



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
250 Washington Street, Boston, MA 02108-4619

MAURA T. HEALEY
Governor

KIMBERLEY DRISCOLL
Lieutenant Governor

KATHLEEN E. WALSH
Secretary

ROBERT GOLDSTEIN, MD, PhD
Commissioner

Tel: 617-624-6000
www.mass.gov/dph

March 21, 2024

Via First Class and Certified Mail No. 9589 0710 5270 0429 9637 78
Return Receipt Requested

William D. Saltzman, Esq.
Koufman Law Group, LLC
145 Tremont Street, 4th Floor
Boston, MA 02111

Re: In the Matter of Melissa A. Hathaway
Docket No. NUR-2020-0173
License No. RN2287217

Dear Attorney Saltzman:

Enclosed please find the Ruling on Objections to Tentative Decision After Full Adjudicatory Hearing ("Ruling") and Final Decision and Order ("Order") issued by the Board of Registration in Nursing on March 21, 2024 and **effective March 31, 2024**. This constitutes full and final disposition of the above-referenced Complaint, as well as the final agency action of the Board. Ms. Hathaway's appeal rights are noted on page 4.

Please note that as of the effective date, Ms. Hathaway's license will change to Suspended. Per the terms of the Order, Ms. Hathaway's license will remain suspended for thirty (30) days followed by automatic reinstatement.

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

Sincerely,

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

Encl.

cc: Martha Sesnovich, Esq., Administrative Magistrate
Jessica Uhing-Leudde, Esq., Chief Prosecuting Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, COUNTY

BOARD OF REGISTRATION IN
NURSING

In the Matter of
Melissa A. Hathaway
License No. RN2287217
License Expires 07/24/2024

Docket No. NUR-2020-0173

**RULING ON OBJECTIONS TO
TENTATIVE DECISION AFTER FULL ADJUDICATORY HEARING**

Procedural History

On November 30, 2021, the Board of Registration in Nursing (“Board”) issued and duly served on Melissa Hathaway (“Respondent”), a Registered Nurse (“RN”), an Order to Show Cause (“OTSC”) on why it should not take action against her license and right to renew. The OTSC alleged that while employed as an RN at Baystate Medical Center (“Baystate”) in Springfield, MA, Respondent interacted in an inappropriate and non-therapeutic manner with an elderly patient (“Patient 1”) who diagnosis included [REDACTED] by striking Patient 1 on the arm. Thereafter, on December 21, 2021, Respondent filed an Answer and request for a hearing.

On January 23 and 24, 2023, the Board held a full adjudicatory hearing before Administrative Magistrate Martha Sesnovich (“AM Sesnovich”). On April 28, 2023, both Prosecuting Counsel and Respondent’s Counsel filed a *Post-Hearing Brief*.

On October 12, 2023, AM Sesnovich issued a *Tentative Decision After Full Adjudicatory Hearing* (“Tentative Decision”). On November 9, 2023, the Board received *Respondent’s Objections to the Tentative Decision After Full Adjudicatory Hearing* (“Respondent’s Objections”). Prosecution did not file objections or a response to Respondent’s Objections.

The Board has reviewed and carefully considered the Tentative Decision and Respondent’s objections.

The Board is not required to address objections or provide a specific response for rejecting the objections. See *Arthurs vs. Board of Registration in Medicine*, 383 Mass. 299, 315-316 (1981) and *Weinberg vs. Board of Registration in Medicine*, 443 Mass. 679, 687 (2005). A

reviewing court “must accept the factual determinations made by the agency” if they are supported by substantial evidence. *McGuinness v. Department of Correction*, 465 Mass. 600, 668 (2013), citing *School Comm. of Boston v. Board of Educ.*, 363 Mass. 125, 128 (1973).

“Substantial evidence means such evidence as a reasonable mind might accept as adequate to support a conclusion.” M.G.L. c. 30A, § 1(6); *Arthurs*, 383 Mass at 304. Additionally, pursuant to 801 CMR 1.01 (11)(c)(2) “the Agency may not reject a Presiding Officer’s tentative determination of credibility of witnesses personally appearing.”

