



I do hereby certify the foregoing to be a true and certified copy of the document on file with the Massachusetts Board of Registration in Nursing.

COMMONWEALTH OF MASSACHUSETTS

an ar 3/26/15
Date

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN NURSING

)
IN THE MATTER OF)
JAN COOK)
LN LICENSE NO. 35669)
License Expired 1/6/15)
_____)

DOCKET NO. NUR-2012-0170

ENTRY OF DEFAULT JUDGMENT and (PROPOSED) FINAL DECISION AND ORDER BY DEFAULT

Pursuant to Massachusetts General Laws Chapter 30A, § 10(2)¹ and the failure of Jan Cook ("Respondent"), after due notice, to appear and defend in this matter, the Board of Registration in Nursing ("Board") finds Respondent in default and issues this Final Decision and Order by Default.

PROCEDURAL BACKGROUND

On August 21, 2013, the Board issued an Order to Show Cause ("Order") ordering Respondent to show cause why the Board should not suspend, revoke,

¹ Pursuant to M.G.L. C.30A, § 10(2), the Board may make informal disposition of any adjudicatory proceeding by default. Upon default, the allegations contained in the Show Cause Order issued against Respondent are accepted as true. *Danca v. Raytheon Co.*, 28 Mass. App. Ct. 942, 943 (1990).

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or otherwise take action against her license No. 35669 to practice as a Licensed Practical Nurse ("LN") in the Commonwealth of Massachusetts ("Commonwealth") based on the allegations in the Order.² (Exhibit 1)

Respondent, through her attorney, John R. Mitchell, Esq., filed a timely Answer to the Order to Show Cause ("Answer") and a request for hearing. (Exhibit 2)

A hearing that was originally scheduled for June 2014 was continued at the request of counsel for Respondent because of a scheduling conflict. On August 18, 2014, Administrative Hearing Counsel Vivian Bendix ("AHC") sent Attorney Mitchell and Prosecuting Counsel Eugene Langner via electronic mail ("email") a Scheduling Order. Among other things, the Scheduling Order stated that the hearing was rescheduled for December 8, 2014 and December 15, 2014.³ (Exhibit 3) On August 21, 2014, Attorney Mitchell notified Respondent via email of the scheduled hearing dates, attaching the AHC's email of August 18, 2014, which stated in part that Respondent would be subject to default for failure to appear and defend as required by the Scheduling Order. (Exhibit 4)

On November 19, 2014, following a Pre-Hearing Conference on November 17, 2014, Attorney Mitchell sent Respondent an email informing her that the Pre-Hearing Conference had taken place and advising her as follows: "The hearing is definitely set for December 8th and 15th. If...you have any medical or personal or other reason why you cannot be there on Dec. 8th and 15th please let me know at once." [sic.] (Exhibit 5) Respondent did not reply to Attorney

² The Order to Show Cause charged Respondent with, among other things, knowingly documenting blood sugar levels in a patient's ("Patient A") record that were lower than the readings on the glucometer used to measure Patient A's blood sugar; documenting a blood sugar level in Patient A's record that did not correspond to a reading in any glucometer that was in use on the patient's unit; and defying a physician's order by failing to contact a physician when Patient A's blood sugar level exceeded 400. (Exhibit 1)

³ The June hearings were scheduled by Administrative Hearings Counsel Maimoona Sahi Ahmad. Ms. Ahmad also granted Respondent's Motion to Continue the Hearing. The instant matter was reassigned to Administrative Hearings Counsel Vivian Bendix when Ms. Ahmad terminated her employment with the Department of Public Health, Division of Health Professions Licensure in August 2014. Ms. Bendix scheduled the December hearing dates.

Mitchell that she would be unable to attend the hearing on December 8, 2014 and December 15, 2014.

