmitting email from the Hearing Unit to Ms. Surdow is attached to AHU X1. Because no such message resulted from the emailing of AHU X1 to Ms. Surdow, it is presumed that she also received the emailed copy of the exhibit.

Ms. Wirick testified that the hearing notice provided Ms. Surdow with the date, time, place and subject matter of the hearing. It explained her rights pertaining to the hearing. The hearing notice also again asked that Ms. Surdow promptly send her continuing education and employment verification documentation so that it could be reviewed prior to the hearing. Ms. Wirick testified that she has received no communications from Ms. Surdow in any form since mailing AHU X1 to her.

Based on this record, it was determined that Ms. Surdow had been provided with good and valid notice of the hearing. AHU X1 was prepared and mailed to her by First Class mail in the normal course of the business of the Division. It was mailed to the last and most current physical address reported by Ms. Surdow to the Board as of the date of the notice. It was not returned to the Hearing Unit as undeliverable. Hence, a presumption arises that the First Class mailing was in fact received by Ms. Surdow. Further, AHU X1 was also emailed to Ms. Surdow's last and most current email address. The emailing did not result in any return message to the Hearing Unit that it was undelivered or undeliverable. Consequently, it is presumed that Ms. Surdow also received the emailed copy of AHU X1.

Ms. Jessica Williams, an Administrative Specialist employed in the Division of Professional Regulation who provides staff support to the Board, then testified. She and her predecessor in that position have assisted the Board in conducting biennial continuing education audits. She testified that a licensee situated such as Ms. Surdow was required to complete at least 15 acceptable continuing education hours during the 2013-2015 renewal period. Of those hours, three were to have been completed in the subject area of substance abuse. Those requirements are stated in Board regulations which are posted on the Board's website. Ms. Surdow's continuing education requirement was prorated or reduced below the 30-hour requirement imposed on other Registered Nurse licensees because of the date of her initial licensure during the audited period under Board regulations.

Ms. Surdow was selected at random for audit. She was notified of her selection in an audit notice dated December 4, 2015. A copy of that notice was admitted as Board Exhibit 1 ("BX 1"). The notice requested that Ms. Surdow submit to the Board certificates of completion or other acceptable documentation of her completion of continuing education hours during the audited period. The notice also requested that she submit an executed Verification of Nursing Employment form. She was asked in the notice to submit the documentation by December 24, 2015. The audit notice was mailed to her at the same address where she received the hearing notice.

Ms. Williams testified that Ms. Surdow filed no response to the initial audit notice. Hence, a final audit notice was mailed to her on January 22, 2016. A copy of the final notice was admitted as BX 2. The final notice again requested that she promptly submit her continuing education documentation and employment verification not later than February 4, 2016. Ms. Williams testified that the final notice did not result in any response from Ms. Surdow. Nor has Ms. Surdow communicated with Board staff since the initial audit notice was sent to her. Both audit notices informed Ms. Surdow that a hearing such as this one would be scheduled if she failed or refused to respond.

Based on this record, Ms. Williams testified that Ms. Surdow is therefore deficient in the full amount of the 15 continuing education hours required in Board rules, including three hours in substance

abuse, for the 2013-2015 renewal period. She is also deficient in not having provided employment verification.

Findings of Fact

The notice of this hearing provided Ms. Surdow with the date, time, place and subject matter of the hearing. AHU X1. The notice was prepared and mailed to her in the normal course of Division business. The notice was mailed to Ms. Surdow by First Class mail to the last and most current physical address reported by her to the Board as the place where she would receive official communications regarding her license. The First Class mailing was not returned to the Hearing Unit as undeliverable. Hence, a presumption arises that the First Class copy of AHU X1 was in fact received by her. Similarly, the notice was emailed to Ms. Surdow at her last and most current reported email address. The emailing of AHU X1 to her did not result in a return message that the email was undelivered or undeliverable. It is therefore presumed that she received the emailed copy of AHU X1 as well. Based on this hearing record, I find as a matter of fact that Ms. Surdow did receive good and valid notice of this hearing. She failed or refused to attend.

In 2015 the Board of Nursing determined to conduct an audit of a randomly selected number of its licensees to determine if they had acted in compliance with Board regulations during the license renewal period October 1, 2013-September 30, 2015. Loriann Surdow, an active licensee of the Board, was selected to participate. She was informed of her selection and was requested to submit her continuing education materials as well as her employment verification. BX 1. When she failed or refused to submit the requested documentation, a final audit notice was mailed to her which again requested the same documentation. BX 2. Ms. Surdow failed to respond to the notice and submitted none of the requested documents. Nor did she communicate with Board staff regarding the matter. She was provided with a final opportunity to submit the requested documents in the hearing notice. AHU X1. She submitted no response to that third request.

