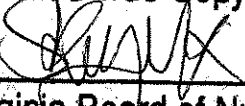


Certified True Copy

By 
Virginia Board of Nursing



COMMONWEALTH of VIRGINIA

RECEIVED

JUN 26 2013

VA BD OF NURSING

Dianne L. Reynolds-Cane, M.D.
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

June 25, 2013

Stephen Michael Kelly
1713 W. Ash
Fullerton, CA 92833

CERTIFIED MAIL

DUPLICATE COPY
VIA FIRST CLASS MAIL

DATE 6/25/13

RE: License No.: 0001-212390

Dear Mr. Kelly:

Pursuant to Section 54.1-2409 of the Code of Virginia (1950), as amended, ("Code"), you are hereby given notice that your license to practice nursing in the Commonwealth of Virginia has been mandatorily suspended by the enclosed Order entered June 25, 2013. You are hereby advised that, pursuant to Section 54.1-2409.1 of the Code, any person who practices a profession or occupation after having their license or certificate to do so suspended shall be guilty of a felony. Please return your license to Jay P. Douglas, Executive Director of the Virginia Board of Nursing, at the above address, immediately upon receipt of this letter.

Section 54.1-2409 of the Code further provides that you may apply to the Board of Nursing ("Board") for reinstatement of your license, and shall be entitled to a hearing not later than the next regular meeting of the Board after the expiration of sixty days from the receipt of such reinstatement application. You have the following rights, among others: to be represented by legal counsel, to have witnesses subpoenaed on your behalf, to present documentary evidence and to cross-examine adverse witnesses. The reinstatement of your license shall require the affirmative vote of three-fourths of the members present of the Board of Nursing.

Should you wish to petition the Board of Nursing for reinstatement of your license, contact Jay P. Douglas, Executive Director, at the above address or (804) 367-4599.

Sincerely,



Dianne L. Reynolds-Cane, M.D., Director
Department of Health Professions

Enclosures
Case # 145235

VIRGINIA:

BEFORE THE DEPARTMENT OF HEALTH PROFESSIONS

IN RE: STEPHEN MICHAEL KELLY, R.N.
License Number: 0001-212390

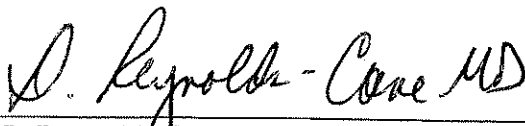
ORDER

In accordance with Section 54.1-2409 of the Code of Virginia (1950), as amended, ("Code"), I, Dianne L. Reynolds-Cane, M.D., Director of the Virginia Department of Health Professions, received and acted upon evidence that the license of Stephen Michael Kelly, R.N., to practice as a registered nurse in the State of Ohio was suspended by an Adjudication Order dated May 17, 2013. A certified copy of the Adjudication Order (with attachment) is attached to this Order and is marked as Commonwealth's Exhibit No. 1.

WHEREFORE, by the authority vested in the Director of the Department of Health Professions pursuant to Section 54.1-2409 of the Code, it is hereby ORDERED that the license of Stephen Michael Kelly, R.N., to practice as a professional nurse in the Commonwealth of Virginia be, and hereby is, SUSPENDED.

Upon entry of this Order, the license of Stephen Michael Kelly, R.N., will be recorded as suspended. Should Mr. Kelly seek reinstatement of his license pursuant to Section 54.1-2409 of the Code, he shall be responsible for any fees that may be required for the reinstatement and renewal of his license prior to issuance of his license to resume practice.

Pursuant to Sections 2.2-4023 and 54.1-2400.2 of the Code, 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 and copying upon request.



Dianne L. Reynolds-Cane, M.D., Director
Department of Health Professions
ENTERED: 6-25-13



COMMONWEALTH of VIRGINIA

Dianne L. Reynolds-Cane, M.D.
Director

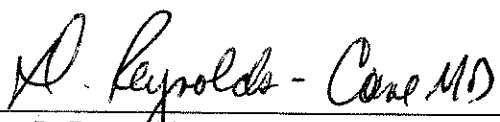
Department of Health Professions

Perimeter Center
9960 Mayland Drive, Suite 300
Henrico, Virginia 23233-1463

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

CERTIFICATION OF DUPLICATE RECORDS

I, Dianne L. Reynolds-Cane, M.D., Director of the Department of Health Professions, hereby certify that the attached Adjudication Order (with attachment) dated May 17, 2013, regarding Stephen Michael Kelly, R.N., is a true copy of the records received from the Ohio Board of Nursing.



Dianne L. Reynolds-Cane, M.D.

Date: 6-25-13



Ohio Board of Nursing

www.nursing.ohio.gov

17 South High Street, Suite 400 • Columbus, Ohio 43215-7410 • (614) 466-3947

BEFORE THE OHIO BOARD OF NURSING

IN THE MATTER OF:

CASE # 12-000790

STEPHEN MICHAEL KELLY, R.N.

ADJUDICATION ORDER

This matter came for consideration before the Ohio Board of Nursing (hereinafter "Board") on May 17, 2013. At such time the Board verified that it reviewed the following materials prior to consideration of this matter:

Hearing Transcript; State's Exhibits; and the Hearing Examiner's Report and Recommendation.