Following unsuccessful efforts to communicate with Respondent, on December 3, 2014, Attorney Mitchell advised Respondent via email that he would have to withdraw his appearance in her case before the Board because he was unable to prepare for the hearing without her cooperation. He further advised Ms. Cook that she would be subjecting herself to default should she fail to appear at the hearing. (Exhibit 6) Respondent did not respond to Attorney Mitchell's email. On December 4, 2014, Attorney Mitchell filed with the AHC a Motion to Withdraw. (Exhibit 7) The AHC denied the Motion to Withdraw, but noted that she would reconsider her ruling if Mr. Mitchell could document that Respondent had been duly notified of the hearing dates and her required attendance at the hearings, and if Respondent failed to appear for the hearing. (Exhibit 8) On December 5, 2014, Attorney Mitchell again emailed Respondent advising her that she was required to appear for the hearing on December 8, 2014 and December 15, 2014. (Exhibit 9)

Respondent failed to appear for the hearings on December 8, 2014 and on December 15, 2014. Respondent did not request that the hearing be continued. Nor did Respondent contact her attorney, Attorney Mitchell, or the AHC regarding her failure to appear for the hearing. Following Respondent's failure to appear for the hearing on December 8, 2014 and December 15, 2014, Respondent's ongoing failure to communicate with Mr. Mitchell, and Mr. Mitchell's submission of certain documentation and representations regarding notification provided to Respondent of the hearing dates and her required attendance at the hearings, the Motion to Withdraw was allowed.⁴

⁴ The Motion to Withdraw was allowed orally at the hearing on December 15, 2014. Thereafter, the AHC notified Respondent in writing that the Motion to Withdraw had been granted. Respondent was further advised that Mr. Mitchell was directed to inform her of what arrangements she could make to obtain from his office documents related to her case before the

EXHIBITS

1. August 21, 2013 Cover Letter, Order to Show Cause, and Certificate of Service
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4. August 21, 2014 email from Mitchell to Respondent (Jan) and 2 others: Scheduling
5. November 19, 2014 email from Mitchell to Respondent (Jan) and 2 others: No Subject
6. December 3, 2014 email from Mitchell to Respondent: Representation
7. December 4, 2014 Cover Letter from Mitchell to Bendix and Motion to Withdraw, dated December 3, 2014
8. December 5, 2014 email from Bendix to Mitchell: Re: Jan Cook
9. December 5, 2014 email from Mitchell to Respondent: No Subject
10. December 23, 2014 Letter: Bendix to Respondent

DISCUSSION

By reason of Respondent's failure to appear and defend at the December 8, 2014 and December 15, 2014 hearings, the Board finds Respondent in default and issues this Final Decision and Order by Default against Respondent.

Productora e Importadora de Papel S. A. de C.V. v. Fleming, 376 Mass. 826,

Board, and that Attorney Mitchell was required to comply with all pertinent provisions of the Massachusetts Rules of Professional Conduct relative to the termination of his representation of Respondent. (Exhibit 10)

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833-835 (1978); University Hospital v. MCAD, 396 Mass. 533, 539 (1986); 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 Order to Show Cause and the violations of statutes and regulations stated therein are deemed admitted and established. 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:⁵

Order

Based on its Final Decision and Order by Default, the Board **Revokes** Respondent's Right to Renew her license to practice as a Licensed Practical Nurse in Massachusetts, LN License No. 35669.

If Respondent renews her license to practice as a Licensed Practical Nurse in Massachusetts before the Effective Date of this Final Decision and Order by Default, the Board **Revokes** said license LN License No. 35669.

Respondent is hereby ordered to return any nursing 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 five (5) days of the Effective Date set forth below.

Respondent shall not practice as a Licensed Practical Nurse in Massachusetts on or after the Effective Date of this Order. "Practice as a

⁵ 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).

Licensed Practical Nurse" includes, but is not limited to, seeking and accepting a paid or voluntary position as a Licensed Practical Nurse or in any way representing herself as a Licensed Practical Nurse in Massachusetts. The Board shall refer any evidence of unlicensed practice to appropriate law enforcement authorities for prosecution as provided by G.L. c. 112, §§ 65 and 80A.

Respondent may petition the Board in writing at such time as she is able to provide documentation satisfactory to the Board that demonstrates her ability to practice nursing in a safe and competent manner. Such documentation shall include, but may not be limited to, the following:

- 1) Certified documentation of the completion after the Effective Date of this Order of the following Continuing Education Hours:
 - a) Six (6) Hours in Legal and Ethical Aspects of Nursing Practice, and
 - b) Six (6) Hours in Critical Thinking and Nursing Judgment, and
 - c) Six (6) Hours in Nursing Care of the Diabetic Patient that includes the topic of Insulin Management, and
 - d) the NSCBN 5.4 contact hour continuing education course on Documentation

- 2) Respondent shall provide documentation 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 request for relicensure.

