

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2013-12071

LUIS MIGUEL EXPOSITO, C.N.A.,

RESPONDENT.

_____ /

AMENDED ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Nursing against Respondent, Luis Miguel Exposito, C.N.A., and in support thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of nursing assistance pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 464, Florida Statutes.

2. At all times material to this Administrative Complaint, Respondent was a licensed certified nursing assistant (C.N.A.) within the state of Florida, having been issued license number CNA 31261.

3. Respondent's address of record is 3710 Collins Avenue, Apartment 306, Miami, Florida 33128.

4. Another possible address for the Respondent is 2535 West 12th Avenue, Apartment #2, Hialeah, Florida 33010.

5. At all times material to this Administrative Complaint, Respondent worked as a certified nursing assistant for patient E.R.S.

6. Respondent began caring for patient E.R.S., a ninety two (92) year old male, on or about April 11, 2013, and continued such nursing care for patient E.R.S. until on or about June 18, 2013.

7. On or about June 17, 2013, Respondent fraudulently cashed check number 5447, in the amount of eight hundred and fifty dollars (\$850.00) from patient E.R.S' joint checking account. The check was endorsed to "cash."

8. Respondent forged the check to mimic the signature of patient E.R.S' wife, E.S.

9. On or about June 24, 2013, Respondent fraudulently cashed check 5457 for one thousand dollars (\$1,000.00) from patient E.R.S' joint checking account. The check was endorsed to "cash."

10. Respondent forged the check to mimic the signature of patient E.R.S' wife, E.S.

11. On or about June 27, 2013, Respondent fraudulently cashed check 5448 for one thousand three hundred dollars (\$1,300.00) from patient E.R.S.' joint checking account. The check was endorsed to "cash."

12. Respondent forged the check to mimic the signature of patient E.R.S' wife, E.S.

COUNT I

13. Petitioner re-alleges and incorporates paragraphs one through nine as if fully set forth herein.

14. Section 464.204(1)(b), Florida Statutes (2012), provides that intentionally violating any provision of Chapter 464, Chapter 456, or the rules adopted by the board, constitutes grounds for which the board may impose disciplinary sanctions.

15. Section 464.018(1)(h), Florida Statutes (2012), provides that unprofessional conduct as defined by board rule constitutes grounds for disciplinary action.

16. Rule 64B9-8.005(4), Florida Administrative Code, provides that unprofessional conduct includes stealing from a patient.

17. Respondent engaged in unprofessional conduct by forging one or more checks in the name of patient E.R.S' wife and/or cashing said checks.

18. Based on the foregoing, Respondent violated Section 464.204(1)(b), Florida Statutes (2012), intentionally violating any provision of Chapter 464, Chapter 456, or the rules adopted by the board, by intentionally violating Section 464.018(1)(h), Florida Statutes (2012), by engaging in unprofessional conduct as defined by Rule 64B9-8.005(4), Florida Administrative Code, to include stealing from a patient.

COUNT II

19. Petitioner re-alleges and incorporates paragraphs one through nine as if fully set forth herein.

20. Section 464.204(1)(b), Florida Statutes (2012), provides that intentionally violating any provision of Chapter 464, Chapter 456, or the rules adopted by the board, constitutes grounds for which the board may impose disciplinary sanctions.

21. Section 456.072(1)(m), Florida Statutes (2012), provides making deceptive, untrue, or fraudulent representation in or related to the

practice of a profession or employing a trick or scheme in or related to the practice of a profession.

22. As set forth above, Respondent made deceptive, untrue, or fraudulent representation in or related to the practice of the profession certified nursing assistant, and/or employed a trick or scheme in or related to the practice of certified nursing assistant when:

- a. On or about June 17, 2013, Respondent cashed check number 5447, in the amount of eight hundred and fifty dollars (\$850.00) from patient E.R.S' joint checking account, and/or forged the check to mimic the signature of patient E.R.S' wife, E.S.; and/or,
- b. On or about June 24, 2013, Respondent cashed check 5457 for one thousand dollars (\$1,000.00) from patient E.R.S.' joint checking account, and/or forged the check to mimic the signature of patient E.R.S' wife, E.S.; and/or,
- c. On or about June 27, 2013, Respondent cashed check 5457 for one thousand three hundred dollars (\$1,300.00) from patient E.R.S.' joint checking account, and/or forged the check to mimic the signature of patient E.R.S' wife, E.S.

23. Based on the foregoing, Respondent violated Section 464.204(1)(b), Florida Statutes (2012), by intentionally violating Section 456.072(1)(m), Florida Statutes, by making deceptive untrue, or fraudulent representation in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.

[Remainder of this page intentionally left blank]

WHEREFORE, the Petitioner respectfully requests that the Board of Nursing enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this _____ day of _____, 2016.

John H. Armstrong, MD, FACS
State Surgeon General and Secretary of Health

Rose Garrison
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265
Florida Bar No.: 105920
(850) 245 - 4444 ext. 8127 Telephone
(850) 245 - 4662 Facsimile
Rose.Garrison@flhealth.gov

/RG

PCP:
PCP Members:

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

A request or petition for an administrative hearing must be in writing and must be received by the Department within 21 days from the day Respondent received the Administrative Complaint, pursuant to Rule 28-106.111(2), Florida Administrative Code. If Respondent fails to request a hearing within 21 days of receipt of this Administrative Complaint, Respondent waives the right to request a hearing on the facts alleged in this Administrative Complaint pursuant to Rule 28-106.111(4), Florida Administrative Code. Any request for an administrative proceeding to challenge or contest the material facts or charges contained in the Administrative Complaint must conform to Rule 28-106.2015(5), Florida Administrative Code.

Mediation under Section 120.573, Florida Statutes, is not available to resolve this Administrative Complaint.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.

Mission:

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Rick Scott
Governor

John H. Armstrong, MD, FACS
State Surgeon General & Secretary

Vision: To be the Healthiest State in the Nation

NOTICE OF HEARING

September 4, 2015
Case # 201312071

To: LUIS MIGUEL EXPOSITO
2535 W 12TH AVE APT. # 2
HIALEAH, FL 33010

YOU ARE HEREBY NOTIFIED THAT THE BOARD OF NURSING WILL CONSIDER YOUR CASE AT THE FOLLOWING MEETING:

Date: Thursday, October 8, 2015
Time: 1:30 pm EST or thereafter
Type: Voluntary Relinquishment
Re: LUIS MIGUEL EXPOSITO: 4401/201312071
Place: Orlando Marriott Lake Mary
1501 International Parkway
Lake Mary, FL 32746
(407) 995-1100

Voluntary relinquishment cases are typically accepted as a block, not individually. If you plan to attend, please arrive approximately 15 minutes early to sign-in prior to the beginning of the meeting. Please note that you be allowed 10 minutes to address the Board.