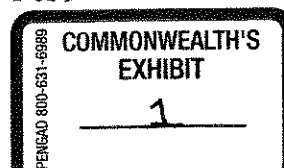
Brian C.M. Forbes was the Hearing Examiner designated in this matter pursuant to Section 119.09, Ohio Revised Code (ORC). *A true copy of the Report and Recommendation of Brian C.M. Forbes is attached hereto and incorporated herein.*

On this date, the Board accepted all of the Findings of Fact and Conclusions of Law, and the Recommendation in the Hearing Examiner's Report and Recommendation, and ordered that **STEPHEN MICHAEL KELLY's** license to practice nursing as a registered nurse in the State of Ohio be suspended for an indefinite period of time with the conditions for reinstatement set forth below, and following reinstatement, **MR. KELLY's** license to practice nursing as a registered nurse shall be subject to a stayed suspension under the probationary terms, conditions, and limitations set forth below for a minimum period of two (2) years, with the **Permanent Practice Restrictions** set forth below.

REQUIREMENTS AND CONDITIONS FOR REINSTATEMENT

1. **MR. KELLY** shall obey all federal, state, and local laws, and all laws and rules governing the practice of nursing in Ohio.
2. **MR. KELLY** shall appear in person for interviews before the full Board or its designated representative as requested by the Board or its designee.
3. **Prior to requesting reinstatement by the Board, MR. KELLY** shall submit a request to the Bureau of Criminal Identification and Investigation (BCII) to conduct a criminal records check of **MR. KELLY**, including a check of Federal Bureau of Investigation (FBI) records, and shall cause BCII to submit **MR. KELLY's** criminal records check

[Signature]
Ohio Board of Nursing
Angela Records Custodian



reports to the Board. A request for reinstatement will not be considered by the Board until the completed criminal records check, including the FBI check, has been received by the Board.

4. **Prior to requesting reinstatement by the Board, MR. KELLY** shall pay the fine of one-thousand dollars (\$1,000.00) as ordered in the 2011 Consent Agreement, and further, the additional fine of five hundred dollars (\$500.00), for a total fine of one-thousand and five hundred dollars (\$1,500.00), by certified check, cashier check, or money order, made payable to the "Treasurer, State of Ohio," to the Board. Payment shall be mailed to the attention of the Compliance Unit, Ohio Board of Nursing, 17 South High Street, Suite 400, Columbus, OH 43215-7410.

Monitoring

5. **MR. KELLY** shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of **MR. KELLY's** history. **MR. KELLY** shall self-administer the prescribed drugs only in the manner prescribed.
6. **MR. KELLY** shall abstain completely from the use of alcohol or any products containing alcohol.
7. **Upon request of the Board or its designee and within sixty (60) days of that request, MR. KELLY** shall, at his own expense, obtain a chemical dependency evaluation by a Board approved chemical dependency professional and shall provide the Board with complete documentation of this evaluation. Prior to the evaluation, **MR. KELLY** shall provide the chemical dependency professional with a copy of this Order and Notice of Automatic Suspension and Opportunity for Hearing. Further, **MR. KELLY** shall execute releases to permit the chemical dependency professional to obtain any information deemed appropriate and necessary for the evaluation. The chemical dependency professional shall submit a written opinion to the Board that includes diagnoses, recommendations for treatment and monitoring, any additional restrictions that should be placed on **MR. KELLY's** license, and a statement as to whether **MR. KELLY** is capable of practicing nursing according to acceptable and prevailing standards of safe nursing care.
8. **MR. KELLY** shall provide the Board with satisfactory documentation of compliance with all aspects of the treatment plan developed by the chemical dependency professional described above until released. Further, the Board may utilize the professional's recommendations and conclusions from the evaluation as a basis for additional terms, conditions, and limitations on **MR. KELLY's** license.
9. **For a minimum, continuous period of six (6) months immediately prior to requesting reinstatement, MR. KELLY** shall submit, at his expense and on the day selected, blood or urine specimens for drug and/or alcohol analysis at a collection site specified by the Board at such times as the Board may request. Upon and after **MR.**

KELLY's initiation of drug screening, refusal to submit such specimen, or failure to submit such specimen on the day he is selected, or in such a manner as the Board may request, shall constitute a violation of a restriction placed on a license for purposes of Section 4723.28(B), ORC. This screening shall require a daily call-in process. The specimens submitted by **MR. KELLY** shall be negative, except for substances prescribed, administered, or dispensed to her by another so authorized by law who has full knowledge of **MR. KELLY's** history.

10. Within thirty (30) days prior to **MR. KELLY** initiating drug screening, **MR. KELLY** shall provide a copy of this Order to all treating practitioners and shall provide to the Board a list of all treating practitioners, including addresses and telephone numbers and cause all treating practitioners to complete a medication prescription report that is to be mailed by the practitioner directly to the Board. The medication report is to be completed for any and all substances prescribed, administered, or dispensed to **MR. KELLY**.
11. After initiating drug screening, **MR. KELLY** shall be under a continuing duty to provide a copy of this Order, prior to initiating treatment, to additional treating practitioners, and to update the list of treating practitioners with the Board within forty-eight (48) hours of being treated by another practitioner. Further, **MR. KELLY** shall notify the Board of any and all medication(s) or prescription(s) received within twenty-four (24) hours of release from hospitalization or medical treatment.
12. For a minimum, continuous period of six (6) months immediately prior to requesting reinstatement, **MR. KELLY** shall attend a minimum of one (1) meeting per week of a support or peer group meeting approved in advance by the Board, or a Twelve Step program, and **MR. KELLY** shall provide satisfactory documentation of such attendance to the Board prior to reinstatement.

Reporting Requirements of MR. KELLY

13. **MR. KELLY** shall sign release of information forms allowing health professionals and other organizations to submit requested documentation or information directly to the Board.
14. **MR. KELLY** shall submit any and all information that the Board may request regarding his ability to practice according to acceptable and prevailing standards of safe nursing practice.
15. **MR. KELLY** shall not submit or cause to be submitted any false, misleading, or deceptive statements, information, or documentation to the Board or to employers or potential employers.
16. **MR. KELLY** shall submit the reports and documentation required by this Order on forms specified by the Board. All reporting and communications required by this Order shall be made to the Compliance Unit of the Board.