- 3) 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.

- 4) if employed during the year immediately preceding Respondent's petition for relicensure, have each employer from said year submit on official letterhead an evaluation reviewing Respondent's attendance, general reliability, and overall job performance;⁶
- 5) 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;⁷ and
 - b. Certified documentation from the state board of nursing of each jurisdiction in which the Respondent has ever been licensed to practice as a nurse, 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's approval of Respondent's relicensure shall be conditioned upon, and immediately followed by, probation of Respondent's nursing license for a period of at least one(1) year, as well as other restrictions and requirements

⁶ If Respondent wasn't employed at all during this period, submit an affidavit so attesting.

⁷ 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 Massachusetts 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.

that the Board may then determine are reasonably necessary in the best interests of the public health, safety, and welfare.

The Board may choose to relicense Respondent if the Board determines that relicensure is in the best interests of the public at large.

The Board voted to adopt the within Final Decision at its meeting held on January 14, 2015 by the following vote: **In favor:** Anthony Alley, BSN, RN, M. Beal, RN/NM, P. Gales, RN, K. Gehly, RN, S. Kelly, RN/NP, J. Killion, LPN, B. Levin, RN, A. Peckham, RN, MSN, C. Simonian, PharmD, R.Ph., S. Taylor, MSN, RN, C. Tebaldi, RN, MS, **Opposed:** None **Abstained:** None **Absent:** E. Richard Rothmund, Cheryl Urena, LPN.

The Board voted to adopt the within Final Order at its meeting held on January 14, 2015, by the following vote: **In favor:** Anthony Alley, BSN, RN, M. Beal, RN/NM, P. Gales, RN, K. Gehly, RN, S. Kelly, RN/NP, J. Killion, LPN, B. Levin, RN, A. Peckham, RN, MSN, C. Simonian, PharmD, R.Ph., S. Taylor, MSN, RN, C. Tebaldi, RN, MS, **Opposed:** None **Abstained:** None **Absent:** E. Richard Rothmund, Cheryl Urena, LPN.

EFFECTIVE DATE OF ORDER

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

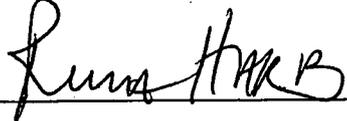
RIGHT TO APPEAL

Respondent is hereby notified of her right to appeal this Final Decision and Order to the Supreme Judicial Court pursuant to G.L. c. 112, § 64 and G.L.c.

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30A §§ 14, 15 within thirty (30) days of her receipt of this Final Decision and Order.

Board of Registration in Nursing

Date Issued: March 24, 2015 
Rula Harb, MSN, RN
Executive Director

NOTIFIED:

VIA FIRST CLASS AND CERTIFIED MAIL RETURN

RECEIPT REQUESTED NO.

Jan Cook
38 Pierce Street
Middleboro, MA 02346

BY HAND DELIVERY

Eugene Langner, Esq.
Office of Prosecutions
Department of Public Health
Division of Health Professions Licensure
239 Causeway Street
Boston, MA 02114

Cook, J.
NUR-2012-0170

EXHIBITS

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN NURSING

In the Matter of)
Jan Cook)
LPN License No. 35669)
License Expires 1/6/15)

Docket No. NUR-2012-0170

ORDER TO SHOW CAUSE

Jan Cook, you are hereby ordered to appear and show cause why the Massachusetts Board of Registration in Nursing ("Board") should not suspend, revoke or otherwise take action against your license to practice as a Licensed Practical Nurse ("LPN") in the Commonwealth of Massachusetts, License No. 35669, or your right to renew such license, pursuant to Massachusetts General Laws (G. L.) Chapter 112, § 61 and Board regulation 244 CMR 9.03, based upon the following facts and allegations:

1. On or about March 5, 1979, the Board issued to you a license to engage in the practice of nursing as a Licensed Practical Nurse in the Commonwealth of Massachusetts, License No. 35669. Your license is current, and expires on January 6, 2015.
2. In January of 2012, while you were employed by MHM Services, Inc., at Bridgewater State Hospital in Bridgewater, Massachusetts ("Bridgewater"), you cared for a diabetic patient ("Patient A").
3. At all relevant times, Patient A had a physician's order for his blood sugar level to be checked every four hours, with doses of insulin to be administered on a scale corresponding to the patient's blood sugar level, and with the physician to be contacted if Patient A's blood sugar level was ever above 400.
4. A hand-held machine called a glucometer was used to measure Patient A's blood sugar levels pursuant to the physician's order described in the preceding paragraph.
5. On numerous occasions in January of 2012, you knowingly documented blood sugar levels in Patient A's diabetic flow sheet that were lower than the readings in Patient A's glucometer.
6. On one occasion in January of 2012, you documented a blood sugar result in Patient A's flow sheet that did not correspond to any reading in Patient A's glucometer, or that of any other glucometer on Patient A's unit at Bridgewater.

7. On numerous occasions in December of 2011 and January of 2012, you documented blood sugar results over 400 in Patient A's flow sheet.
8. On numerous occasions in December of 2011 and January of 2012, you failed to advise Patient A's physician when the patient's blood sugar level, as indicated by the glucometer, or as indicated by your entries in the patient's flow sheet, exceeded 400.
9. On numerous occasions in December of 2011 and January of 2012, in spite of having documented blood sugar results for Patient A as described in Paragraph 7 above, you documented having given Patient A only as much insulin as required by the patient's standing order.
10. You had previously been given a verbal warning by your nurse manager at Bridgewater for failing to complete an accurate narcotic count at the end of a shift, and had previously been found deficient in your training hours as required by Bridgewater.
11. You failed, on request of the Board in connection with its investigation of the foregoing allegations, to provide proof of having completed the required continuing education for the previous two (2) license renewal cycles.
12. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a Licensed Practical Nurse pursuant to Board regulation 244 CMR 9.03 for violation of Standards of Conduct for Nurses, namely:
 - a. Your conduct as alleged violates 244 CMR 9.03(5) for failing to engage in the practice of nursing in accordance with accepted standards of nursing practice.
 - b. Your conduct as alleged violates 244 CMR 9.03(10) for performing acts beyond the scope of nursing practice as defined in *M.G.L. c. 112, § 80B* and *244 CMR 3.00*.
 - c. Your conduct as alleged violates 244 CMR 9.03(15) for abusing, neglecting, mistreating, abandoning, or otherwise harming a patient.
 - d. Your conduct as alleged violates 244 CMR 9.03(31) for knowingly falsifying, or attempting to falsify, any documentation or information related to any aspect of licensure as a nurse, the practice of nursing, and the delivery of nursing services.
 - e. Your conduct as alleged violates 244 CMR 9.03(44) for failing to make complete, accurate, and legible entries in all records required by federal and state laws and regulations and accepted standards of nursing practice.

- f. Your conduct as alleged violates 244 CMR 9.03(47) for engaging in any other conduct that fails to conform to accepted standards of nursing practice or in any behavior that is likely to have an adverse effect upon the health, safety, or welfare of the public.
13. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a Licensed Practical Nurse pursuant to G. L. c. 112, § 61 for deceit, malpractice, and gross misconduct in the practice of the profession or for any offense against the laws of the Commonwealth relating thereto.
14. Your conduct as alleged reflects a lack of the "good moral character" required for initial licensure as a Licensed Practical Nurse and license renewal under G.L. c. 112, § 74A.
15. Your conduct as alleged also constitutes unprofessional conduct and conduct which undermines public confidence in the integrity of the profession. *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338, 342 (1996); see also, *Kvitka v. Board of Registration in Medicine*, 407 Mass. 140, cert. denied, 498 U.S. 823 (1990); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708, 713 (1982).

You have a right to an adjudicatory hearing ("hearing") on the allegations contained in the Order to Show Cause before the Board determines whether to suspend, revoke, or impose other discipline against your license. G.L. c. 112, § 61. Your right to a hearing may be claimed by submitting a written request for a hearing *within twenty-one (21) days of receipt of this Order to Show Cause*. You must also submit an Answer to this Order to Show Cause in accordance with 801 CMR 1.01(6)(d) *within twenty-one (21) days of receipt of this Order to Show Cause*. The Board will give you prior written notice of the time and place of the hearing following receipt of a written request for a hearing.