After the conclusion of the board meeting, the Board will file a final order stating the facts of the case and the Board's decision on the agreement. A copy of the order will be sent to the respondent, typically within 30 days of the board meeting.

Do not send additional materials to the Board office at this time. Additional material will not be considered at the Board meeting, except at the discretion of the Board Chair. Following the meeting you may view the meeting minutes at: <http://floridasnursing.gov>.

Requests for continuance must be received in the Board Office at least 7 days in advance of the meeting and are subject to approval by the Board Chair or designee. Any request due to medical conditions must be accompanied by a statement from a Physician or Advanced Registered Nurse Practitioner. Requests for continuances can be mailed to the board office or faxed to (850) 617-6460. Please include your full name and contact information.

For questions regarding meeting location directions, contact the hotel at the number listed above under "Place."

If you have any further questions regarding the upcoming board meeting, please contact Melissa Greenfield at (850) 245-4155. **For questions regarding your case, please contact Prosecution Services Unit at (850) 245-4640.**

Florida Department of Health

Division of Medical Quality Assurance • Bureau of Health Care Practitioner Regulation
Board of Nursing
4052 Bald Cypress Way, Bin C-02 • Tallahassee, FL 32399-3252
PHONE: 850/245-4444 • FAX 850/617-6460

www.FloridaHealth.gov

TWITTER: HealthyFLA
FACEBOOK: FLDepartmentofHealth
YOUTUBE: fldoh
FLICKR: HealthyFla
PINTEREST: HealthyFla

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NOTICE OF HEARING

September 4, 2015
Case # 201312071

To: LUIS MIGUEL EXPOSITO
3710 COLLINS AVE APT 306
MIAMI, FL 33128

YOU ARE HEREBY NOTIFIED THAT THE BOARD OF NURSING WILL CONSIDER YOUR CASE AT THE FOLLOWING MEETING:

Date: Thursday, October 8, 2015
Time: 1:30 pm EST or thereafter
Type: Voluntary Relinquishment
Re: LUIS MIGUEL EXPOSITO: 4401/201312071
Place: Orlando Marriott Lake Mary
1501 International Parkway
Lake Mary, FL 32746
(407) 995-1100

Voluntary relinquishment cases are typically accepted as a block, not individually. If you plan to attend, please arrive approximately 15 minutes early to sign-in prior to the beginning of the meeting. Please note that you be allowed 10 minutes to address the Board.

After the conclusion of the board meeting, the Board will file a final order stating the facts of the case and the Board's decision on the agreement. A copy of the order will be sent to the respondent, typically within 30 days of the board meeting.

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State Surgeon General and Secretary

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MEMORANDUM

TO: Joe Baker, Jr., Executive Director, Certified Nursing Assistants
FROM: Lucas May, Assistant General Counsel
RE: **Voluntary Relinquishment**
SUBJECT: DOH v. Luis Miguel Exposito, C.N.A.
 DOH Case Number 2013-12071
DATE: August 13, 2015

Enclosed you will find materials in the above-referenced case to be placed on the agenda for final agency action for the **October 8, 2015** meeting of the board. The following information is provided in this regard.

Subject: Luis Miguel Exposito, C.N.A.

Subject's Address of Record: 3710 Collins Ave Apt 306
 Miami, FL 33128

Enforcement Address: 2535 W 12th Ave
 Apt. # 2
 Hialeah, FL 33010

Additional Address: 3710 Collins Ave. Apt 306
 Miami Beach, FL 33140

Subject's License No: 31261 **Rank:** CNA

Licensure File No: 358447

Initial Licensure Date: 5/11/2004

Board Certification: No

Required to Appear: No

Current IPN/PRN Contract: No

Allegation(s): Section 464.204(1)(b), F.S.(2012), by Rule 64B9-8.005(4), F.A.C.

Prior Discipline: None

Probable Cause Panel: March 11, 2014
 Trybulski and Kemp

Subject's Attorney: Pro Se

Florida Department of Health

Office of the General Counsel – Prosecution Services Unit
 4052 Bald Cypress Way, Bin C-65 • Tallahassee, FL 32399-3265
 EXPRESS MAIL: 2585 Merchants Row Boulevard, Suite 105
 PHONE: 850/245-4444 • FAX 850/245-4662

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DOH v. Luis Miguel Exposito, C.N.A.
DOH Case Number 2013-12071

Complainant/Address: Department of Children and Families
401 NW 2nd Ave., N-821
Attn: Abraham De La Cruz
Miami, FL 33128

Materials Submitted: Memorandum to the Board
Voluntary Relinquishment (filed)
Administrative Complaint
Board Notification Letter
Supplemental Investigative Reports
dated 5.11.15 and 10.30.13
Election of Rights
Respondent's document
Prosecutor's document
PCP Memo
456 Material
Final Investigative Report

STATE OF FLORIDA
DEPARTMENT OF HEALTH

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Angel Sanders*
DATE **AUG 04 2015**

DEPARTMENT OF HEALTH,

Petitioner,

v.

Case No. 2013-12071

LUIS MIGUEL EXPOSITO, C.N.A.,

Respondent.

VOLUNTARY RELINQUISHMENT OF LICENSE

Respondent, **Luis Miguel Exposito, C.N.A.**, license number **31261**, hereby voluntarily relinquishes Respondent's license to practice nursing in the State of Florida and states as follows:

1. Respondent's purpose in executing this Voluntary Relinquishment is to avoid further administrative action with respect to this case. Respondent understands that acceptance by the Board of Nursing (hereinafter the Board) of this Voluntary Relinquishment shall be construed as disciplinary action against Respondent's license pursuant to Section 456.072(1)(f), Florida Statutes. As with any disciplinary action, this relinquishment will be reported to the National Practitioner's Data Bank. Licensing authorities in other states may impose discipline in their jurisdiction based on discipline taken in Florida.

2. Respondent agrees to voluntarily cease practicing nursing assistance immediately upon executing this Voluntary Relinquishment. Respondent further agrees to refrain from the practice of nursing assistance until

such time as this Voluntary Relinquishment is presented to the Board and the Board issues a written Final Order in this matter.

3. In order to expedite consideration and resolution of this action by the Board in a public meeting, Respondent, being fully advised of the consequences of so doing, hereby waives the statutory privilege of confidentiality of Section 456.073(10), Florida Statutes, and waives a determination of probable cause, by the Probable Cause Panel, or the Department when appropriate, pursuant to Section 456.073(4), Florida Statutes, regarding the complaint, the investigative report of the Department of Health, and all other information obtained pursuant to the Department's investigation in this case. By signing this waiver, Respondent understands that the record and complaint become public record and remain public record and that information is immediately accessible to the public.

4. Upon the Board's acceptance of this Voluntary Relinquishment, Respondent agrees to waive all rights to seek judicial review, or to otherwise challenge or contest the validity of this Voluntary Relinquishment and of the Final Order of the Board incorporating this Voluntary Relinquishment.

