COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY BOARD OF REGISTRATION IN NURSING

In the Matter of	)	
Malia Nation	)	Docket No. NUR-2014-0123
RN License No. 2284969	)	
License Expired: 10/24/14	)	

FINAL DECISION AND ORDER BY DEFAULT

Pursuant to Massachusetts General Laws Chapter 30A, § 10(2), 801 CMR 1.01(7)(g) (2), the failure of Malia Nation ("Respondent"), after due notice, to appear and defend in this matter, the Board of Registration in Nursing ("Board") issues this Final Decision and Order by Default.

PROCEDURAL BACKGROUND

On November 6, 2014, the Board issued an Order to Show Cause ("OTSC")[1] ordering Respondent to show cause why the Board should not suspend, revoke, or otherwise take action against her license to practice as a Registered Nurse in the Commonwealth of Massachusetts ("Commonwealth") based on the allegations in the OTSC regarding discipline imposed in the State of Tennessee ("TN").[2] In the OTSC, Respondent was advised: "Notwithstanding the earlier filing of an Answer and/or request for a hearing, your failure to respond to notices or correspondence, failure to appear for any scheduled status conference, pre-hearing conference or hearing dates, or failure to otherwise defend this action shall result in the entry of default." Based on Respondent's claim that she failed to receive the OTSC, on December 5, 2014, Prosecuting Counsel sent Respondent a copy of the OTSC, and directed Respondent to

[1] Sent by First Class and Certified Mail No. 7014 0510 0001 0374 6427 to Respondent at her address of record in Rockvale, TN ("Rockvale address") as well as First Class and Certified Mail No. 7014 0510 0001 0374 6441 to a Brentwood, TN address.

[2] Allegations cited in the OTSC, included: discipline imposed against Respondent's license to practice nursing in TN based on a Consent Order issued by the Tennessee Board of Nursing ("Board") for Respondent's possession and use of cocaine; and Respondent's failure to adhere to the terms of the Consent Order.

file an Answer to the OTSC within 21 days.[3] By letter dated December 15, 2014, Respondent filed an Answer to the Order to Show Cause.

On February 23, 2015, the Administrative Hearings Counsel ("AHC") issued a Scheduling Order notifying Respondent that a status conference was scheduled for March 25, 2015.[4] In that Scheduling Order the AHC reminded Respondent "that failure to appear for any scheduled conferences or hearing dates shall result in the entry of default at which time the Board may issue a Final Decision and Order by Default with appropriate sanctions". Respondent failed to appear at the March 25, 2015 status conference and failed to request a continuance of the status conference. By letter dated March 25, 2015, the AHC notified Respondent that default had been entered against her based on her failure to attend the March 25, 2015 status conference.[5] Respondent was also advised that she could file a motion to remove the default by April 1, 2015 and that the motion must include demonstrated good cause for her failure to attend the conference. Respondent was also informed that if she failed to file said motion by April 1, 2015 or if she filed such a motion but failed to provide demonstrated good cause for his failure to attend the conference, the entry of default would remain in effect and the Board would issue a Final Decision and Order by Default with appropriate sanctions. Respondent failed to file a motion to remove the default by April 1, 2015.

The Board takes administrative notice of the following exhibits that are a part of the administrative record. The OTSC is incorporated herein by reference and attached hereto:

EXHIBITS

1. Order to Show Cause with attachment, November 6, 2014
   A. Tennessee Board of Nursing Consent Order re: Malia Jane Nation, November 12, 2013
2. Prosecuting Counsel's Letter to Respondent, December 5, 2014

[3] Sent by First Class and Certified Mail No. 7014 0510 0001 0374 6748 to Respondent at her Rockvale address.
[4] Sent by First Class and Certified Mail No. 7012 0470 0001 3526 5328 to Respondent at her Rockvale address.
[5] Sent by First Class and Certified Mail No. 7012 0470 0001 3526 5311 to Respondent at her address of record in Rockvale, TN.