17. **MR. KELLY** shall submit the reports and documentation required by this Order to the attention of the Compliance Unit, Ohio Board of Nursing, 17 South High Street, Suite 400, Columbus, OH 43215-7410.
18. **MR. KELLY** shall verify that the reports and documentation required by this Order are received in the Board office.
19. **MR. KELLY** shall inform the Board within three (3) business days, in writing, of any change in address and/or telephone number.

DURATION

The Board may only alter the indefinite suspension imposed if: (1) **MR. KELLY** submits a written request for reinstatement; (2) the Board determines that **MR. KELLY** has complied with all conditions of reinstatement; and (3) the Board determines that **MR. KELLY** is able to practice according to acceptable and prevailing standards of safe nursing care based upon an interview with **MR. KELLY** and review of the documentation specified in this Order.

Following reinstatement, MR. KELLY shall be subject to the following probationary terms, conditions, and limitations for a minimum period of two (2) years.

1. **MR. KELLY** shall obey all federal, state, and local laws, and all laws and rules governing the practice of nursing in Ohio.
2. **MR. KELLY** shall appear in person for interviews before the full Board or its designated representative as requested by the Board or its designee.

Monitoring

3. **MR. KELLY** shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of **MR. KELLY's** history. **MR. KELLY** shall self-administer prescribed drugs only in the manner prescribed.
4. **MR. KELLY** shall abstain completely from the use of alcohol or any products containing alcohol.
5. During the probationary period, **MR. KELLY** shall submit, at his expense and on the day selected, blood or urine specimens for drug and/or alcohol analysis at a collection site specified by the Board at such times as the Board may request. Refusal to submit such specimen, or failure to submit such specimen on the day she is selected, or in such a manner as the Board may request, shall constitute a violation of a restriction placed on a license for purposes of Section 4723.28(B), ORC. This screening shall require a daily call-in process. The specimens submitted by **MR. KELLY** shall be negative, except for substances prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of **MR. KELLY's** history.

Treating Practitioners and Reporting

6. Within sixty (60) days of the execution of the probationary period, **MR. KELLY** shall provide a copy of this Order to all treating practitioners and shall provide to the Board a list of all treating practitioners, including addresses and telephone numbers. Further, **MR. KELLY** shall be under a continuing duty to provide a copy of this Order, prior to initiating treatment, to additional treating practitioners, and to update the list of treating practitioners with the Board within forty-eight (48) hours of being treated by another practitioner.
7. **MR. KELLY** shall cause all treating practitioners to complete a medication prescription report that is to be mailed by the practitioner directly to the Board. The medication report is to be completed for any and all substances prescribed, administered, or dispensed to **MR. KELLY** throughout the duration of this Order.
8. Within twenty-four (24) hours of release from hospitalization or medical treatment, **MR. KELLY** shall notify the Board of any and all medication(s) or prescription(s) received.

Employment Conditions

9. Prior to accepting employment as a nurse, each time with every employer, **MR. KELLY** shall **notify the Board, in writing.**
10. **MR. KELLY** is under a continuing duty to provide a copy of this Order and Notice of Automatic Suspension and Opportunity for Hearing to any new employer **prior to accepting nursing employment.** **MR. KELLY** shall have his employer(s), if working in a position where a nursing license is required, submit written reports regarding job performance on a quarterly basis **beginning within thirty (30) days of accepting nursing employment.** **MR. KELLY** shall have his employer(s) send documentation to the Board, along with the first employer report, of receipt of a copy of this Order and Notice of Automatic Suspension and Opportunity for Hearing, including the date they were received.

Reporting Requirements of MR. KELLY

11. **MR. KELLY** shall sign releases of information forms allowing health professionals and other organizations to submit the requested documentation directly to the Board.
12. **MR. KELLY** shall submit any and all information that the Board may request regarding her ability to practice according to acceptable and prevailing standards of safe nursing practice.
13. **MR. KELLY** shall not submit or cause to be submitted any false, misleading, or deceptive statements, information, or documentation to the Board or to employers or potential employers.

14. **MR. KELLY** shall submit the reports and documentation required by this Order on forms specified by the Board. All reporting and communications required by this Order shall be made to the Compliance Unit of the Board.
15. **MR. KELLY** shall submit the reports and documentation required by this Order or any other documents required by the Board to the attention of the Compliance Unit, Ohio Board of Nursing, 17 South High Street, Suite 400, Columbus, OH 43215-7410.
16. **MR. KELLY** shall verify that the reports and documentation required by this Order are received in the Board office.
17. **MR. KELLY** shall inform the Board within five (5) business days, in writing, of any change in employment status or of any change in residential or home address or telephone number.
18. **Prior to working as a nurse**, if requested by the Board or its designee, **MR. KELLY** shall complete a nurse refresher course or extensive orientation approved in advance by the Board.

Permanent Practice Restrictions

MR. KELLY shall not practice nursing as a registered nurse (1) for agencies providing home care in the patient's residence; (2) for hospice care programs providing hospice care in the patient's residence; (3) for staffing agencies or pools; (4) as an independent provider where the nurse provides nursing care and is reimbursed for services by the State of Ohio through State agencies or agents of the State; or (5) for an individual or group of individuals who directly engage **MR. KELLY** to provide nursing services for fees, compensation, or other consideration or as a volunteer.

MR. KELLY shall not function in a position or employment where the job duties or requirements involve management of nursing and nursing responsibilities, or supervising and evaluating nursing practice. Such positions include, but are not limited to, the following: Director of Nursing, Assistant Director of Nursing, Nurse Manager, Vice President of Nursing.