5. Petitioner and Respondent hereby agree that upon the Board's acceptance of this Voluntary Relinquishment, each party shall bear its own attorney's fees and costs related to the prosecution or defense of this case.

6. Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent in connection with the Board's

consideration of this Voluntary Relinquishment. Respondent agrees that consideration of this Voluntary Relinquishment and other related materials by the Board shall not prejudice or preclude the Board, or any of its members, from further participation, consideration, or resolution of these proceedings if the terms of this Voluntary Relinquishment are not accepted by the Board.

SIGNED this 07 day of July, 2015




Luis Miguel Exposito, C.N.A.

STATE OF FLORIDA

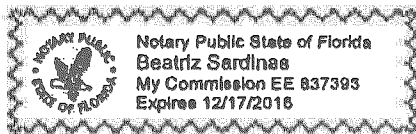
COUNTY OF Miami-Dade

Before me personally appeared D.L.C whose identity is known to be by Luis Miguel Exposito (type of identification), and who under oath, acknowledges that his/her signature appears above. Sworn to and subscribed by Respondent before me this 7 day of July, 2015.



Notary Public

My Commission Expires:



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John H. Armstrong, MD, FACS
State Surgeon General and Secretary

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August 14, 2015

VIA U.S. MAIL

Luis Miguel Exposito, C.N.A.
2535 W 12th Avenue
Apartment 2
Miami, Florida 33128

Re: DOH vs. Luis Miguel Exposito, C.N.A.
DOH Case Number: 2013-12071

Dear Mr. Exposito:

We are in receipt of your executed Voluntary Relinquishment form. By signing the Voluntary Relinquishment of License form, you agreed to the following:

- the Voluntary Relinquishment will be considered disciplinary action against your license, pursuant to Section 456.072(1)(f), Florida Statutes;
- you will never reapply for licensure as a Certified Nursing Assistant in the State of Florida; and
- Voluntarily relinquishing your Florida Certified Nursing Assistant license may have an effect on Registered Nurse licenses that you may hold in other states.

If you have any questions or concerns, please contact me as soon as possible to discuss, at 850-245-4444 extension 8242. Otherwise, this case will proceed as planned, and the Florida Board of Nursing will take up your request for Voluntary Relinquishment of License at their meeting scheduled for **October 8, 2015**, you will receive official notification of the date and time approximately two weeks prior to the meeting. You are not required to attend the meeting.

Sincerely,

Lucas L. May
Assistant General Counsel

LLM/pb

Florida Department of Health

Office of the General Counsel – Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65 • Tallahassee, FL 32399-3265
EXPRESS MAIL: 2585 Merchants Row Boulevard, Suite 105
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Sincerely,

Lucas L. May
Assistant General Counsel

LLM/pb

Florida Department of Health

Office of the General Counsel – Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65 • Tallahassee, FL 32399-3265
EXPRESS MAIL: 2585 Merchants Row Boulevard, Suite 105
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August 14, 2015

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Luis Miguel Exposito, C.N.A.
3710 Collins Avenue
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Re: DOH vs. Luis Miguel Exposito, C.N.A.
DOH Case Number: 2013-12071

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- the Voluntary Relinquishment will be considered disciplinary action against your license, pursuant to Section 456.072(1)(f), Florida Statutes;
- you will never reapply for licensure as a Certified Nursing Assistant in the State of Florida; and
- Voluntarily relinquishing your Florida Certified Nursing Assistant license may have an effect on Registered Nurse licenses that you may hold in other states.

If you have any questions or concerns, please contact me as soon as possible to discuss, at 850-245-4444 extension 8242. Otherwise, this case will proceed as planned, and the Florida Board of Nursing will take up your request for Voluntary Relinquishment of License at their meeting scheduled for **October 8, 2015**, you will receive official notification of the date and time approximately two weeks prior to the meeting. You are not required to attend the meeting.

Sincerely,

Lucas L. May
Assistant General Counsel

LLM/pb

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NOTICE OF HEARING

March 5, 2015

To: LUIS MIGUEL EXPOSITO
2535 W. 12TH AVENUE
APARTMENT 2
HIALEAH, FL 33010

YOU ARE HEREBY NOTIFIED THAT THE BOARD OF NURSING WILL CONSIDER YOUR CASE AT THE FOLLOWING MEETING:

Date: Thursday, April 16, 2015
Time: 1:30 pm EST or thereafter
Type: Hearing
Re: LUIS MIGUEL EXPOSITO: 4401/201312071
Place: DoubleTree by Hilton Deerfield Beach-Boca Raton
100 Fairway Drive
Deerfield Beach, FL 33441
(954) 427-7700

Informal hearings, informal waivers and informal licensure hearings are heard individually by the Board. **Respondents have the opportunity to address the Board but attendance is not mandatory unless otherwise indicated.** Should you plan to attend, please arrive approximately 15 minutes prior to the beginning of the meeting to sign in.

After the conclusion of the meeting, the Board will file a final order stating the facts of the case and the outcome voted on by the Board. A copy of the order will be sent to the respondent, typically within 30 days of the board meeting.

Do not send additional materials to the Board office at this time. Additional material will not be considered at the Board meeting, except at the discretion of the Board Chair.

Requests for continuance must be received in the Board Office at least 7 days in advance of the meeting and are subject to approval by the Board Chair or designee. Any request due to medical conditions must be accompanied by a statement from a Physician or Advanced Registered Nurse Practitioner. Requests for continuances can be mailed to the board office or faxed to (850) 617-6460. Please include your full name and contact information.

For questions regarding meeting location directions, contact the hotel at the number listed above under "Place."

If you have any further questions regarding the upcoming board meeting, please contact Akaiba Cummings at (850) 245-4444, ext. 3781. For questions regarding your case, please contact Prosecution Services Unit at (850) 245-4640.

Florida Department of Health

Division of Medical Quality Assurance • Board of Nursing
4052 Bald Cypress Way, Bin C-02 • Tallahassee, FL 32399-3252
PHONE: 850/ 245-4125 • FAX 850/ 245-4172

www.FloridasHealth.gov

TWITTER:HealthyFLA
FACEBOOK:FLDepartmentofHealth
YOUTUBE: fldoh

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NOTICE OF HEARING

March 5, 2015
Case #

To:

YOU ARE HEREBY NOTIFIED THAT THE BOARD OF NURSING WILL CONSIDER THIS CASE AT THE FOLLOWING MEETING:

Date: Friday, April 17, 2015
Time: 8:30 am EST or thereafter
Type:
Re: : /
Place: DoubleTree by Hilton Deerfield Beach
Boca Raton
100 Fairway Drive
Deerfield Beach, FL 33441
(954) 427-7700

This notice is to inform you, as an involved party or complainant, that the above listed case is scheduled to go before the Board of Nursing. While you are not required to attend, the meeting is open to the public. **There is no action needed on your part at this time.**

After the conclusion of the meeting, the Board file will file a final order stating the facts of the case and the Board's decision. A copy of the order will be sent to the respondent, typically within 30 days of the board meeting. This information will also be available on the Department of Health's website at: www.flhealthsource.com.