Hearings shall be conducted in accordance with the State Administrative Procedure Act, G.L. c. 30A, §§ 10 and 11, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 and 1.03, under which you are granted certain rights including, but not limited to, the rights: to a hearing, to secure legal counsel or another representative to represent your interests, to call and examine witnesses, to cross-examine witnesses who testify against you, to testify on your own behalf, to introduce evidence, and to make arguments in support of your position.

The Board will make an audio recording of any hearing conducted in the captioned matter. In the event that you wish to appeal a final decision of the Board, it is incumbent on you to supply a reviewing court with a "proper record" of the proceeding, which may include a written transcript. *New Bedford Gas and Light Co. v. Board of Assessors of Dartmouth*, 368 Mass. 745, 749-750 (1975). Upon request, the Board will make available a copy of the audio recording of the proceeding at your own expense.

Pursuant to 801 CMR 1.01(10)(i)(1), upon motion, you "may be allowed to provide a public stenographer to transcribe the proceedings at [your] own expense upon terms ordered by the Presiding Officer." Those terms may include a requirement that any copy of the transcript produced must be sent immediately upon completion, and on an ongoing basis, directly to the Presiding Officer by the stenographer or transcription service. The transcript will be made available to the Prosecutor representing the Board. Please note that the administrative record of the proceedings, including, but not limited to, the written transcript of the hearing, is a public record and subject to the provisions of G.L. c. 4 § 7 and G.L. c. 66, §10.

Your failure to submit a written request for a hearing within twenty-one (21) days of receipt of this Order to Show Cause *shall constitute a waiver of the right to a hearing* on the allegations herein and on any Board disciplinary action. Your failure to submit an Answer to the Order to Show Cause within twenty-one (21) days of receipt of the Order to Show Cause *shall result in the entry of default* in the captioned matter.

Notwithstanding the earlier filing of an Answer and/or request for a hearing, your failure to respond to notices or correspondence, your failure to appear for any scheduled status conference, pre-hearing conference or hearing dates, or your failure to otherwise defend this action shall result in the entry of default.

If you are defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations in this Order to Show Cause, and may revoke, suspend, or take other disciplinary action against your license to practice nursing in the Commonwealth of Massachusetts, including any right to renew your license.

Your Answer to the Order to Show Cause and your written request for a hearing must be filed with Eugene Langner, Prosecuting Counsel, at the following address:

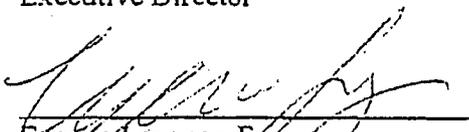
Eugene Langner, Esq.
Prosecuting Counsel
Department of Public Health
Office of the General Counsel
239 Causeway Street, 5th Floor
Boston, MA 02114

You or your representative may examine Board records relative to this case prior to the date of the hearing during regular business hours at the office of the Prosecuting Counsel. If you elect to undertake such an examination, then please contact Prosecuting

Counsel in advance at (617) 973-0838 to schedule a time that is mutually convenient.

BOARD OF REGISTRATION IN NURSING,
Rula F. Harb, MSN, RN
Executive Director

By:


Eugene Langner, Esq.
Prosecuting Counsel
Department of Public Health

Date: August 21, 2013

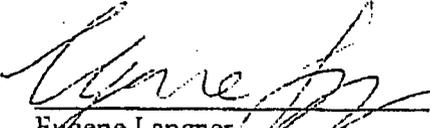
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order to Show Cause was served upon the Respondent:

Jan Cook
38 Peirce Street
Middleboro, MA 02346

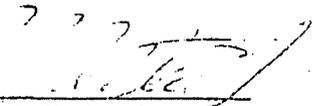
by first class mail, postage prepaid, and by Certified Mail No. 7012 3460 0001 7331 1128

This 21st day of August, 2013.