FAILURE TO COMPLY

The stay of MR. KELLY's suspension shall be lifted and MR. KELLY's license to practice nursing as a registered nurse will be automatically suspended if it appears to the Board that **MR. KELLY** has violated or breached any terms or conditions of this Order. Following the automatic suspension, the Board shall notify **MR. KELLY** via certified mail of the specific nature of the charges and automatic suspension of his license. Upon receipt of this notice, **MR. KELLY** may request a hearing regarding the charges.

DURATION

The Board may only alter the probationary period imposed by this Order if: (1) the Board determines that **MR. KELLY** has complied with all aspects of this Order; and (2) the Board determines that **MR. KELLY** is able to practice according to acceptable and prevailing standards of safe nursing care without Board monitoring, based upon an interview with **MR. KELLY** and review of the reports as required herein. Any period during which **MR. KELLY** does not work in a position for which a nursing license is required shall not count toward fulfilling the probationary period imposed by this Order.

This ORDER shall become effective immediately and is hereby entered upon the Journal of the Board for the 17th day of May, 2013.

TIME AND METHOD TO PERFECT AN APPEAL

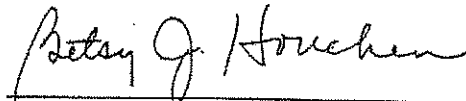
Any party desiring to appeal shall file a Notice of Appeal with the Ohio Board of Nursing, 17 S. High St., Suite 400, Columbus OH 43215-7410, setting forth the order appealed from and stating that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice of appeal may, but need not, set forth the specific grounds of the party's appeal.

A copy of such Notice of Appeal shall also be filed by the appellant with the Franklin County Court of Common Pleas, Columbus, Ohio. In filing a notice of appeal with the agency or court, the notice that is filed may be either the original notice or a copy of the original notice. Such notices of appeal shall be filed within fifteen (15) days after the mailing of the notice of the Ohio Board of Nursing's Order as provided in Section 119.12 of the Ohio Revised Code.

CERTIFICATION

The State of Ohio
County of Franklin

I, the undersigned Betsy J. Houchen, Executive Director for the Ohio Board of Nursing, hereby certify that the foregoing is a true and exact reproduction of the original Order of the Ohio Board of Nursing entered on its Journal, on the 17th day of May, 2013.



Betsy J. Houchen, R.N., M.S., J.D.
Executive Director

May 17, 2013

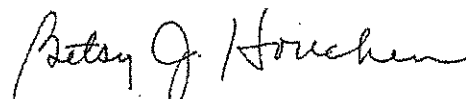
Date

(SEAL)

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Order, concerning **STEPHEN MICHAEL KELLY**, was sent via certified mail, return receipt requested, this 5th day of June, 2013 to **STEPHEN MICHAEL KELLY**, at 1713 West Ash, Fullerton, CA 92833.

I also certify that a copy of the same was sent via regular U.S. mail this 5th day of June, 2013 to Lamont Pugh, SAC, Sanctions & Exclusions, Department of Health and Human Services, Office of Inspector General, Office of Investigations, P.O. Box 81020, Chicago, IL 60601-81020.



Betsy J. Houchen, R.N., M.S., J.D.
Executive Director

bcmf

cc: Henry G. Appel, Assistant Attorney General

Certified Mail Receipt No. 7012 1010 0003 6598 1943

RECEIVED

State of Ohio
Board of Nursing 2013 FEB -7 PH 2:55
17 South High Street, Suite 400
Columbus, Ohio 43215-7410 BOARD OF NURSING
OHIO

In the Matter of
Stephen Michael Kelly, R.N.
Respondent

Brian C.M. Forbes, J.D.
Hearing Examiner

Case No. 12-000790

February 7, 2013
Report and Recommendation

Appearances: For the Ohio State Board of Nursing: Michael DeWine, OHIO ATTORNEY GENERAL, and Henry Appel, Esq., Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, OH 43215-3428. Telephone: 614-466-8600; Fax: 614-466-6090.

For the Licensee/Respondent: Stephen M. Kelly, 1713 West Ash, Fullerton, CA 92833. Telephone: 714-447-4938; Fax: None. Email: steve.kelly@yahoo.com.

Nature of the Case

This is an administrative proceeding under Chapter 119 (the Administrative Procedure Act), and Chapter 4723 (the Nurse Practice Act), of the Ohio Revised Code ("ORC"). This case involves a Notice of Automatic Suspension and Opportunity for Hearing ("Notice") issued to the Respondent, Stephen Michael Kelly, R.N. ("Respondent" or "Mr. Kelly"), on May 18, 2012. (State Exhibit 1.)

In the Notice, the Ohio Board of Nursing ("Board") informed Mr. Kelly that his license to practice nursing as a registered nurse ("R.N.") was automatically suspended pursuant to the Failure to Comply section of his November 18, 2011 Consent Agreement ("Consent Agreement") with the Board, based on his failure to comply with the terms and conditions of his Consent Agreement. (*Id.*) These violations included his failure to pay his fine, and to register with Firstlab to participate in the Board's random alcohol/drug screening program. (*Id.*) The Board also notified Mr. Kelly that it intended to take disciplinary action against his nursing license pursuant to Section 4723.28(B)(17), ORC, based on his failure to comply with the terms and conditions of his Consent Agreement as referenced above. (*Id.*)

In the Notice sent to Mr. Kelly, the Board set forth its reasons for the proposed action, identified the charges against him, and advised Mr. Kelly of his right to a hearing. (*Id.*) Mr.