For questions regarding meeting location directions, contact the hotel at the number listed above under "Place."

If you have any further questions regarding the upcoming board meeting, please contact Akaiba Cummings at (850) 245-4444, ext 3781.

**STATE OF FLORIDA
BOARD OF NURSING**

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NO. 2013-12071

LUIS MIGUEL EXPOSITO, C.N.A.,

Respondent.

**MOTION FOR FINAL ORDER AFTER A HEARING NOT INVOLVING
DISPUTED ISSUES OF MATERIAL FACTS**

PETITIONER, the Florida Department of Health, by and through the undersigned counsel, hereby moves the Board of Nursing for entry of a Final Order in the above-styled cause on a date and time that has been determined and noticed by the Board. As grounds therefore Petitioner states:

1. Petitioner previously filed an Administrative Complaint against Respondent alleging that Respondent had violated the provisions of Florida Statutes, as set forth therein. Petitioner, by filing the Administrative Complaint, is seeking to discipline Respondent's license to practice nursing, thereby affecting Respondent's substantial interests.

2. On or about April 9, 2014, Petitioner served Respondent with the Administrative Complaint via certified mail at 2535 W. 12th Avenue, Apartment #2, Hialeah, Florida 33010. Petitioner, by serving Respondent with the Administrative Complaint, provided Respondent written notice of its decision to seek discipline of the Respondent's license to practice nursing.

3. Respondent has filed an Election of Rights Form or other responsive pleading evincing, or has otherwise indicated, that Respondent does not dispute the material facts alleged in the Administrative Complaint.

4. There are no disputed issues of material fact to be resolved by the Board.

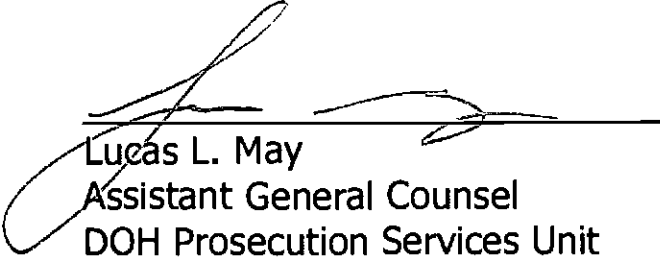
5. Respondent has been advised by way of this Motion, that a copy of the investigative file in this case will be furnished to the Board, establishing a prima facie case regarding the violations as set forth in the Complaint.

WHEREFORE, Petitioner respectfully requests that the Board of Nursing, after allowing Respondent the opportunity to present oral and/or written evidence in mitigation of the Administrative Complaint, enter a Final

Order imposing whatever discipline upon Respondent's license that the Board deems appropriate.

Respectfully Submitted,

John H. Armstrong, MD
State Surgeon General and Secretary of Health



Lucas L. May
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar #0102747
(850) 245-4444 telephone
(850) 245-4683 facsimile
Email: lucas.may@flhealth.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been provided by U.S. mail this 10 day of October, 2014, to: Annabelle Nahra, Esquire c/o Luis Miguel Exposito, C.N.A., at 9130 South Dadeland Boulevard, Suite 1910, Miami, Florida 33156.



Lucas L. May
Assistant General Counsel

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2013-12071

LUIS MIGUEL EXPOSITO, C.N.A.,

RESPONDENT.
_____ /

ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Nursing against Respondent, Luis Miguel Exposito, C.N.A., and in support thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of nursing assistance pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 464, Florida Statutes.

2. At all times material to this Administrative Complaint, Respondent was a licensed certified nursing assistant (C.N.A.) within the state of Florida, having been issued license number CNA 31261.

3. Respondent's address of record is 2535 West 12th Avenue, Apartment #2, Hialeah, Florida 33010.

4. At all times material to this Administrative Complaint, Respondent worked as a certified nursing assistant for patient E.R.S.

5. Respondent began caring for patient E.R.S., a ninety two (92) year old male, on or about April 11, 2013 and continued such nursing care for patient E.R.S. until on or about June 18, 2013.

6. On or about June 17, 2013, Respondent cashed check number 5447, in the amount of eight hundred and fifty dollars (\$850.00) from patient E.R.S.' joint checking account. The check was endorsed to "cash." Respondent forged the check to mimic the signature of patient E.R.S.' wife, E.S.

7. Patient E.R.S.' joint account was cancelled before any further fraudulent transactions could occur.

8. Respondent attempted to cash check 5457 for one thousand dollars (\$1,000.00) on or about June 24, 2013.

9. Respondent attempted to cash check 5448 for one thousand three hundred dollars (1,300.00) on or about June 27, 2013.

10. Section 464.204(1)(b), Florida Statutes (2012), provides that intentionally violating any provision of Chapter 464, Chapter 456, or the rules adopted by the board, constitutes grounds for which the board may impose disciplinary sanctions.

11. Section 464.018(1)(h), Florida Statutes (2012), provides that unprofessional conduct as defined by board rule constitutes grounds for disciplinary action.

12. Rule 64B9-8.005(4), Florida Administrative Code, provides that unprofessional conduct includes stealing from a patient.

13. Respondent engaged in unprofessional conduct by forging a check in the name of patient E.R.S' wife and cashing said check.

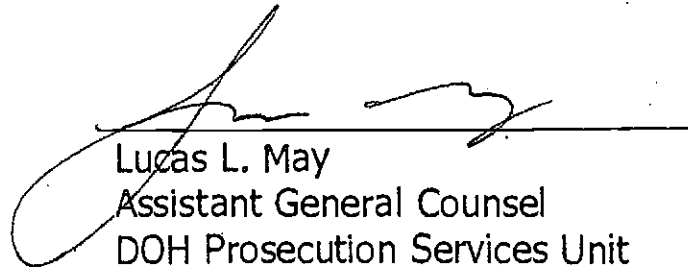
14. Based on the foregoing, Respondent violated Section 464.204(1)(b), Florida Statutes (2012), intentionally violating any provision of Chapter 464, Chapter 456, or the rules adopted by the board, by intentionally violating Section 464.018(1)(h), Florida Statutes (2012), by engaging in unprofessional conduct as defined by Rule 64B9-8.005(4), Florida Administrative Code, to include stealing from a patient.

WHEREFORE, the Petitioner respectfully requests that the Board of Nursing enter an order imposing one or more of the following penalties:

permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 11 day of March, 2014.