3. Respondent's Answer to Order to Show Cause, dated December 15, 2014
4. Scheduling Order, February 23, 2015
5. Letter re: Entry of Default, March 25, 2015

DISCUSSION

By reason of Respondent's failure to appear and defend as required by the Board and her failure to respond to notices and directives, the Board enters default against Respondent and issues this Final Decision and Order. University Hospital v. MCAD, 396 Mass. 533, 539 (1986)(approving administrative agency's imposition of default where it provided reasonable procedural safeguards for notice of consequences of failure to answer and opportunity to object and where judicial review of entire proceeding was available if sought); Wang v. Board of Registration in Medicine, 405 Mass. 15, 19-20 (1989) (where professional lacked current license to practice in the Commonwealth, board had jurisdiction based on professional's inchoate right to renew license).

The Board finds that the allegations in the OTSC and the violations of statutes and regulations stated therein are deemed admitted and established. Productora e Importadora de Papel S. A. de C.V. v. Fleming, 376 Mass. 826, 833-835 (1978)(default establishes truth of allegations; Danca Corp. v. Raytheon Co., 28 Mass. App. Ct. 942, 943 (1990) (upon default, allegations of complaint are accepted as true); Respondent was afforded an opportunity for a full and fair hearing as required by G.L. c. 30A, §§ 10 and 11 (1), G.L. c. 112, § 62, and 801 CMR 1.01 (4) (c). Wherefore, in accordance with the Board's authority and statutory mandate, the Board orders as follows:[6]

ORDER

Based on its Final Decision by Default, the Board **revokes** Respondent's license to practice as a Registered Nurse in the Commonwealth, license No. RN2284969 for a

[6] In that the evidence in this default proceeding, consisting of the above-referenced exhibits, was before the Board no tentative decision is required. 801 CMR 1.01 (11).

minimum of three (3) years. The Board further revokes the Respondent's right to renew her license.

Respondent is hereby ordered to return any license issued to her by the Board, whether current or expired, to the Board's office at 239 Causeway Street, Boston, Massachusetts 02114, by hand or by certified mail, within ten (10) days of the Effective Date set forth below.

Respondent shall not practice as a Registered Nurse in Massachusetts on or after the Effective Date of this Order. "Practice as a Registered Nurse" includes, but is not limited to, seeking and accepting a paid or voluntary position as a Registered Nurse or in any way representing herself as a Registered Nurse in Massachusetts. Practice as a Registered Nurse following the Effective Date of this Order and prior to reinstatement of licensure by the Board constitutes unlicensed practice and is grounds for civil and criminal penalties as provided by G.L. c. 112, §§ 65 and 80.

The Board may choose to reinstate Respondent's license if the Board determines in its sole discretion that reinstatement is in the best interests of the public health, safety and welfare.

Respondent may petition the Board in writing for relicensure when she can provide documentation satisfactory to the Board demonstrating her ability to practice nursing in a safe and competent manner. Such documentation shall include evidence that Respondent has been in stable and sustained recovery from all substances of abuse for the three (3) years immediately preceding any petition for relicensure. Accordingly, Respondent shall with any petition for relicensure have submitted directly to the Board:

1) the results of random supervised urine tests for substances of abuse for Respondent, collected no less than fifteen (15) times per year, according to the requirements outlined in Attachment A, during the two (2) years immediately preceding the petition for relicensure, all of which are required to be negative;

2) documentation that Respondent obtained a sponsor and regularly attended Alcoholics Anonymous (AA) and/or Narcotics Anonymous (NA) meetings at least three (3) times per week during the two (2) years immediately preceding any petition for license reinstatement, such documentation to include a letter of support from the Respondent's sponsor and weekly signatures verifying this required attendance;

3) documentation verifying that she has regularly attended group or individual counseling or therapy, or both, during the two (2) years immediately preceding any petition for relicensure[7];

4) reports from Respondent's primary care provider and any specialist(s) whom Respondent may have consulted verifying that Respondent is medically able to resume the safe and competent practice of nursing, which meets the requirements set forth in Attachment B 1.