Eugene Langner
Prosecuting Counsel

11. Respondent has been unable to provide these records because they are in the possession of the Complainant MHM Services, Inc., and her personal copies were destroyed by a natural disaster, and therefore denies these allegations.
12. Respondent denies the allegations in paragraphs 12a, 12b, 12c, 12d, 12e, 12f.
13. Respondent denies the allegations in paragraph thirteen.
14. Respondent denies the allegations in paragraph fourteen.
15. Respondent denies the allegations in paragraph fifteen.

Jan Cook
By her attorney,



John R. Mitchell, Esquire
BBO #: 349820
105 Bank Street
Fall River, MA 02720
508-676-6000
Fax No. 508-676-6600

Date: September 9, 2013

SUFFOLK COUNTY

COMMONWEALTH OF MASSACHUSETTS

BOARD OF REGISTRATION IN NURSING
Docket No. NUR 2012-0170

In the Matter of)
Jan Cook)
RN License No. 35669)
License Expires 1/6/15)
_____)

REQUEST FOR A HEARING

Now comes the Respondent Jan Cook and pursuant to the Order to Show Cause issued in this matter, Jan Cook requests a hearing on the allegations set forth in the Order To Show Cause.

Jan Cook
By her attorney,



John R. Mitchell, Esquire
BBO #: 349820
105 Bank Street
Fall River, MA 02720
508-676-6000
Fax No. 508-676-6600

Date: September 9, 2013

Exh. 3

Bendix, Vivian M (DPH)

From: Bendix, Vivian M (DPH)

Sent: Monday, August 18, 2014 1:12 PM

To: 'John Mitchell'; Langner, Eugene (DPH)

Subject: RE: In the Matter of Karen Fitzpatrick-Johnson (NUR-2012-0169); Jan Cook (NUR-2013-0170); Carol Thomas (NUR-2012-0171) SCHEDULING ORDER

Dear Mr. Mitchell and Mr. Langner:

Thank you for your reply, Mr. Mitchell.

I do not wish to see the glucometers. I believe Mr. Langner is on vacation until September 1st.

Please note that I am setting the following dates:

Status Conference: Monday, September 22, 2014 at 11:00 a.m. in Room 419

Pre-Hearing Conference: Wednesday, November 12, 2014 at 12:00 p.m. in Room 419

Hearing: Monday, December 8, 2014 and Monday, December 15, 2014 at 9:30 a.m. in Room 421

All conferences and hearings will be held at 239 Causeway Street, Boston, MA 02114. Official Notices of the Pre-Hearing Conference and Hearing will be issued at a later date. However, the above-referenced dates are firm and should be reserved by the parties. The dates set forth above will not be continued except upon written motion for good cause shown. Should Counsel for Respondents or Respondents fail to appear and defend as required by this Scheduling Order, Respondents may be subject to the entry of default regardless of the prior filing of an Answer and/or Request for Hearing. Following the entry of default, the Board may issue a Final Decision and Order by Default, which could result in discipline of a Respondent's license to practice nursing in the Commonwealth, including revocation, suspension or other discipline deemed appropriate by the Board.

Sincerely,
Vivian Bendix
Administrative Hearings Counsel

Exh. 4



John Mitchell <jrmitchlaw@gmail.com>

Scheduling

John Mitchell <jrmitchlaw@gmail.com>

Thu, Aug 21, 2014 at 1:52 PM

To: <nurseycms@yahoo.com>

Jan

Carol, Karen, Jan:

[Attached please find a letter from the Hearings Officer, Vivian Bendix.]

follow on December 8th and December 15th.]

[and then the hearing will



re: list = 0



Thanks
John

--
John R. Mitchell, Esquire
105 Bank Street
Fall River, MA 02720
(508) 676-6000-phone
(508) 676-6600-fax

NOTICE: This email message and/or its attachments may contain information that is confidential or restricted. It is intended only for the individuals named as recipients in the message. If you are NOT an authorized recipient, you are prohibited from using, delivering, distributing, printing, copying, or disclosing the message or content to others and must delete the message from your computer. If you have received this message in error, please notify the sender by return email. This e-mail may contain confidential and/or privileged information for the sole use of the intended recipient. Any review or distribution by anyone other than the person for whom it was originally intended is strictly prohibited. If you have received this e-mail in error, please contact the sender and delete all copies. Opinions, conclusions or other information contained in this e-mail may not be that of the organization.