John H. Armstrong, MD, FACS
State Surgeon General and Secretary of Health



Lucas L. May
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265
Florida Bar No.: 0102747
(850) 245 - 4444 ext. 8242 Telephone
(850) 245 - 4683 Facsimile
Lucas.May@flhealth.gov

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Angel Sanders*
DATE MAR 12 2014

/LLM

PCP: *March 11, 2014*
PCP Members: *Trybulski & Kemp*

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

**v.
LUIS MIGUEL EXPOSITO, C.N.A.,**

CASE NO. 2013-12071

Respondent.
_____ /

**MOTION TO ASSESS COSTS
IN ACCORDANCE WITH SECTION 456.072(4)**

The Department of Health, by and through counsel, and moves the Board of Nursing for entry of a Final Order assessing costs against Respondent for the investigation and prosecution of this case in accordance with Section 456.072(4), Florida Statutes (2012). As grounds therefore, the Petitioner states the following:

1. At its next regularly scheduled meeting, the Board of Nursing will take up for consideration the above-styled disciplinary action and will enter a Final Order.

2. Section 456.072(4), Florida Statutes (2012), states, in pertinent part, as follows:

In addition to any other discipline imposed through final order, or citation, entered on or after July 1, 2001, under

this section or discipline imposed through final order, or citation, entered on or after July 1, 2001, for a violation of any practice act, the board, or the department when there is no board, shall assess costs related to the investigation and prosecution of the case. The costs related to the investigation and prosecution include, but are not limited to, salaries and benefits of personnel, costs related to the time spent by the attorney and other personnel working on the case, and any other expenses incurred by the department for the case. The board, or the department when there is no board, shall determine the amount of costs to be assessed after its consideration of an affidavit of itemized costs and any written objections thereto....

3. As evidenced in the attached affidavit (Exhibit A), the investigation and prosecution of this case has resulted in costs in the total amount of \$2,795.52, based on the following itemized statement of costs:

Subject's Name: EXPOSITO, LUIS MIGUEL

***** Cost to Date *****		
	Hours	Costs
Complaint:	0.40	\$21.96
Investigation:	24.90	\$1,590.89
Legal:	11.60	\$1,182.67
Compliance:	0.00	\$0.00
	*****	*****
Sub Total:	36.90	\$2,795.52
Expenses to Date:		\$0.00
Prior Amount:		\$0.00
Total Costs to Date:		\$2,795.52

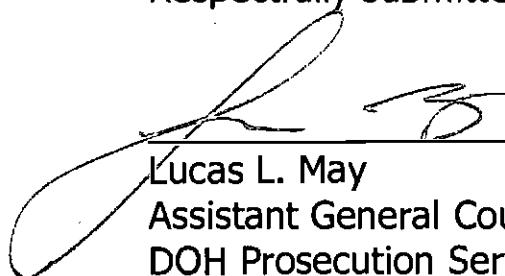
4. The attached affidavit reflects the Department's costs for attorney time in this case as \$1,182.67 (Exhibit A). However, the Department is not seeking costs for attorney time in this case.

5. Should Respondent file written objections to the assessment of costs, within ten (10) days of the date of this motion, specifying the grounds for the objections and the specific elements of the costs to which objections are made, Petitioner requests that the Board determine the amount of costs to be assessed based upon its consideration of the affidavit attached as Exhibit A and any timely-filed written objections.

6. Petitioner requests that the Board grant this motion and assess costs in the amount of \$1,612.85 as supported by competent, substantial evidence. This assessment of costs is in addition to any other discipline imposed by the Board and is in accordance with Section 456.072(4), Florida Statutes (2012).

WHEREFORE, the Department of Health requests that the Board of Nursing enter a Final Order assessing costs against Respondent in the amount of \$1,612.85.

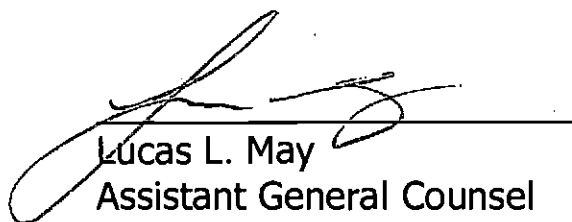
Respectfully submitted,



Lucas L. May
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar #0102747
(850) 245-4444 telephone
(850) 245-4683 facsimile
Email: lucas.may@flhealth.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Assess Costs has been provided to: Annabelle Nahra, Esquire c/o Luis Miguel Exposito, C.N.A., at 9130 South Dadeland Boulevard, Suite 1910, Miami, Florida 33156, by U.S. Mail on this 10 day of October, 2014.



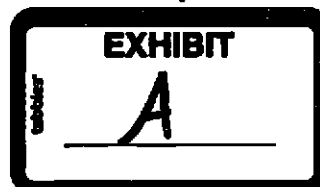
Lucas L. May
Assistant General Counsel

AFFIDAVIT OF FEES AND COSTS EXPENDED

STATE OF FLORIDA
COUNTY OF LEON:

BEFORE ME, the undersigned authority, personally appeared **SHANE WALTERS** who was sworn and states as follows:

- 1) My name is Shane Walters.
- 2) I am over the age of 18, competent to testify, and make this affidavit upon my own personal knowledge and after review of the records at the Florida Department of Health (DOH).
- 3) I am the Senior Management Analyst II for the Consumer Services Unit for DOH. The Consumer Services Unit is where all complaints against Florida health care licensees (e.g., medical doctors, dentists, nurses, respiratory therapists) are officially filed. I have been in my current job position for more than one year. My business address is 4052 Bald Cypress Way, Bin C-75 Tallahassee, Florida 32399-3275.
- 4) As Senior Management Analyst II of the Consumer Services Unit, my job duties include reviewing data in the Time Tracking System and verifying that the amounts correspond. The Time Tracking System is a computer program which records and tracks DOH's costs regarding the investigation and prosecution of cases against Florida health care licensees
- 5) As of today, DOH's total costs for investigating and prosecuting DOH case number(s) **2013-12071** (Department of Health v. **Luis Miguel Exposito, C.N.A.**,) are **TWO THOUSAND SEVEN HUNDRED NINETY-FIVE DOLLARS AND FIFTY-TWO CENTS (\$2,795.52)**.
- 6) The costs for DOH case numbers **2013-12071** (Department of Health v. **Luis Miguel Exposito, C.N.A.**,) are summarized in Exhibit 1 (Cost Summary Report), which is attached to this document.
- 7) The itemized costs and expenses for DOH case numbers **2013-12071** (Department of Health v. **Luis Miguel Exposito, C.N.A.**,) are detailed in Exhibit 2 (Itemized Cost Report and Itemized Expense Report and receipts), which is attached to this document.
- 8) The itemized costs as reflected in Exhibit 2 are determined by the following method: DOH employees who work on cases daily are to



keep track of their time in six-minute increments (e.g., investigators and lawyers). A designated DOH employee in the Consumer Services Unit, Legal Department, and in each area office, inputs the time worked and expenses spent into the Time Tracking System. Time and expenses are charged against a state health care Board (e.g., Florida Board of Medicine, Florida Board of Dentistry, Florida Board of Osteopathic Medicine), and/or a case. If no Board or case can be charged, then the time and expenses are charged as administrative time. ~~The hourly rate of each employee is calculated by formulas established by the Department. (See the Itemized Cost Report)~~

- 9) Shane Walters, first being duly sworn, states that she has read the foregoing Affidavit and its attachments and the statements contained therein are true and correct to the best of her knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

Shane Walters
Shane Walters, Affiant

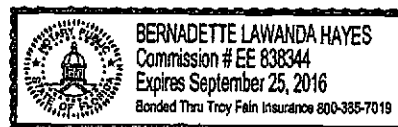
State of Florida
County of Leon

Sworn to and subscribed before me this 17th day of September, 2014,
by Shane Walters, who is personally known to me.