Analysis

Respondent’s Objections Section I

Respondent argues that the Magistrate’s finding that Respondent intentionally struck Patient 1 in a non-therapeutic way is founded upon incorrect legal conclusions and is not supported by a preponderance of the evidence. In making this argument, Respondent ignores the five witnesses who made statements that Respondent struck Patient 1 as well as statements made by Respondent herself admitting to striking Patient 1:

“[Dr. Ophelia] Cabrera testified that she witnessed the Respondent “slap the patient on the hand” and wrote in her statement that “the nurse in the room slapped the patient’s arm” Exhibit 5A; Tr. v1 at 27. [Janitza] Salcedo testified that the Respondent “smacked her kind of like in arm.” Tr. v1 at 47. [Ryan] O’Connor remembered the Respondent “hitting the patient on the shoulder” and wrote in his statement, “Melissa slapped patient in upper arm,” Exhibit 5B; Tr. v1 at 63. Julia Gibson (“Gibson”) wrote in her statement, “Melissa was at the foot of the bed and reacted by hitting her arm.” Exhibit 5B. Samantha Lopez (“Lopez”) wrote in her statement, Melissa immediately hit the patient on her right arm (was not a tap).” Exhibit 5B.”

Further, in Respondent’s initial statement written the night of the incident, she stated, “[t]hen she went to take a hard swing at my face and without a thought I slapped her arm.” When questioned about that issue during the Hearing, the Respondent was unable to explain why her statement, Exhibit 5B, failed to mention that the contact was unintentional or incidental to defending herself. Instead, the Respondent testified that she did not know what to write. Tr. v1 at 161-162. Respondent also wrote “The minute I did it all I could think is shit Melissa what did you just do? [REDACTED]. You

are at work you can't do that." "As medical providers we always say do no harm and all in one day I created harm." *Tentative Decision at 10, Ex. 54*. Lastly, the intentionally nature of the strike is evidenced by Respondent's request that her Spanish speaking coworker translate a comment to the likes of "how do you like that" to Patient 1. These words in conjunction with the physical contact support the conclusion that Respondent's act was intentional and not in an attempt to de-escalate the situation.

Due to these inconsistent statements and discrepancies between her original statement and her hearing testimony, the Administrative Magistrate found Respondent lacked credibility during the Hearing as to whether her conduct in striking Patient 1 was intentional or accidental. Therefore, the Magistrate's findings that Respondent intentionally struck Patient 1 is founded on correct legal conclusions and is supported by the evidence.

An intentional strike to an elderly, agitated, behavioral health/psychiatric patient is not therapeutic nor is an attempt to de-escalate the situation. Cabrera testified that he did "not recall any de-escalation actions coming from the Respondent and stated that slapping an agitated patient on the hand is not consistent with de-escalation." Tr. VI at 30 and 35-38. The Charge Nurse at the time of the incident, Eric Johnson ("Johnson"), was asked at the hearing whether striking a patient is appropriate de-escalation conduct and Johnson stated, "It's inappropriate. That's not de-escalation." TR. VI. At 79-80.

The Board declines to modify the Tentative Decision as it relates to the finding that Respondent intentionally struck Patient 1 in a non-therapeutic way.

Respondent's Objections Section I(A) and (B)

Respondent argues that the Respondent had a right to defend herself from assault by Patient 1, and the "duty to retreat" is inapplicable as a matter of law to Respondent's situation. Respondent further argues that the Respondent acted in self-defense.

The Board does not find merit to Respondent's objection that Respondent had a right to defend herself from assault by Patient 1, and the "duty to retreat" is inapplicable as a matter of law to Respondent's situation. Patient 1 was a [REDACTED]-year-old female with [REDACTED] who was being restrained during an agitated episode. Respondent was holding Patient 1's feet with her left hand. Salcedo was holding Patient 1's right arm down and when Patient 1 attempted to

swing her left arm, Salcedo caught it and then brought it down. These facts do not suggest that Respondent was in serious and imminent threat of violence or personal injury.

Respondent's objections state that "Respondent and every other clinician who endeavored to control Patient 1 had a professional obligation to protect patients and others that transcends the obligations of ordinary citizens." The evidence does not suggest there were other patients in the room at the time of the incident who could have been harmed by Patient 1 and Salcedo had already brought Patient 1's arm down at the time Respondent struck Patient 1's arm. For these reasons, the Board declines to modify the findings of the Tentative Decision that Respondent did not strike Patient 1 in self-defense.

Respondent's Objections Section I(C)

Respondent argues that her split-second decision to ward off a blow from Patient 1 was a reasonable and lawful exercise of professional judgment that does not constitute a violation of accepted standards of nursing practice; patient mistreatment; conduct that fails to conform to accepted standards of nursing practice; behavior that is likely to have an adverse effect upon the health, safety, or welfare of the public; gross misconduct in the practice of the profession; or unprofessional conduct which undermines public confidence in the nursing profession.