[Bendix, ltr.odt
17K

08/08/2014

Dear Mr. Mitchell and Mr. Langner:

Thank you for your reply, Mr. Mitchell.

I do not wish to see the glucometers. I believe Mr. Langner is on vacation until September 1st.

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Sincerely,

Vivian Bendix

Administrative Hearings Counsel

Exh. 5



John Mitchell <jrmitchlaw@gmail.com>

(no subject)

John Mitchell <jrmitchlaw@gmail.com>
to:

[Jan <nurseycms@yahoo.com>]

Wed. Nov 19, 2014 at 8:38 AM

Carol, Jan, Karen:

[Hello everyone, on Monday we had the pre-hearing conference in Boston with myself, Attorney Langner and Hearing Officer Bendix.]



Redacted



(no subject)

[The hearing is definitely scheduled for December 8th and 15th. If any of you have any medical or personal or other reason why you cannot be there on Dec. 8th and Dec. 15th please let me know at once.]

^
Redacted



(no subject)

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↑
Redacted
↓

I await your reply.

Thanks,

John

John R. Mitchell, Esquire
105 Bank Street
Fall River, MA 02720
(508) 676-6000-phone
(508) 676-6600-fax

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Exh. 6



John Mitchell <jrmitchlaw@gmail.com>

Representation

John Mitchell <jrmitchlaw@gmail.com>
To: Jan <nurseycms@yahoo.com>

Wed, Dec 3, 2014 at 5:59 PM

Dear Jan:

Could you please let me know if you are going to attend Monday's hearing.

I will be filing a motion to withdraw as your counsel for the hearing on Monday December 8th and Monday December 15th .

Without your participation it is difficult for me to prepare your case.

As I have discussed with you the Board's counsel has made it clear that they will be seeking disciplinary action whether or not you attend the hearing.

In any event, obviously, I can not represent you when we are not able to meet and prepare for the hearing.

The hearing is Monday at 9:30 at the Board's office at 239 Causeway Street, Boston MA. fifth floor.

the Board's counsel has made it clear that he will proceed with a default proceeding if you do not attend the hearing.

I cannot represent you without preparing you as a witness and the case itself without your cooperation.

Under separate cover I will be sending you a Motion to Withdraw as your counsel.

John

John R. Mitchell, Esquire
105 Bank Street
Fall River, MA 02720
(508) 676-6000-phone
(508) 676-6600-fax

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JOHN R. MITCHELL

Exh 7

Attorney at Law
105 Bank Street
Fall River, Massachusetts 02720
Telephone (508) 676-6000 • Fax (508) 676-6600
e-mail: jrmitchlaw@gmail.com

December 4, 2014

Vivian Bendix, Esquire
Administrative Hearings Counsel
Division of Health Professions Licensure
Department of Public Health
239 Causeway Street, Suite 500 (Fifth Floor)
Boston, Massachusetts 02114

Re: Jan Cook
Dkt. # NUR-2012-0170

Dear Hearings Officer Bendix:

Attached is a Motion to Withdraw my appearance as counsel for Jan Cook. I do not believe Ms. Cook is interested in my representing her anymore, but I am not certain because I have not spoken to her in some time.

Yesterday I sent her another e-mail informing her that I would need to withdraw because I am not able to prepare for the hearing without her immediate cooperation. I have not heard back from her.

Accordingly, I am filing this Motion to Withdraw. I have sent her an e-mail copy of this motion as well as Attorney Eugene Langner, counsel for the Board.

I will additionally send this motion out to you, Attorney Langner, and Mrs. Cook by ordinary mail.

Sincerely yours,

John R. Mitchell, Esquire

JRM/jmh
Enclosure
c.c.: Jan Cook
Eugene Langner

SUFFOLK COUNTY

COMMONWEALTH OF MASSACHUSETTS
BOARD OF REGISTRATION IN NURSING

In the Matter of)
Jan Cook)
RN License No. 35669)
License Expires 1/6/15)

Docket No. NUR-2012-0170

MOTION TO WITHDRAW

Now comes Attorney John R. Mitchell of 105 Bank Street, Fall River, MA and moves that the Board allow him to withdraw his appearance as counsel for Jan Cook.