Bernadette Lawanda Hayes
Notary Signature

Bernadette Lawanda Hayes
Name of Notary Printed

Stamp Commissioned Name of Notary Public:

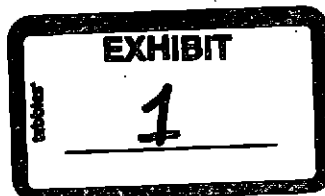


Complaint Cost Summary

Complaint Number: 201312071

Subject's Name: **EXPOSITO, LUIS MIGUEL**

***** Cost to Date *****		
	Hours	Costs
Complaint:	0.40	\$21.96
Investigation:	24.90	\$1,590.89
Legal:	11.60	\$1,182.67
Compliance:	0.00	\$0.00
	*****	*****
Sub Total:	36.90	\$2,795.52
Expenses to Date:		\$0.00
Prior Amount:		\$0.00
Total Costs to Date:		\$2,795.52



**Time Tracking System
Itemized Cost by Complaint**

Complaint 201312071

Report Date 09/17/2014

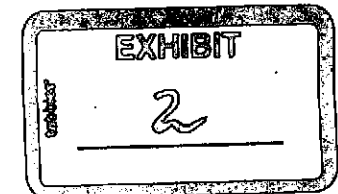
Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
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CONSUMER SERVICES UNIT

HA52	0.40	\$54.90	\$21.96	07/31/2013	25	REVIEW CASE FILE
Sub Total	0.40		\$21.96			

INVESTIGATIVE SERVICES UNIT

MI199	0.50	\$63.98	\$31.99	08/09/2013	4	ROUTINE INVESTIGATIVE WORK
MI28	0.60	\$63.98	\$38.39	08/12/2013	4	ROUTINE INVESTIGATIVE WORK
MI199	1.50	\$63.98	\$95.97	08/12/2013	4	ROUTINE INVESTIGATIVE WORK
MI199	0.50	\$63.98	\$31.99	08/13/2013	76	REPORT PREPARATION
MI199	3.10	\$63.98	\$198.34	08/13/2013	4	ROUTINE INVESTIGATIVE WORK
MI199	1.30	\$63.98	\$83.17	08/14/2013	4	ROUTINE INVESTIGATIVE WORK
MI199	0.60	\$63.98	\$38.39	08/14/2013	76	REPORT PREPARATION
MI199	1.20	\$63.98	\$76.78	08/15/2013	4	ROUTINE INVESTIGATIVE WORK
MI199	0.20	\$63.98	\$12.80	09/04/2013	4	ROUTINE INVESTIGATIVE WORK
MI200	0.80	\$63.98	\$51.18	10/03/2013	4	ROUTINE INVESTIGATIVE WORK
MI200	0.80	\$63.98	\$51.18	10/04/2013	4	ROUTINE INVESTIGATIVE WORK
MI200	0.60	\$63.82	\$38.29	10/24/2013	4	ROUTINE INVESTIGATIVE WORK
MI200	1.30	\$63.82	\$82.97	10/29/2013	76	REPORT PREPARATION
MI200	4.00	\$63.82	\$255.28	10/29/2013	14	TRAINING
MI28	4.20	\$63.82	\$268.04	10/29/2013	4	ROUTINE INVESTIGATIVE WORK
MI200	2.10	\$63.82	\$134.02	10/30/2013	76	REPORT PREPARATION
MI200	0.50	\$63.82	\$31.91	10/30/2013	14	TRAINING
MI200	0.40	\$63.82	\$25.53	11/08/2013	76	REPORT PREPARATION
MI200	0.30	\$63.82	\$19.15	11/13/2013	4	ROUTINE INVESTIGATIVE WORK
MI200	0.20	\$63.82	\$12.76	07/14/2014	6	SUPPLEMENTAL INVESTIGATION
MI200	0.20	\$63.82	\$12.76	07/15/2014	6	SUPPLEMENTAL INVESTIGATION
Sub Total	24.90		\$1,590.89			





Time Tracking System
Itemized Cost by Complaint

Complaint 201312071

Report Date 09/17/2014

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
PROSECUTION SERVICES UNIT						
HLL113B	0.20	\$101.95	\$20.39	11/12/2013	35	TELEPHONE CALLS
HLL113B	1.20	\$101.95	\$122.34	11/12/2013	25	REVIEW CASE FILE
HLL113B	0.40	\$101.95	\$40.78	11/13/2013	35	TELEPHONE CALLS
HLL113B	1.20	\$101.95	\$122.34	11/13/2013	31	PREPARE OR REVISE CLOSING ORDER
HLL113B	0.70	\$101.95	\$71.37	11/15/2013	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL113B	1.00	\$101.95	\$101.95	01/07/2014	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL113B	0.20	\$101.95	\$20.39	01/09/2014	31	PREPARE OR REVISE CLOSING ORDER
HLL113B	1.00	\$101.95	\$101.95	01/13/2014	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL113B	0.40	\$101.95	\$40.78	03/17/2014	79	STIPULATION
HLL113B	0.30	\$101.95	\$30.59	04/24/2014	25	REVIEW CASE FILE
HLL113B	0.10	\$101.95	\$10.20	04/24/2014	35	TELEPHONE CALLS
HLL113B	0.20	\$101.95	\$20.39	05/07/2014	60	MISCELLANEOUS
HLL113B	0.20	\$101.95	\$20.39	07/14/2014	35	TELEPHONE CALLS
HLL113B	0.10	\$101.95	\$10.20	07/14/2014	35	TELEPHONE CALLS
HLL113B	0.20	\$101.95	\$20.39	07/14/2014	6	SUPPLEMENTAL INVESTIGATION
HLL113B	0.60	\$101.95	\$61.17	08/01/2014	25	REVIEW CASE FILE
HLL113B	2.50	\$101.95	\$254.88	08/05/2014	26	PREPARE OR REVISE MEMORANDUM
HLL113B	0.30	\$101.95	\$30.59	08/13/2014	60	MISCELLANEOUS
HLL113B	0.30	\$101.95	\$30.59	08/13/2014	60	MISCELLANEOUS
HLL113B	0.10	\$101.95	\$10.20	08/26/2014	36	PREPARATION OR REVISION OF LETTER
HLL113B	0.10	\$101.95	\$10.20	08/29/2014	35	TELEPHONE CALLS
HLL113B	0.30	\$101.95	\$30.59	09/11/2014	60	MISCELLANEOUS
Sub Total	11.60		\$1,182.67			