A licensee situated such as Ms. Surdow was required by Board rules to have completed 15 acceptable continuing hours during the 2013-2015 renewal period, including three hours in the subject

area of substance abuse. In conjunction with this audit, she was also required to provide written verification of her nursing employment. Since Ms. Surdow has filed no response to the requests for such documentation, and since she has not communicated with Board staff nor attended the hearing in order to explain her failure to respond, I find as a matter of fact that she is deficient in the full amount of 15 acceptable continuing education hours for the audited biennium, and is further deficient in having failed to verify her employment.

Conclusions of Law

The notice of this hearing provided Ms. Surdow with the date, time, place and subject matter of the proceedings. The notice otherwise comported with legal requirements for notices of hearings before the Board. AHU X1.

The notice was prepared and mailed to Ms. Surdow in the normal course of Division business by First Class mail to the last and most current physical address which she had reported to the Board. Licensees are expected and required to update their address information as changes occur. The First Class mailing was not returned to the Division as undeliverable. Hence, under the "mailbox rule" a rebuttable legal presumption arises that the First Class copy of AHU X1 was in fact received by Ms. Surdow. Further, AHU X1 was also emailed to Ms. Surdow at her last reported email address. The emailing did not result in a return message that it was undelivered or undeliverable. AHU X1 at 2. Hence, it is also presumed that Ms. Surdow received the emailed AHU X1 as well. Based on this hearing record, I conclude as a matter of law that Ms. Surdow received good and valid notice of this hearing. She failed or refused to attend the hearing.

It is public policy in Delaware that the practice of nursing by competent persons is necessary for the protection of the public health, safety and welfare. To that end the legislature has chartered the Board of Nursing and vested it with the authority to administer, supervise and regulate the profession. 24 Del. C. §1901. The Board is empowered to adopt regulations which carry into effect the Delaware Nursing Act. 24 Del. C. §1906(a)(1). The Board is specifically authorized to adopt regulations establishing continuing education requirements for its licensees. 24 Del. C. §1906(a)(18). The Board is vested with

the authority to conduct hearings and to impose professional discipline upon its licensees when the Board deems such action just and proper. 24 Del. C. §1906(a)(9). It may be a basis for professional discipline if a licensee engages in unprofessional conduct as the Board defines that term in its regulations. 24 Del. C. §1922(a)(8). A form of unprofessional conduct is the failure to comply with Board requirements for continuing education. Bd. Reg. 10.4.2.27. These are all valid means and ends rationally related to the legitimate State purpose of protecting the public from those who would engage in the unprofessional or incompetent practice of nursing.

Loriann Surdow is an active licensee of the Board of Nursing. She was selected at random in 2015 for an audit of her completed continuing education hours during the license renewal period October 1, 2013-September 30, 2015. As a Registered Nurse licensee who was issued her license during the period under audit, Ms. Surdow was required to have completed at least 15 contact hours of continuing education during the 2013-2015 renewal period. Bd. Reg. 9.2.2.3.1. At least three of those hours must have been completed in the subject area of substance abuse. *Id.*

In both an audit notice and final audit notice Ms. Surdow was requested to submit proof of her completion of continuing education hours during the 2013-2015 renewal period. BX 1-2. She was also requested to submit written verification of her nursing employment. The audit notices were mailed to her at the same physical address where she received the hearing notice. Ms. Surdow failed or refused to respond to the audit notices. She was given a final opportunity to submit her documentation in the hearing notice. She again failed or refused to respond. Consequently, I conclude as a matter of law that Ms. Surdow has violated Bd. Reg. 10.4.2.27. As such, she is subject to professional discipline pursuant to 24 Del. C. §1922(a)(8).

I further conclude that Ms. Surdow has demonstrated disrespect for the lawful processes of the Board by failing to file any response to the audit notices in this case, and by failing or refusing to attend the hearing in order to explain her actions. The level of professional discipline recommended below is consistent with the Board's conclusion in other cases that, without compliance with Board continuing

education regulations, the Board has no assurance that a licensee has maintained her competencies and will not endanger the public health, safety and welfare.


Due process has been afforded in this case.

Recommendation

Based on due consideration of all relevant evidence and based on the findings of fact and conclusions of law set for the above, the following is recommended to the Board:

1. That the Board suspend the nursing license currently issued to Loriann Surdow, effective immediately and as of the date when a majority of the Board votes to impose such discipline;
2. That Ms. Surdow's license suspension continue from time to time thereafter until she shall complete the 15 contact hours of acceptable continuing education and submit documentary proof to the Executive Director of the Board that she has done so, and has further submitted a completed Verification of Nursing Employment form to the Executive Director;
3. That the 15 hours which Ms. Surdow may complete in satisfaction of the terms of the final order of the Board in this case shall apply solely to clear her deficiency for the 2013-2015 license renewal period and shall not be credited on her account to any other renewal period, including the 2015-2017 renewal period;
4. That Ms. Surdow be designated for continuing education audit at the close of the 2015-2017 license renewal period;
5. That the final order of the Board in this case constitute public disciplinary action reportable to pertinent public practitioner data bases.

Dated: December 7, 2016



Roger A. Akin
Chief Hearing Officer