The Board finds that each conclusion is supported by the evidence. The Board declines to modify the Tentative Decision as it relates to the Conclusions of Law.

Respondent's Objections Section II

Respondent argues that the Board should dismiss the Complaint against the Respondent's license, or at most, issue a letter of admonition. The Respondent's Section II objections do not identify any error of fact or law.

Conclusion

Each of the Administrative Magistrate's findings of fact is supported by witness testimony and/or documents in evidence. Respondent's objections do not identify any legal error; as such, the Board finds that Respondent's objections are without merit and declines to modify the Tentative Decision as written.

The Board voted to adopt this **Ruling on Respondent's Objections to Tentative Decision After Full Adjudicatory Hearing** at its meeting held on March 13, 2024, by the following vote:

In Favor: *A. Alley, K.A. Barnes, A. Joseph, M. McAuliffe, D. Nikitas, V. Percy, R. Reynolds, A. Sprague, L. Wu*

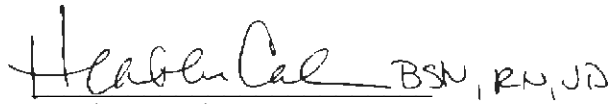
Opposed: *None*

Abstained: *None*

Recused: *None*

Absent: *K. Crowley, L. Keough, L. Kelly, J. Monagle*

Board of Registration in Nursing,

A handwritten signature in black ink, appearing to read "Heather Cambra", followed by the text "BSN, RN, JD".

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

Date Issued: March 21, 2024

Notified:

**FIRST CLASS AND CERTIFIED MAIL NO,
RETURN RECEIPT REQUESTED**

William D. Saltzman, Esq.
Koufman Law Group, LLC
145 Tremont Street, 4th Floor
Boston, MA 02111

INTEROFFICE DELIVERY VIA SHARED DRIVE

Jessica Uhing-Leudde, Esq., Chief Prosecutor
Department of Public Health
Office of General Counsel
250 Washington Street, 2nd Floor
Boston, MA 02108

Martha Sesnovich, Esq., Administrative Magistrate
Department of Public Health
Office of General Counsel
250 Washington Street, 2nd Floor
Boston, MA 02108

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, COUNTY

BOARD OF REGISTRATION IN
NURSING

In the Matter of
Melissa A. Hathway
License No. RN2287217
License Expires 07/24/2024

Docket No. NUR-2020-0173

FINAL DECISION AND ORDER

Procedural History

On November 30, 2021, the Board of Registration in Nursing (“Board”) issued and duly served on Melissa Hathaway (“Respondent”), a Registered Nurse (“RN”), an Order to Show Cause (“OTSC”) on why it should not take action against her license and right to renew. The OTSC alleged that while employed as an RN at Baystate Medical Center (“Baystate”) in Springfield, MA, Respondent interacted in an inappropriate and non-therapeutic manner with an elderly patient (“Patient 1”) in the Emergency Department whose diagnosis included dementia by striking Patient 1 on the arm. Thereafter, on December 21, 2021, Respondent filed an Answer and request for a hearing.

On January 23 and 24, 2023, the Board held a full adjudicatory hearing before Administrative Magistrate Martha Sesnovich (“AM Sesnovich”). On April 28, 2023, both Prosecuting Counsel and Respondent’s Counsel filed a *Post-Hearing Brief*.

On October 12, 2023, AM Sesnovich issued a *Tentative Decision After Full Adjudicatory Hearing* (“Tentative Decision”). On November 9, 2023, the Board received *Respondent’s Objections to the Tentative Decision After Full Adjudicatory Hearing* (“Respondent’s Objections”). Prosecution did not file objections or a response to Respondent’s Objections.

The Board has reviewed and carefully considered the Tentative Decision and Respondent’s objections. For the reasons set forth in the Board’s Ruling on Respondent’s Objections to the Tentative Decision, the Board adopts the Tentative Decision in full, including all findings of fact, credibility determinations, conclusions of law and discussion contained therein, as the Board’s Final Decision.

Discussion/Rational for Sanction

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).

