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Executive Office of Health and Human Services
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January 12, 2024

Via First Class and Certified Mail No. 9589 0710 5270 0876 5995 06
Return Receipt Requested

Mark A. Hickernell, Esq.
Massachusetts Teachers Association
Division of Legal Services
2 Heritage Drive, 8th Floor
Quincy, MA 02171

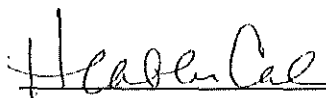
Re: In the Matter of Marie Provenzano
Docket Nos. NUR-2019-0037; NUR-2019-0155
License No. RN274354

Dear Attorney Hickernell:

Enclosed please find the Final Decision and Order after Full Adjudicatory Hearing issued by the Board of Registration in Nursing on January 12, 2024 and **effective January 22, 2024**. This constitutes full and final disposition of the above-referenced Complaints, as well as the final agency action of the Board. Your client's appeal rights are noted on page 5.

You may contact Meghan Bresnahan, Board Counsel at Meghan.bresnahan@mass.gov with any questions that you may have concerning this matter.

Sincerely,

 BSN, RN, JD
Heather Cambra, BSN, RN, JD
Acting Executive Director
Board of Registration in Nursing

Encl.

cc: Acting Chief Administrative Magistrate Karen Gray Currthers
Noah Ertel, Esq., Prosecuting Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN NURSING

_____)
Board of Registration in Nursing,)
Petitioner)
)
v.)
)
MARIE PROVENZANO)
)
License No. RN274354)
License Expires 07/17/2024)
Respondent)
_____)

Docket Nos. NUR-2019-0037
NUR-2019-0155

FINAL DECISION AND ORDER AFTER ADJUDICATORY HEARING

PROCEDURAL HISTORY

On December 23, 2019, the Board of Registration in Nursing (“the Board”) issued and duly served on Marie Provenzano (“Respondent”) an *Order to Show Cause* (“OTSC”) related to two complaints filed regarding Respondent’s license, as referenced above. Respondent’s Counsel filed an Answer to the OTSC. Acting Chief Administrative Magistrate Gray Curruthers presided over a full adjudicatory hearing on June 28, June 30, and July 1, 2021 (“Hearing”), where Prosecuting Counsel, Respondent’s Counsel, and Respondent were all present. On November 22, 2021, both Prosecuting Counsel and Respondent’s Counsel filed a Post-Hearing Brief.

On September 29, 2023, Acting Chief Administrative Magistrate Gray Curruthers issued a *Tentative Decision After Full Adjudicatory Hearing* (“*Tentative Decision*”). The Board has carefully considered the *Tentative Decision* and hereby adopts the *Tentative Decision*, including all findings of fact, conclusions of law and credibility determinations. The *Tentative Decision* is attached hereto and incorporated herein by reference.

DISCUSSION

The Board is charged with protecting the public health, safety, and welfare and, to this end, the Board has broad authority to regulate the conduct of nursing professionals including the ability to sanction professionals for conduct that undermines public confidence in the integrity of the profession. *See 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).

Based on the Findings of Fact contained in the *Tentative Decision*, the following allegations contained in the OTSC were proven at hearing:

1. During the period beginning on or about October 3, 2018 through or about December 12, 2018, Respondent failed to document administering Focalin for Student A.
2. On or about January 9, 2019, Respondent removed Student D's bottle of 10 mg Adderall tablets from the KIS medicine cabinet and placed it in a desk drawer.
3. On January 10, 2019, Student D did not receive his scheduled morning dose of Adderall because Respondent removed the medication from the KIS medicine cabinet.

Based on the Legal Determinations contained in the *Tentative Decision*, the conduct described above was found to be violation of 244 CMR 9.03 (5), (35), (39), (44), and (47) and warrants discipline under G.L. c. 112 § 61 and Board Regulations 244 CMR 7.03.

Prosecuting Counsel's position as to disposition, which was a period of suspension of the Respondent's license to practice nursing, presumes that it had established all the allegations contained in the OTSC, which it has not. Respondent's position as to disposition is that no sanction should be imposed.