CERTIFIED TO BE A TRUE COPY


Cynthia Record-Castaden

Kelly made a timely request for a hearing. (State Exhibit 2.) The Board gave Mr. Kelly written notice that it would consider the charges in proceedings to be held before a Hearing Examiner, setting forth the date, time, and location for this hearing. (State Exhibits 3, 4)

The parties were provided with the opportunity to present evidence on the charges during a hearing conducted on December 11, 2012. Although Mr. Kelly was notified about the hearing, he did not appear. (State Exhibits 3, 4; *see Tr.*, pp. 5-6, 16-17, 28-29.) The State presented its evidence, including exhibits and witness testimony.

This report is based on the evidence presented at the hearing.

Summary of the Issues

In the Notice, the Board alleged the following underlying facts in support of the charged violation against Mr. Kelly:

On or about November 18, 2011 . . . you entered into a Consent Agreement . . . with the Ohio Board of Nursing . . . in which you agreed with the Board that your license to practice nursing as a registered nurse in the State of Ohio would be suspended indefinitely and that such suspension would be stayed subject to probationary terms, conditions, and limitations for a minimum period of two (2) years. *Attached to and incorporated within the November 2011 Consent Agreement is a November 19, 2010 Notice of Opportunity for Hearing (November 2010 Notice) with the attached August 2, 2006 Texas Agreed Order) and the November 14, 2007 Nevada Letter.*

Item 4 of the November 2011 Consent Agreement states, "MR. KELLY is hereby fined five hundred dollars (\$500.00) for each application he submitted to the Board that contained false information. BY JANUARY 1, 2012, MR. KELLY shall pay the fine of one thousand dollars (\$1,000.00) by certified check, cashier check, or money order, made payable to the "Treasurer, State of Ohio," to the Board. Payment shall be mailed to the attention of the Compliance Unit, Ohio Board of Nursing, 17 South High Street, Suite 400, Columbus, OH 43215-7410."

Despite this provision, as of April 23, 2012, you have failed to submit to the Board a payment of one thousand dollars (\$1, 000.00).

Item 7 of the November 2011 Consent Agreement states, "Within forty-five (45) days of the effective date of this Consent Agreement and continuing for a minimum, continuous period of six (6) months, MR. KELLY shall submit, at his expense and on the day selected, blood, breath, hair, or urine specimens for drug and/or alcohol analysis at a collection site specified by the Board at such times as the Board may request. Upon and after MR. KELLY's initiation of drug screening, refusal to submit such specimen, or failure to submit such specimen on the day he is selected, or in such a manner as the Board may request, shall constitute a violation of a restriction placed on a license for purposes of Section 4723.28(B), ORC. This screening shall require a daily call-in process. The specimens submitted by MR. KELLY shall be negative, except for substances prescribed, administered, or dispensed to him by another so authorized by law who has received a complete copy of this Consent Agreement prior to prescribing for MR. KELLY."

Despite this provision, as of April 23, 2012, you have failed to register with FirstLab, the Board's random drug/alcohol screen program administrator, to determine if you had been selected to provide a specimen for analysis.

(State Exhibit 1; emphasis in original.)

From the evidence before me, I find that all of the underlying factual allegations in the Notice that serve as the basis for the charged violation against Mr. Kelly have been proven. He violated the terms of his Consent Agreement by: failing to pay his fine; and failing to register with Firstlab to participate in the Board's random alcohol/drug screening program. (See Tr., pp. 20, 24-25.)

The Board is required to consider the merits of each case, and may, based upon the circumstances leading to the charges, consider both aggravating and mitigating circumstances shown in the record. Because the evidence establishes a valid basis for disciplinary action against Mr. Kelly pursuant to Section 4723.28(B)(17), ORC, and after considering the evidence in aggravation and in mitigation, I recommend that Mr. Kelly's license to practice as a R.N. be indefinitely suspended, with specific conditions for reinstatement. Thereafter, should Mr. Kelly meet all the conditions for reinstatement, his license should then be subject to probationary terms and conditions for a period of not less than two (2) years.

My analysis follows.

Evidence Examined

The State presented evidence in the form of exhibits, identified in the record at page 3 of the transcript of proceedings. State's Exhibits 1-7 were admitted into the record following their identification. (Tr., p. 30.) The State's Exhibits included the following: Notice of Automatic Suspension and Opportunity for Hearing and other procedural and scheduling documents for Hearing (State Exhibits 1-4); Letters to and from Mr. Kelly (State Exhibits 5, 6); and Mr. Kelly's Credential View Screen (State Exhibit 7).

The State called Michael Wise, an Adjudication Coordinator for the Board, and Marion Wilson, a Monitoring Agent for the Board, to testify.

Mr. Kelly did not appear, and no other witnesses testified on his behalf.

Mr. Kelly presented no other evidence or exhibits for admission or consideration.

All testimony and exhibits admitted in the hearing of the matter, whether or not specifically referred to in this Report, were thoroughly reviewed and considered by the Hearing Examiner prior to the entry of the findings, conclusions, and recommendations shown below.

Summary of the Evidence

Mr. Kelly graduated from nursing school in California on or about June 1, 1991. (*See* State Exhibit 7, p. 2; *see also* Tr., p. 23.) Mr. Kelly stated that he was admitted to a drug diversion program at Cornerstone of Southern California in June of 2004, which he successfully completed in 2007. (*See* State Exhibit 1, p. 7.) While in the program, Mr. Kelly reported that he submitted to random drug screens, all of which were negative. (*See id.*) Mr. Kelly also asserted that he had not used any drugs or alcohol since 2004. (*See id.*)

While in the diversion program, Mr. Kelly obtained his R.N. license in Ohio on August 26, 2005. (*See* State Exhibit 1, p. 6; *See* State Exhibit 7.)