Total Cost	\$2,795.52
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Report Date 09/17/2014

*** CONFIDENTIAL ***

Time Tracking System
Itemized Cost by Complaint

Complaint 201312071

Page 3 of 3

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
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*** CONFIDENTIAL ***

**Time Tracking System
Itemized Expense by Complaint
Complaint**

Report Date: 09/17/2014

Page 1 of 1

Staff Code	Expense Date	Expense Amount	Expense Code	Expense Code Description
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SubTotal
Total Expenses

ELECTION OF RIGHTS

Case Name: Luis Miguel Exposito, C.N.A.

Case No. 2013-12071

PLEASE SELECT ONLY 1 OF THE 3 OPTIONS

An Explanation of Rights is attached. If you do not understand these options, please consult with your attorney or contact the attorney for the Prosecution Services Unit at the address/phone number listed at the bottom of this form.

OPTION 1. I do not dispute the allegations of fact in the Administrative Complaint, but do wish to be accorded a hearing, pursuant to Section 120.57(2), Florida Statutes, at which time I will be permitted to submit oral and/or written evidence in mitigation of the complaint to the Board.

OPTION 2. I do not dispute the allegations of fact contained in the Administrative Complaint and waive my right to object or to be heard. I request that the Board enter a final order pursuant to Section 120.57, Florida Statutes.

OPTION 3. I do dispute the allegations of fact contained in the Administrative Complaint and request this to be considered a petition for formal hearing, pursuant to Sections 120.569(2)(a) and 120.57(1), Florida Statutes, before an Administrative Law Judge appointed by the Division of Administrative Hearings. I specifically dispute the following paragraphs of the Administrative Complaint:

In addition to the above selection, I also elect the following:

- I accept the terms of the Settlement Agreement, have signed and am returning the Settlement Agreement or I am interested in settling this case.
 I do not wish to continue practicing and have signed and returned the Voluntary Relinquishment of licensure form.

Regardless of which option I have selected, I understand that I will be given notice of time, date, and place when this matter is to be considered by the Board for Final Action. Mediation under Section 120.573, Florida Statutes, is not available in this matter.

(Please sign and complete all the information below.)

Respondent's signature [Signature]
Address: 2535 NW 12th Ave.
Apt 2. Hialeah FL 33010
Lic. No. CNA 31261
Phone No.
Fax No.

STATE OF FLORIDA
COUNTY OF Miami-Dade
Before me personally appeared Luis Exposito whose identity is known to be by FL DL
(type of identification), and who under oath, acknowledges that his/her signature appears above. Sworn to and subscribed by Respondent before me this 9 day of September, 2014.

Notary Public
My Commission Expires:



MAYDELLINE JIMENEZ
MY COMMISSION # FF 005184
EXPIRES: April 3, 2017
Bonded Thru Budget Notary Services

PLEASE MAIL AND/OR FAX COMPLETED FORM TO: Lucas L. May, Assistant General Counsel, DOH, Prosecution Services Unit, 4052 Bald Cypress Way, Bin C-65, Tallahassee, Florida 32399-3265. Telephone Number: (850) 245-4444; FAX (850) 245-4683- TDD 1-800-955-8771.

Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



Rick Scott
Governor

John H. Armstrong, MD, FACS
State Surgeon General & Secretary

Vision: To be the Healthiest State in the Nation

October 2, 2014

VIA U. S. MAIL

Annabelle Nahra, Esq.
9130 South Dadeland Boulevard
Suite 1910
Miami, Florida 33156

Re: DOH vs. Luis Miguel Exposito, C.N.A.
DOH Case Number: 2013-12071

Dear Ms. Nahra:

I am in receipt of your client's election of rights requesting a hearing not involving disputed issues of material fact executed by you on September 9, 2014 concerning the above referenced case. This means that the facts alleged in the Administrative Complaint are uncontested. This is an important distinction because, by law, the Board cannot resolve disputes of material fact in this case or any disciplinary case. Since your client is requesting a hearing not involving disputed issues of material fact, your client is not admitting the facts alleged in the Administrative Complaint, however, your client is agreeing not to contest these facts and to limit presentation to legal argument, if any, and to matters in mitigation or extenuation.

Our office is now preparing this case to be presented at the next meeting of the Florida Board of Nursing, scheduled for December 4, 2014, you will receive official notification of the date and time approximately two weeks prior to the meeting. Please be advised your case will be set at the convenience of the Department and/or the Florida Board of Nursing and you will be notified of the date and time approximately two weeks prior to the meeting.

Thank for your attention and cooperation in this matter. Should you have any questions, please feel free to contact this office.

Sincerely,

Lucas L. May
Assistant General Counsel

LLM/pb

Florida Department of Health

Office of the General Counsel • Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65 • Tallahassee, FL 32399-1701
Express mail address: 2585 Merchants Row – Suite 105
PHONE: 850/245-4444 • FAX 850/245-4683

www.FloridasHealth.com

TWITTER: HealthyFLA
FACEBOOK: FLDepartmentofHealth
YOUTUBE: fldoh

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

BOARD:	Nursing
CASE NUMBER:	2013-16979
COMPLAINT MADE BY:	DCF
DATE OF COMPLAINT:	October 30, 2013
SUBJECT:	Lisa Marie Boitschenko, L.P.N. 7140 B Lake Magnolia Drive New Port Richey, FL 34653
SUBJECT'S ATTORNEY	N/A
INVESTIGATED BY:	Tamara Armstrong St. Petersburg
REVIEWED BY:	Judson Searcy Assistant General Counsel
RECOMMENDATION:	Reconsideration (4016) License revoked

CLOSING ORDER ON RECONSIDERATION

THE COMPLAINT: The Administrative Complainant alleged Subject violated Section 464.018(1)(h), Florida Statutes (2013), by engaging in unprofessional conduct as defined by Rule 64B9-8.005(14), Florida Administrative Code, to include using force against a patient, striking a patient, or throwing objects at a patient.

THE FACTS: On June 11, 2014, the Department of Health filed an Administrative Complaint in this case alleging that Respondent abused a patient.

The Board of Nursing revoked Respondent's license on or about June 17, 2015, in case number 2013-17255, due to a plea of guilty to the related criminal case of Abuse of a Disabled Adult.

The Department and the Probable Cause Panel have determined that based upon the Subject's license having been revoked, this case should be dismissed without further prosecution.

