

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

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July 14, 2023

Via First Class & Certified Mail No. 7022 2410 0001 6855 4801
RETURN RECEIPT REQUESTED

Michelle Fortier
147 Arkansas Rd.
Tewksbury, MA 01876

RE: In the Matter of Michelle Fortier, Docket No. NUR-2019-0211
License No. RN213729

Dear Ms. Fortier:

Please find enclosed the Final Decision and Order issued by the Board of Registration in Nursing on July 14, 2023, and **effective July 24, 2023**. This constitutes full and final disposition of the above-referenced complaint, as well as the final agency action of the Board. **Your appeal rights are noted on page 2 of the Final Decision and Order.**

You may contact Heather Engman, Esq, Chief Board Counsel at heather.engman@mass.gov with any questions that you may have concerning this matter.

Sincerely,

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

Encl.

cc: Tracy Otina, Esq., Prosecuting Counsel
Jaclyn Gagne, Esq., Chief Administrative Magistrate

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN NURSING

In the Matter of
Michelle Fortier
RN213729

Docket No. NUR-2019-0211

FINAL DECISION AND ORDER

Procedural History

On November 16, 2020, the Board of Registration in Nursing (“the Board”) issued an *Order to Show Cause* (“OTSC”). On September 12, 2022 the parties filed Joint Stipulations of facts and law and a sanction hearing was held on November 17, 2022.

On December 9, 2022, the Magistrate submitted *Tentative Decision After Sanction Hearing* (“*Tentative Decision*”). The Board 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.

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 Board voted to adopt the within Final Decision at its meeting held on July 12, 2023, by the following vote:

In favor: Anthony Alley; Karen Crowley; Michelle Harty; Anthony B Joseph;
Linda Kelly; Lori Keough; Marianne McAuliffe; Janet Monagle; Diane Nikitas; Carolyn Norris; Raquel Reynolds

Opposed: None
Abstained: None
Recused: None
Absent: Kelly Ann Barnes; Virginia Percy; Audra Sprague; Lisa Wu

ORDER

Based on its Final Decision, the Board imposes a **REPRIMAND** on Respondent's license to practice as a Registered Nurse in Massachusetts, RN213729.

The Board voted to adopt the within Final Order at its meeting held on July 12, 2023, by the following vote:

In favor: Anthony Alley; Karen Crowley; Michelle Harty; Anthony B Joseph; Linda Kelly; Lori Keough; Marianne McAuliffe; Janet Monagle; Diane Nikitas; Carolyn Norris; Raquel Reynolds
Opposed: None
Abstained: None
Recused: None
Absent: Kelly Ann Barnes; Virginia Percy; Audra Sprague; Lisa 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,

Patricia McNamée ○

Heather Cambra, BSN, RN, JD

Acting Executive Director

Board of Registration in Nursing

Date Issued: July 14, 2023

Notified:

By first-class and certified mail no. 7022 2410 0001 6855 4801,
Return Receipt Requested

Michelle Fortier
147 Arkansas Road
Tewksbury, MA 01876

By interoffice mail

Tracy Otina, Esq.
Prosecuting Counsel
Department of Public Health
250 Washington Street
Boston, MA 02108

By interoffice mail

Jaclyn Gange, Esq.
Administrative Magistrate
Department of Public Health
250 Washington Street
Boston, MA 02108

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN NURSING

Board of Registration in Nursing)

Petitioner)

v.)

Michelle L. Fortier)

RN License No. 213729)

License Expires 06/26/2022)

Respondent)
_____)

Docket No. NUR-2019-0211

ORDER TO SHOW CAUSE

Michelle L. Fortier 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 Registered Nurse ("RN") in the Commonwealth of Massachusetts, License No. RN213729 or your right to renew such license, pursuant to G.L. c. 112, §61 and 74 and Board regulation 244 CMR 9.03, based upon the following facts and allegations:

1. On or about April 24, 1995, the Board issued to you a license to engage in the practice of nursing as a Registered Nurse in the Commonwealth of Massachusetts, License No. RN213729. Your license expires on June 26, 2022.
2. On or about January 17, 2019, Tewksbury Police Officers responded to a report of an altercation at Location 1 ("Location 1"), located in Tewksbury, MA ("Location 1 Incident").
3. You were present at the Location 1 Incident.
4. Tewksbury Police Officers conducted an investigation at the scene of the Location 1 Incident ("Location 1 Investigation").
5. After the Location 1 Investigation, Tewksbury Police officers placed you under arrest and charged you with two (2) counts of Assault and Battery in violation of G.L. c. 265 § 13A/B. You were transported to the Tewksbury Police Station.
6. At the Tewksbury Police Station, you were booked by Lt. Thomas Casey of the Tewksbury Police Department ("Booking").