Effective August 2, 2006, Mr. Kelly entered into an Agreed Order with the State of Texas Board of Nursing. (State Exhibit 1, pp. 16-21; *see also* Tr., p. 11.) This Order was the result of Mr. Kelly's disclosure in his Texas application that he was "addicted to and/or treated for the use of alcohol or any other drug" within the past five (5) years. (State Exhibit 1, p. 17.)

On May 30, 2007, Mr. Kelly submitted his biennial renewal application for his nursing license in Ohio. (*See* State Exhibit 1, p. 6.) In his 2007 renewal application, Mr. Kelly falsely stated that he had not entered into an agreement with respect to a professional license in lieu of or in order to avoid formal disciplinary action with any other nursing Board; he failed to disclose his August 2006 Agreed Order in Texas. (*See id.*; *see also* Tr., p. 27.)

On November 7, 2007, the State Board of Nursing in Nevada denied Mr. Kelly's application for licensure due to "controlled substances and/or alcohol related action in another state." (*See* State Exhibit 1, pp. 6, 23.)

On June 16, 2009, Mr. Kelly submitted his Ohio biennial renewal application on-line. (*See id.* at 6.) In his application, Mr. Kelly failed to disclose the denial of his nursing license application in Nevada; he falsely stated that he had not been denied professional licensure or re-licensure in any other state. (*See id.*; *see also* Tr., pp. 26-27.)

As a result of his falsified statements to the Ohio Board of Nursing in his 2007 and 2009 biennial renewal applications about his Agreed Order in Texas and his licensure denial in Nevada, the Board issued a Notice of Opportunity for Hearing to Mr. Kelly on November 19, 2010. (State Exhibit 1, pp. 13-15.) Effective November 18, 2011, Mr. Kelly entered into a Consent Agreement with the Board resolving the November 2010 Notice. (State Exhibit 1, pp. 5-12.) Among other terms and conditions, the Consent Agreement required that Mr. Kelly pay a

total fine of one-thousand dollars (\$1,000.00) to the Board by January 1, 2012, and that he enroll and participate in the Board's random drug/alcohol screening program within forty-five (45) days of the effective date of the Consent Agreement. (State Exhibit 1, pp. 7-8.) As of the effective date of his Consent Agreement with the Board, Mr. Kelly held nursing licenses in the following jurisdictions: Nevada, Massachusetts, Ohio, Virginia, Indiana, Missouri, New Mexico, Texas, Utah, and Washington. (*See id.* at 6.)

Mr. Kelly's Monitoring Agent, Marion Wilson, mailed the Consent Agreement to Mr. Kelly on November 21, 2010, together with instructions, forms, and an application for Firstlab, the drug screen administrator for the Board. (State Exhibit 5; *see also* Tr., pp. 19, 21-22.)

Mr. Kelly neither paid the fine nor enrolled and participated in the Board's random drug/alcohol screening program through Firstlab. (*See* Tr., pp. 20, 24-25.) By letter dated February 3, 2012, and sent via email to Ms. Wilson with the Board, Mr. Kelly stated that "[s]ubsequent to the signing of the [consent] agreement I have decided that the agreement is extremely harsh, that I am not willing to abide by its terms, and that it creates a substantial hardship."¹ (State Exhibit 6.) He further admitted that he "answered applications wrongly," and accordingly, "there should be consequences," but also stated the he is "not willing to 'start over' with daily call-ins" and other requirements "which would normally be required of someone who had a recent chemical problem." (*Id.*)

Consequently, the Board issued a Notice to Mr. Kelly on May 18, 2012, at which time his nursing license in Ohio was automatically suspended. (State Exhibit 1.)

With regard to possible discipline and sanctions, the State requested "[a]t the very minimum, Mr. Kelly should have an indefinite suspension until he complies with the terms of the Consent Agreement," with an extension of the drug screening period from six (6) months to one (1) year. (Tr., p. 33.) While not "necessarily recommending it," the State also suggested that the Board "at least consider" whether or not a nonpermanent revocation is appropriate. (*Id.* at 34.)

If we have somebody who has gotten a reasonable Consent Agreement and not because of inability, but just because of unwillingness, refuses to comply with the Consent Agreement, perhaps this is a person who shouldn't even be practicing nursing in Ohio at all.

¹ Although this letter was on Attorney Hugh Douglas Whittemore's letterhead, it was sent under the electronic signature of Mr. Kelly. (State Exhibit 6; *see also* Tr., p. 32.) Mr. Whittemore is not licensed to practice law in the State of Ohio, and he declined to petition the Ohio Supreme Court and the Board as required to appear *pro hac vice* in this case. (*See* Tr., pp. 5-6, 13, 16-17.)

Now, I don't necessarily think it should be a permanent revocation, but at least consider the idea of a nonpermanent revocation where the onus will be upon Mr. Kelly to show why he should be allowed to return to the practice of nursing in Ohio.

(*Id.*)

Analysis

The Board is statutorily charged with the duty and obligation to protect the public, and the integrity of the nursing profession. (*See* Chapter 4723, ORC.) While the impact and result of Board disciplinary action may ultimately be to revoke, limit, or restrict a nurse's ability to practice temporarily or permanently, the intent is not primarily or necessarily punitive in nature, but, to protect the public and ensure safe nursing practices. Ultimately, however, any potential sanction or discipline under consideration by the Board is a result of the conduct, actions, and decisions of the licensee.

Here, from the record now before the Board, it appears that there is a preponderance of evidence to find that all of the factual allegations in the Notice have been proven, and that Mr. Kelly failed to comply with Items 4 and 7 of his Consent Agreement by not paying his fine and refusing to enroll and participate in the Board's random drug/alcohol screening program administered by Firstlab. (*See* State Exhibit 1, pp. 7-8; Tr., pp. 20, 24-25.) Accordingly, and pursuant to Section 4723.28(B)(17), ORC, the Board is authorized to discipline Mr. Kelly.