The Order to Show Cause alleged that Respondent struck an elderly dementia patient (Patient 1) on the arm. Respondent's Answer to the Order to Show Cause expressly denies that she engaged in the alleged conduct. AM Sesnovich found that Respondent intentionally struck Patient 1 in a non-therapeutic way and therefore violated 244 CMR 9.03 (5), (15) and (47). AM Sesnovich also found the Respondent's actions undermine the public confidence in the integrity of the profession, constituted malpractice in the practice of the nursing profession, and that the Respondent committed an offense against the laws of the Commonwealth relating to the practice of nursing.

The Board has previously suspended nurses for patient abuse, including intentionally striking patients in a non-therapeutic manner. *In the Matter of Karen Jean Smith*, NUR-2017-0013 (Final Decision and Order for Suspension for thirty (30) days based upon Licensee slapping patient on shoulder while trying to administer medication to the patient who was resisting). *In the Matter of William McCarthy*, NUR-2016-0055 (Indefinite surrender based upon Licensee using excessive force with 17-year-old disabled patient including pushing patients head in wheelchair). *In the Matter of Edwin Azu*, NUR-2018-0110 (One (1) year surrender of license based upon Licensee pushing patient causing patient to fall and hit head.) *In the Matter of Christopher Colby*, NUR-2013-0112, (Ninety (90) day suspension based upon Licensee interacting with two (2) patients in a non-therapeutic and violent manner.) *In the Matter of Maryellen Robertson*, NUR-2021-0228, (Summary suspension followed by two (2) year suspension of license based

upon Licensee striking a patient in the face who was being restrained and in a mentally deranged state).

The Board voted to adopt the within **Final Decision** at its meeting held on March 13, 2024, by the following vote:

In Favor: *A. Alley, K.A. Barnes, A. Joseph, M. McAuliffe, D. Nikitas, V. Percy, R. Reynolds, A. Sprague, L. Wu*

Opposed: *None*

Abstained: *None*

Recused: *None*

Absent: *K. Crowley, L. Keough, L. Kelly, J. Monagle*

ORDER

Based on its Final Decision and the foregoing discussion, the Board **SUSPENDS** the Respondent's license to practice as a Registered Nurse in Massachusetts, License No. RN2287217 for thirty (30) days commencing with the Effective Date of this Agreement ("Suspension Period").

Respondent shall not practice as a Registered Nurse in Massachusetts on or within thirty (30) days of 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. 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 80.

After the Suspension Period, Licensee will receive notice of termination of the Suspension Period and Licensee's nursing license will be automatically reinstated.

If the Licensee does not comply with each requirement of this Order, or if the Board opens a Subsequent Complaint¹ during the Suspension Period, the Board may upon written notice to the Licensee, as warranted to protect the public health, safety, or welfare:

- i. EXTEND the Suspension Period and/or begin a Probationary Period; and/or
- ii. MODIFY the Suspension Period and/or the Probationary Period requirements.

In Favor: *A. Alley, K.A. Barnes, A. Joseph, M. McAuliffe, D. Nikitas, V. Percy, R. Reynolds, A. Sprague, L. Wu*

Opposed: *None*

Abstained: *None*

Recused: *None*

Absent: *K. Crowley, L. Keough, L. Kelly, J. Monagle*

EFFECTIVE DATE OF ORDER

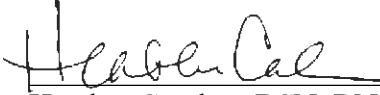
This Final Decision and Order becomes effective upon the tenth (10th) day from the date it is issued (see “Date Issued” below).

RIGHT TO APPEAL

Respondent is hereby notified of 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.

¹ The term “Subsequent Complaint” applies to a complaint opened after the Effective Date, which (1) alleges that the Licensee engaged in conduct that violates Board statutes or regulations, and (2) is substantiated by evidence, as determined following the complaint investigation during which the Licensee shall have an opportunity to respond.

Board of Registration in Nursing,

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

Date Issued: March 21, 2024

Notified:

**FIRST CLASS AND CERTIFIED MAIL NO,
RETURN RECEIPT REQUESTED**

William D. Saltzman, Esq.
Koufman Law Group, LLC
145 Tremont Street, 4th Floor
Boston, MA 02111

INTEROFFICE DELIVERY VIA SHARED DRIVE

Jessica Uhing-Leudde, Esq., Chief Prosecutor
Department of Public Health
Office of General Counsel
250 Washington Street, 2nd Floor
Boston, MA 02108

Martha Sesnovich, Esq., Administrative Magistrate
Department of Public Health
Office of General Counsel
250 Washington Street, 2nd Floor
Boston, MA 02108