7. During Booking, Lt. Casey observed you to be unsteady on your feet, your eyes to be bloodshot and glassy, and a strong odor of alcohol emanating from your person, consistent with alcohol intoxication.
8. During Booking, you admitted that you were intoxicated.
9. After Booking, you were placed in a holding cell at the Tewksbury Police Department.
10. At approximately 10:30 PM on January 17, 2019, Lt. Casey conducted a prisoner check of you in the holding cell. During the course of this prisoner check, you began to yell at Lt. Casey and grabbed and poked his chest. Officer Paul Morris of the Tewksbury Police Department then secured your arms and placed you in handcuffs. You began flailing your arms and came into contact with both Lt. Casey and Officer Morris. You attempted to walk out of the booking area and spoke to Lt. Casey and Officer Morris using derogatory language. ("Holding Cell Incident").
11. As a result of the Holding Cell Incident, you were charged with one (1) count of Assault and Battery on a Police Officer in violation of G.L. c. 265 § 13D.
12. On or about January 18, 2019, you were arraigned in the Lowell District Court on Docket Number 1911CR000268 on two (2) counts of Assault and Battery in violation of G.L. c. 265 § 13A/B and one (1) count of Assault and Battery on a Police Officer in violation of G.L. c. 265 § 13D ("Lowell Docket").
13. On or about September 19, 2019, the two (2) counts of Assault and Battery in violation of G.L. c. 265 § 13A/B on the Lowell Docket were dismissed. Regarding the count of Assault and Battery on a Police Officer in violation of G.L. c. 265 § 13D, you were placed on Pretrial Probation for one (1) year with conditions that included undergoing a substance abuse evaluation, no consumption of alcohol, and random alcohol screens ("PTP").
14. The Lowell District Court Probation Department alleged that you violated the conditions of your PTP for failing to report for alcohol testing on December 30, 2019, December 31, 2019, April 17, 2020, April 22, 2020, May 8, 2020, July 9, 2020, July 14, 2020, and for [REDACTED]
15. On or August 19, 2020, your PTP on the Lowell Docket with one (1) pending count of Assault and Battery on a Police Officer in violation of G.L. c. 265 § 13D was terminated and the complaint was placed back on the trial docket. The Lowell Docket remains pending as of the issuance of this Order to Show Cause.
16. As a result of the above allegations, on October 4, 2019 the Board opened an investigation ("Board Investigation").
17. During the Board Investigation, you wrote a letter to Investigator Mary Matthews dated October 27, 2019 in which you stated the following:
 - a. "At the station I pointed and poked the officers badge and stated that he should've loosened [the handcuffs] and that it was wrong to do that. Because of that, I got the charge of assault and battery on a police officer."

Grounds for Discipline¹

- A. Your conduct, as alleged, as well as other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your license to practice as an RN and/or your right to renew your license pursuant to Board regulation 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.
- B. Your conduct, as alleged, as well as other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your license to practice as an RN and/or your right to renew your license pursuant to G.L. c. 112, §61, for committing deceit, malpractice, gross misconduct in the practice of the profession, or any offense against the laws of the Commonwealth relating thereto.
- C. Your conduct as alleged, as well as any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against your license to practice as an RN and/or your right to renew your license pursuant to G.L. c. 112, §74 for failing to be of good moral character.
- D. Your conduct, as alleged, as well as other evidence that may be adduced at hearing, also constitutes unprofessional conduct and conduct that undermines public confidence in the integrity of the nursing profession as defined in *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 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 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 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.

¹ It is well-settled administrative law that due process requires that “notice must be given that is reasonably calculated to apprise an interested party of the proceeding and to afford him an opportunity to present his case;” due process does not require Prosecuting Counsel to provide a detailed description of evidence they intend to introduce at a disciplinary hearing. *Langlitz v. Board of Registration of Chiropractors*, 396 Mass. 374, 376-377 (1985). See *Lapointe v. License Board of Worcester*, 389 Mass. 454, 458 (1983) (“[d]ue process requires notice of the grounds on which the board might act rather than the evidentiary support for those grounds”). Thus, notice pleadings do not require Prosecuting Counsel to match factual allegations to grounds for discipline. Similarly, factual allegations are not necessarily an exhaustive characterization of the evidence to be adduced at 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 offered by the Presiding Officer." Those terms may include a requirement that any copy of the transcript produced must be sent promptly 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 an Answer to the Order to Show Cause within twenty-one days of receipt of the Order to Show Cause *shall result in the entry of default* in the above-captioned matter. Your failure to submit a written request for a hearing within twenty-one 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.

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.

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 as a Registered Nurse in the Commonwealth of Massachusetts, including any right to renew your license.

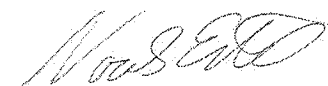
Your Answer to the Order to Show Cause and your written request for a hearing must be filed with the Prosecuting Counsel at the following address:

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

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) 519-9612 to schedule a time that is mutually convenient.

Board of Registration in Nursing,
Lorena Merielles Silva-Herman, *MSN-L, MBA, DNP, RN*
Executive Director

By:



Noah Ertel, Esq.
BBO #680698
Prosecuting Counsel
Department of Public Health
noah.ertel@mass.gov

Date: November 16, 2020

CERTIFICATE OF SERVICE

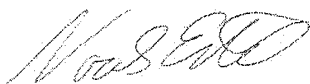
I hereby certify that a copy of the foregoing Cover Letter, Order to Show Cause, and this Certificate of Service were served upon the Licensee, Michelle L. Fortier, at her address of record with the Board:

Michelle L. Fortier
147 Arkansas Rd
Tewksbury, MA 01876-4102

by First Class Mail, postage prepaid, and Certified Mail No. 7019 0700 0000 3094 3377

by email: [REDACTED]

This _16_ day of November, 2020



Noah Ertel, Esq.
Prosecutor
Prosecuting Counsel