Mr. Kelly's non-compliance has placed his nursing license and career in peril. Compliance with all of the Board's Consent Agreement requirements is essential in cases, such as Mr. Kelly's, when screening has been identified as a necessary and mandatory requirement in order for the licensee to be permitted to continue in the nursing practice. (*See* State Exhibit 1, 5-12.) When a licensee fails to comply with random screening, and regardless of the reason(s), the Board loses its ability to ensure that a licensee is abstaining from the use of alcohol/drugs, and practicing consistent with acceptable and prevailing standards of safe nursing practice, and accordingly, its ability to protect the public. Consequently, if a licensee is permitted to practice nursing in circumstances when they are non-compliant with their terms, conditions, and restrictions, there is a great potential for risk to the public. As such, if Mr. Kelly is unwilling to be one hundred percent (100%) compliant with his requirements, to include payment of his fine and participation in the Board's random drug/alcohol screening program, he should not

reasonably expect to be permitted to continue working in the nursing profession in Ohio. (See State Exhibit 6.)

Mr. Kelly has a history with the Board, and has already been given a "chance" as a result of his prior issues with substance abuse, and falsification. Pursuant to Rule 4723-16-07(B)(1), OAC, the Board shall consider prior action taken by the Board against the Respondent when making a decision regarding discipline.

Here, Mr. Kelly's history with the Board includes his 2011 Consent Agreement with the Board due to providing false answers to questions in his 2007 and 2009 biennial renewal applications. (State Exhibit 1, pp. 5-12; *see also* Tr., pp. 26-27.) To resolve these issues, Mr. Kelly agreed to the terms and conditions found in the Consent Agreement. (*See id.*) He now finds himself before the Board, facing disciplinary action again, because of his decision not to comply with his Consent Agreement. (*See* State Exhibit 1.) Mr. Kelly has unilaterally decided, and then informed the Board, that he is not going to comply with his Consent Agreement terms as found in Items 4 and 7. (*See id.* at 7, 8; *see* State Exhibit 6.) And it is with this history in mind that I have, and the Board should, consider Mr. Kelly's case with heightened scrutiny.

Other aggravating circumstances that surround Mr. Kelly's case include the intentional, willful nature of his non-compliance, his unilateral defiance in refusing to comply with his obligations, and the fact that Mr. Kelly failed to even attend or otherwise participate in the disciplinary hearing in this matter to offer any evidence that might have been considered in mitigation.

The practice of nursing in the State of Ohio is a privilege, not a right. Mr. Kelly's own conduct and choices, and nothing else, placed him under monitoring in the first place, and now again, put his nursing license in serious jeopardy.

I have considered the merits of this case, and have, based upon the circumstances leading to these charges, also considered both aggravating and mitigating circumstances as shown in the record. Given the proven violations, Mr. Kelly's unilateral decision not to comply with his requirements, and so as to protect and ensure the public's continuing trust and confidence in the nursing profession, it is my recommendation that Mr. Kelly's R.N. license be indefinitely suspended, and that before he can seek reinstatement, he be required to submit a criminal background check, complete any nursing courses as required by the Board, random alcohol/drug

screening for six (6) months, payment of his fine as specified in the November 2011 Consent Agreement, and payment of an additional fine of five-hundred dollars (\$500.00).

Thereafter, if Mr. Kelly meets all the conditions for reinstatement, his license should then be subject to probationary terms and conditions, to be determined by the Board, for a period of not less than two (2) years, with similar terms as found in his November 2011 Consent Agreement, to include permanent practice restrictions.

Findings of Fact

Having heard the testimony of the witnesses and the arguments of the State, and having examined the exhibits admitted into evidence, I make the following findings of fact and conclusions of law. To the extent that any findings of fact constitute conclusions of law, they are offered as such. To the extent that any conclusions of law constitute findings of fact, they are so offered.

1. Respondent, Stephen Michael Kelly, holds a suspended license with the Ohio Board of Nursing as a R.N. He has been licensed in Ohio as a R.N. since August 26, 2005. His R.N. license was automatically suspended effective May 18, 2012.
2. On or about August 2, 2006, Mr. Kelly entered into an Agreed Order with the State of Texas Board of Nursing.
3. On or about November 7, 2007, the State Board of Nursing in Nevada denied Mr. Kelly's application for licensure.
4. On or about November 19, 2010, the Ohio Board of Nursing issued a Notice of Opportunity for Hearing to Mr. Kelly.
5. The State has established by at least a preponderance of the evidence that on or about November 18, 2011, Mr. Kelly entered into a Consent Agreement with the Board resolving the November 2010 Notice in which he agreed with the Board that his license to practice nursing as a registered nurse in the State of Ohio would be suspended indefinitely and that such suspension would be stayed subject to probationary terms, conditions, and limitations for a minimum period of two (2) years.
6. The State has established by at least a preponderance of the evidence that Item 4 of the November 2011 Consent Agreement states, "MR. KELLY is hereby fined five hundred dollars (\$500.00) for each application he submitted to the Board that contained false

information. BY JANUARY 1, 2012, MR. KELLY shall pay the fine of one thousand dollars (\$1,000.00) by certified check, cashier check, or money order, made payable to the "Treasurer, State of Ohio," to the Board. Payment shall be mailed to the attention of the Compliance Unit, Ohio Board of Nursing, 17 South High Street, Suite 400, Columbus, OH 43215-7410."