The Board finds that Respondent violated 244 CMR 9.03 (5), (35), (39), (44), and (47) and her conduct warrants discipline under G.L. c. 112 § 61 and Board Regulations 244 CMR 7.03. However, The Board believes that due to the mitigating factors addressed in the *Tentative Decision* and Respondent's Post-Hearing Brief, a

suspension is not warranted. The *Tentative Decision* contains the following findings which the board may consider solely as to disposition:

1. Beginning in 2017-2018, KIS had an increase in diabetic students, which KIS had not had before, and it increased Respondent's workload as caring for these students required constant monitoring and communication.
2. Respondent was the only school nurse and had no assistance in the 2017-2018 and 2018-2019 school years.
3. Respondent had several verbal conversations with her supervisors during the 2017-2018 school year to explain the unmanageable workload and that she needed assistance in her office to keep the children safe.
4. As Respondent did not receive the verbally requested help in the 2017-2018 school year, she emailed KIS vice principal on September 4, 2018 again stating the increasing needs of the students and requesting clerical help.
5. KIS did not provide Respondent with additional assistance in her office. When asked how this affected her duties, Respondent testified:

"I am just one person and I (indiscernible) could not properly keep all the clerical items in my office straight if I did not have assistance. I made that very clear to them, and so I had to kind of say what my priorities were. Was it caring for the students and making sure they were getting the care done, or was it paperwork? And I chose students."
6. Following the incidents described in the Complaints, Respondent took steps to improve her practice including ensuring medication counts regardless of the circumstances in the nurses' office, ensured a third person was present for medication counts and administration concerning Student A, improved organization of the medication cabinet, and stopped cutting pills in half in the absence of a reason to do so.
7. Respondent was suspended eight work days as a result of the allegations against her.

The Board voted to adopt the within **Final Decision** at its meeting held on January 10, 2024, by the following vote:

In favor: *A. Alley, K.A. Barnes, K. Crowley, M. Harty, A. Joseph, L. Kelly,
L. Keough, M. McAuliffe, J. Monagle, D. Nikitas, V. Percy, R.
Reynolds*

Opposed:

Abstained:

Recused:

Absent: *A. Sprague, L. Wu*

ORDER

The Board has reviewed and carefully considered the *Tentative Decision* and Parties' Post-Hearing Briefs. Based on its Final Decision and on the rationale outlined above, the Board hereby imposes a **REPRIMAND** on Respondent's nursing license, RN274354. The Board considered the following mitigating factors when determining this sanction:

- Respondent took steps to improve her practice.
- Respondent's work environment was not supportive of her practice.
- Respondent requested but did not receive assistance with her practice.
- Respondent was suspended eight workdays without pay as a result of the allegations against her.

The Board voted to adopt the within **Final Order** at its meeting held on January 10, 2024, by the following vote:

In favor: *A. Alley, K.A. Barnes, K. Crowley, M. Harty, A. Joseph, L. Kelly,
L. Keough, M. McAuliffe, J. Monagle, D. Nikitas, V. Percy, R.
Reynolds*

Opposed:

Abstained:

Recused:

Absent: *A. Sprague, L. Wu*

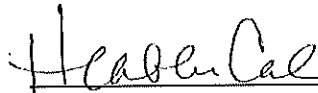
EFFECTIVE DATE OF ORDER

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

RIGHT TO APPEAL

Respondent is hereby notified of the right to appeal this Final Decision and Order to the Supreme Judicial Court pursuant to M.G.L. c. 112, §64. Respondent must file any appeal within thirty (30) days of receipt of this notice of Final Decision and Order.

Board of Registration in Nursing,

 BSN, RN, JD
Heather Cambra, BSN, RN, JD
Acting Executive Director
Board of Registration in Nursing

Date Issued: January 12, 2024

Notified:

By first-class and certified mail no. 9589 0710 527008765995 06,
Return receipt requested;

Mark A. Hickernell, Esq.
Massachusetts Teachers Association
Division of Legal Services
2 Heritage Drive, 8th Floor
Quincy, MA 02171

By inter-office mail

Noah Ertel, Esq.
Department of Public Health
Office of General Counsel
250 Washington Street, 2nd Floor
Boston, MA 02108

By inter-office mail

Acting Chief Administrative Magistrate Karen Gray Carruthers
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