The reason for this withdrawal is because Attorney Mitchell has not been able to communicate fully and effectively with Ms. Cook leading up to the hearing which is scheduled for December 8, 2014 and accordingly is not able to prepare adequately for the hearing concerning Ms. Cook.

Wherefore, Attorney Mitchell requests that the Hearing Officer allow him to withdraw his appearance as counsel for Jan Cook in the above-captioned proceeding

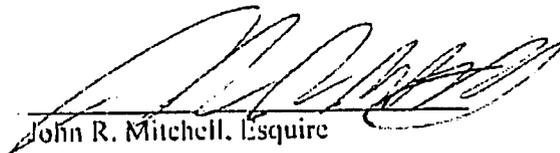
Jan Cook
By her attorney,

John R. Mitchell, Esquire
105 Bank Street
Fall River, MA 02720
508-676-6000
Fax No. 508-676-6600
BBO #: 349820
jrmitchlaw@gmail.com

Date: December 3, 2014

CERTIFICATE OF SERVICE

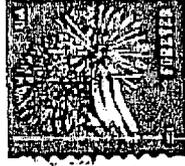
I, John R. Mitchell, attorney for Complainant Jan Cook certify that I have served a copy of the foregoing document upon Respondent by mailing a copy of same, postage prepaid, to counsel of record, Eugene Langner, Esq., Department of Public Health Office of the General Counsel, 5th Floor 239 Causeway Street Boston, Massachusetts 02114 and Jan Cook, 38 Pierce Street, Middleboro, MA 02346 on the date above written.


John R. Mitchell, Esquire

JOHN
L
Attorney --
105 Bank Street
Fall River, Massachusetts 02720

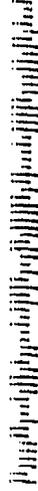
PROVIDENCE RI 028

06 DEC 2014 PM 5 L



Vivian Bendix, Esquire
239 Causeway Street, Suite 500 (Fifth Floor)
Boston, Massachusetts 02114

02114214025



Exh. 8

Bendix, Vivian M (DPH)

From: Bendix, Vivian M (DPH)
Sent: Friday, December 05, 2014 10:15 AM
To: 'John Mitchell'
Cc: Langner, Eugene (DPH)
Subject: RE: Jan Cook

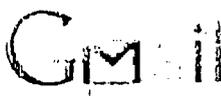
Dear Mr. Mitchell:

I am sympathetic to the communication problems you have had with Ms. Cook. However, at this late date I cannot grant your motion. The hearing in Ms. Cook's case was originally scheduled for June 2014 and was continued at Respondent's request. The current hearing dates have been scheduled for months and a Pre-Hearing Conference took place nearly 3 weeks ago. You had ample time to file a motion to withdraw at a point when your withdrawal would not have had a potentially serious adverse material effect on Ms. Cook's interests and when Ms. Cook could have sought other counsel to represent her at Monday's hearing.

Please confirm that you have previously notified Ms. Cook in writing that the hearing is scheduled for December 8 and 15, 2014 and that her attendance is required. If you are able to document that Ms. Cook has been duly notified of the hearing date and her required appearance and if Ms. Cook fails to appear at the hearing, I will reconsider your motion.

Sincerely,
Vivian Bendix
Administrative Hearings Counsel

Exh 9



John Mitchell <jrmitchlaw@gmail.com>

(no subject)

John Mitchell <jrmitchlaw@gmail.com>

Fri, Dec 5, 2014 at 3:32 PM

To: Jan <nurseycms@yahoo.com>

Jan:

The Hearings Officer has denied my Motion to Withdraw in your case. She asked me to confirm that you know about the hearing scheduled for December 8th and 15th, 2014 at 239 Causeway Street, Boston, Massachusetts, fifth floor, at the Division of Nursing Licensure.

As you know, I have given you several notices of these dates before but Ms. Bendix, the hearings officer, has asked that I let you know of these dates once again, and that she states your attendance is required at the hearing.

I do ask that you contact me before Monday so we might discuss this further.

Thanks,

John

John R. Mitchell, Esquire
105 Bank Street
Fall River, MA 02720
(508) 676-6000-phone
(508) 676-6600-fax

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John R. Mitchell, Esquire
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