7. The State has established by at least a preponderance of the evidence that despite this provision, Mr. Kelly has failed to submit to the Board a payment of one thousand dollars (\$1,000.00).
8. The State has established by at least a preponderance of the evidence that Item 7 of the November 2011 Consent Agreement states, "Within forty-five (45) days of the effective date of this Consent Agreement and continuing for a minimum, continuous period of six (6) months, MR. KELLY shall submit, at his expense and on the day selected, blood, breath, hair, or urine specimens for drug and/or alcohol analysis at a collection site specified by the Board at such times as the Board may request. Upon and after MR. KELLY's initiation of drug screening, refusal to submit such specimen, or failure to submit such specimen on the day he is selected, or in such a manner as the Board may request, shall constitute a violation of a restriction placed on a license for purposes of Section 4723.28(B), ORC. This screening shall require a daily call-in process. The specimens submitted by MR. KELLY shall be negative, except for substances prescribed, administered, or dispensed to him by another so authorized by law who has received a complete copy of this Consent Agreement prior to prescribing for MR. KELLY."
9. The State has established by at least a preponderance of the evidence that Mr. Kelly has failed to register with FirstLab, the Board's random drug/alcohol screen program administrator, to determine if he has been selected to provide a specimen for analysis.
10. By letter dated February 3, 2012, and sent via email to Ms. Wilson with the Board, Mr. Kelly stated that "[s]ubsequent to the signing of the [consent] agreement I have decided that the agreement is extremely harsh, that I am not willing to abide by its terms, and that it creates a substantial hardship."

11. On May 18, 2012, the Board issued a Notice of Automatic Suspension and Opportunity for Hearing to Mr. Kelly based on his failure to comply with his Consent Agreement. Mr. Kelly made a timely request for a hearing.
12. Mr. Kelly failed to appear at the December 11, 2012 hearing, and did not submit any evidence, whether in the form of exhibits or a written statement, for consideration at the hearing.

Conclusions of Law

1. Because he holds a license as a RN. issued by the Ohio Board of Nursing, Stephen Michael Kelly, R.N., is subject to the jurisdiction of the Board in actions taken pursuant to Chapter 4723 of the Ohio Revised Code.
2. Upon sufficient cause to believe a licensee of the Board of Nursing has violated a provision of the Nurse Practice Act, the Board is authorized to take action with respect to that licensee's nursing license. Upon Mr. Kelly's receipt of the Board's charging document, he timely requested an evidentiary hearing before the Board took any final action based upon the Board's charges. Upon its receipt of Respondent's request for an administrative hearing, the Board set the matter for hearing, in the manner provided for by Chapter 119, ORC (Ohio Administrative Procedure Act), and provided the Respondent with an opportunity to be heard before it took any final action with respect to the Respondent's license as a R.N., in the manner provided for by law.
3. Section 4723.28(B)(17), ORC, authorizes the Board to discipline a licensee for violation of any restrictions placed on a nursing license by the Board.
4. The Board is authorized to take action against Mr. Kelly's license to practice nursing as a R.N. where, by at least a preponderance of the evidence, the State establishes that Mr. Kelly violated Item 4 of his Consent Agreement when he failed to pay his agreed fine of one-thousand dollars (\$1,000.00) on or before January 1, 2012.
5. The Board is authorized to take action against Mr. Kelly's license to practice nursing as a R.N. where, by at least a preponderance of the evidence, the State establishes that Mr. Kelly violated Item 7 of his Consent Agreement when he failed to register with FirstLab, the Board's random drug/alcohol screen program administrator, to determine if he has been selected to provide a specimen for analysis.

6. Pursuant to Section 4723.28(B), ORC, upon proof that the Respondent has violated a provision of the Nurse Practice Act as set forth in Section 4723.28, ORC, the Board, by a vote of a quorum, may impose one or more of the following sanctions: it may deny, revoke, permanently revoke, suspend, or place restrictions on any nursing license issued by the Board; it may reprimand or otherwise discipline a holder of a nursing license; or it may impose a fine of not more than five hundred dollars (\$500.00) per violation.

Recommendation

I have considered the merits of this case, and have, based upon the circumstances leading to these charges, also considered both aggravating and mitigating factors as shown in the record. Upon sufficient proof that the Respondent, Stephen Michael Kelly, has violated provisions of the Nurse Practice Act as shown above, and to ensure the public's continuing trust and confidence in the nursing profession, I recommend that Mr. Kelly's license to practice as a R.N. be indefinitely suspended, with specific conditions for reinstatement to be determined by the Board, and including the following: a criminal background check, complete any nursing courses as required by the Board, random alcohol/drug screening for six (6) months, payment of his fine as specified in the November 2011 Consent Agreement, and payment of an additional fine of five-hundred dollars (\$500.00).

Thereafter, if Mr. Kelly meets all the conditions for reinstatement, his license should then be subject to probationary terms and conditions, to be determined by the Board, for a period of not less than two (2) years, with similar terms as found in his November 2011 Consent Agreement, to include permanent practice restrictions.

This is a recommendation only; it is not a final order. Only the Board has the authority to enter a final order in this administrative action. The Board has the authority to adopt, modify, or reject this recommendation, and this recommendation shall have no legal effect until and unless adopted by the Board, and a final order is issued by the Board as provided for by Chapters 4723 and 119 of the Revised Code.

February 7, 2013
Date


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CERTIFICATE OF SERVICE

I certify that the original of this document was served upon the Ohio State Board of Nursing at its offices in Columbus, Ohio, by hand delivery on February 7, 2013, with instructions that the Board is to forward time-stamped copies of the entry to all parties of record, and that on that date a copy was sent by fax transmission to the parties at the fax numbers shown above.


Brian C.M. Forbes, Hearing Examiner