5) if employed during the year immediately preceding Respondent's petition forrelicensure, have each employer from said year submit on official letterhead an evaluation reviewing Respondent's attendance, general reliability, and overall job performance[8];

6) certified Court and/or Agency documentation that there are no pending actions or obligations, criminal or administrative, against the Respondent before any court or Administrative Agency including, but not limited to:

a. Documentation that at least one (1) year prior to any petition for reinstatement the Respondent satisfactorily completed all court requirements (including probation) imposed on her/him in connection with any criminal matter and a description of those completed requirements and/or the disposition of such matters[9]; and

b. Certified documentation from the Tennessee Board of Nursing verifying that the Respondent successfully met all requirements imposed by the Tennessee Board of Nursing in connection with their discipline of her nursing licenses and that her Tennessee license are, or are eligible to be, reinstated in good standing and free of any restrictions or conditions. [10]

7) documentation satisfactory to the Board of her successful completion of all continuing education equivalent to the continuing education required by Board regulations for the two (2) license renewal cycles immediately preceding any petition for relicensure.

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[7] Such documentation shall be completed by each licensed mental health professional seen by Respondent, and shall be written within thirty (30) days preceding any petition for relicensure. Further, such documentation shall include: a summary of Respondent's progress in therapy and her full, sustained recovery from substance abuse, dependence and addiction; a statement of the frequency and length of therapy; and specific treatment recommendations for Respondent's full, sustained recovery from substance abuse, dependence and addiction.

[8] If Respondent wasn't employed at all during this period, submit an affidavit so attesting.

[9] The Respondent shall also provide, if requested, an authorization for the Board to obtain a Criminal Offender Record Information (CORI) Report of the Respondent conducted by the Department of Criminal Justice Information Services and a sworn written statement that there are no pending actions or obligations, criminal or administrative, against the Respondent before any court or administrative body in any other jurisdiction.

[10] Respondent shall also submit certified documentation from the state board of nursing of each jurisdiction in which the Respondent has ever been licensed to practice as a nurse, other than Tennessee, sent directly to the Massachusetts Board, identifying her license status and discipline history, and verifying that her nursing license is, or is eligible to be, in good standing and free of any restrictions or conditions.

The Board may require the Respondent to submit additional documentation prior to acting on the Respondent's petition for reinstatement.

The Board may condition its approval of Respondent's petition for reinstatement upon the Respondent entering into a Consent Agreement for probation of Respondent's nursing license for a period of time, with such restrictions and requirements that the Board may at that time and in its sole discretion determine are reasonably necessary to protect the public health, safety, and welfare.

The Board voted to adopt the within Final Decision by Default at its meeting held on May 13, 2015, by the following vote:

In favor:	A. Alley, BSN, RN; M. Beal,RN/NM; P. Gales, RN; K. Gehly, RN; S.Kelly, RN/NP; J. Killion, LPN; A. Peckham, RN, MSN; C. Simonian, Pharm.D., R.Ph.; S. Taylor, MSN, RN; C. Tebaldi, RN, MS; C. Urena, LPN
Opposed:	None
Abstained:	None
Recused:	None
Absent:	B. Levin, RN; E. Richard Rothmund

The Board voted to adopt the within Final Order by Default at its meeting held on May 13, 2015, by the following vote:

In favor:	A. Alley, BSN, RN; M. Beal,RN/NM; P. Gales, RN; K. Gehly, RN; S.Kelly, RN/NP; J. Killion, LPN; A. Peckham, RN, MSN; C. Simonian, Pharm.D., R.Ph.; S. Taylor, MSN, RN; C. Tebaldi, RN, MS; C. Urena, LPN
Opposed:	None
Abstained:	None
Recused:	None
Absent:	B. Levin, RN; E. Richard Rothmund

EFFECTIVE DATE OF ORDER

This Final Decision and Order by Default becomes effective upon the tenth (10th) day from the date it is issued (see "Date Issued" below).

RIGHT TO APPEAL

Respondent is hereby notified of the right to appeal this Final Decision and Order Default to either the Supreme Judicial Court pursuant to M.G.L. c. 112, § 64 or to a Superior Court with jurisdiction pursuant to M.G.L. c. 30A §§ 14. Respondent must file her appeal within thirty (30) days of receipt of notice of this Final Decision and Order by Default.

Board of Registration in Nursing

Date Issued: May 20, 2015

Rula Harb, MSN, RN
Executive Director

Notice to:

VIA FIRST CLASS MAIL AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED 7012 3460 0001 7330 8388
Malia Nation
4107 Coleman Hill Road
Rockvale, TN 37153

BY HAND
Eugene Langner, Esq.
Prosecuting Counsel
Department of Public Health
Division of Health Professions Licensure
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