THE LAW: This case has been closed due to the revocation of Subject's license.

It is, therefore, ORDERED that this matter be, and same is hereby, DISMISSED.

DONE AND ORDERED this _____ day of _____, 2015.

CHAIRPERSON, PROBABLE CAUSE PANEL
BOARD OF NURSING

FILED DATE - 6-17-15
Department of Health

STATE OF FLORIDA
BOARD OF NURSING

By: Amey L. Conway
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

Case No.: 2013-17255

License No.: PN 5188242

LISA MARIE BOITSCHENKO,

Respondent.

FINAL ORDER

This matter appeared before the Board of Nursing at a duly-noticed public meeting on June 5, 2015 in Tampa, Florida, for a hearing not involving disputed issues of material fact pursuant to Sections 120.569 and 120.57(2), Florida Statutes. Petitioner has filed an Administrative Complaint seeking disciplinary action against the license. A copy of the Administrative Complaint is attached to and made a part of this Final Order. Service of the Administrative Complaint was made upon Respondent by certified mail, return receipt requested. Respondent has not filed an Election of Rights. Petitioner has filed a Motion for Determination of Waiver and Entry of Final Order. Petitioner was represented by Matthew Witters, Assistant General Counsel, Florida Department of Health. Respondent was not present.

FINDINGS OF FACT

Since the licensee has not replied to the Administrative Complaint nor contested the factual allegations, the prosecuting attorney offered the investigative file to prove the facts as alleged. The investigative file was received into evidence and the Board finds the uncontested facts adequately support the allegations. Therefore, the Board adopts as its finding of facts the facts stated in the Administrative Complaint.

CONCLUSIONS OF LAW

Based upon the Findings of Fact, the Board concludes the licensee has violated Section 464.018(1)(c), Florida Statutes.

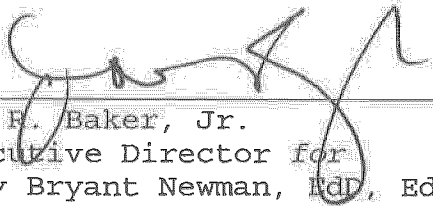
The Board is empowered by Sections 464.018(2) and 456.072(2), Florida Statutes, to impose a penalty against the licensee. Therefore it is ORDERED that:

The license of LISA MARIE BOITSCHENKO is revoked. Within 30 days the licensee shall return her license to the Board office, 4052 Bald Cypress Way, Tallahassee, Florida 32399 or shall surrender the license to an investigator of the Department of Health. The licensee's employer shall immediately be informed of the revocation in writing from the licensee with a copy to the Board office.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 16th day of June, 2015.

BOARD OF NURSING



Joe F. Baker, Jr.
Executive Director for
Jody Bryant Newman, EdD, EdS Chair

NOTICE OF APPEAL RIGHTS

Pursuant to Section 120.569, Florida Statutes, the parties are hereby notified that they may appeal this Final Order by filing one copy of a notice of appeal with the clerk of the department and by filing a filing fee and one copy of a notice of appeal with the District Court of Appeal within thirty days of the date this Final Order is filed.

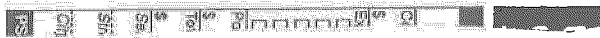
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by certified mail to LISA MARIE BOITSCHENKO, 7140 B Lake Bagnolia Drive, New Port Rickey FL 34653 & 4254 North Buffalo Road, Orchard Park NY 14127; by email to Lee Ann Gustafson, Assistant Attorney General, LeeAnn.Gustafson@myflorida.com and Department of Health-PSU, Matthew.Witters@flhealth.gov on this 17th day of June, 2015.

NY



7015 0640 0006 2400 7297



Deputy Agency Clerk

FL

Case No. 2013-17255

7015 0640 0006 2400 7303



**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2013-17255

LISA MARIE BOITSCHENKO, L.P.N.,

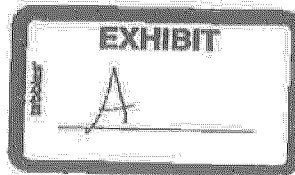
RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Nursing against Respondent, Lisa Marie Boitschenko, L.P.N., and in support thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of nursing pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 464, Florida Statutes.

2. At all times material to this Administrative Complaint, Respondent was a licensed practical nurse (L.P.N.) within the state of Florida, having been issued license number PN 5188242.



3. Respondent's address of record is 7140 B Lake Magnolia Drive, New Port Richey, Florida 34653.

4. Respondent's alternate address is 4254 North Buffalo Road, Orchard Park, New York 14127.

4. On or about May 29, 2014, in the Sixth Judicial Circuit Court, In and For Pinellas County, Florida, case number CRC 13-18233CFANO-B, Respondent entered a plea of guilty to Abuse of Elderly Person or Disabled Adult in violation of Section 825.102(1), Florida Statutes, a third degree felony.

5. Section 464.018(c), Florida Statutes (2013), provides that being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of nursing or to the ability to practice nursing, constitutes grounds for discipline.

6. A licensed practical nurse is one of a handful of categories of licensed professionals that provide direct patient care, in many instances, to the elderly or those with long-term infirmities, often in patient's homes or in nursing home settings. They are in a unique position to have direct access to vulnerable patients with little to no constant supervision. As

such, entering a plea of guilty to abuse of elderly person or disabled adult, in which the victim was a patient, directly relates to the practice of nursing or the ability to practice nursing, and violates the trust and confidence invested by the Legislature in these licensees.

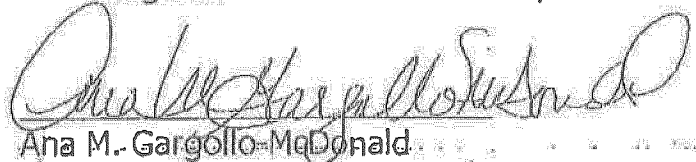
9. As set forth above, on or about May 29, 2014, in the Sixth Judicial Circuit Court, Pinellas County, Florida, in case number CRC 13-18233CFANO-B, Respondent entered a plea of guilty to Abuse of Elderly Person or Disabled Adult, which directly relates to the practice of, or the ability to practice nursing assistance

10. Based on the foregoing, Respondent violated Section 464.018(1)(c), Florida Statutes (2013), by being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of nursing or to the ability to practice nursing.

WHEREFORE, the Petitioner respectfully requests that the Board of Nursing enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 20th day of January 2015.

John H. Armstrong, MD, FACS
State Surgeon General and Secretary of Health



Ana M. Gargollo-McDonald
Assistant General Counsel
Fla. Bar No. 85907
Florida Department of Health
Office of the General Counsel
4052 Bald Cypress Way, Bin #C65
Tallahassee, FL 32399-3265
Telephone: (850) 245-4444 ext. 8133
Facsimile: (850) 245-4683
Email: ana.gargollo-mcdonald@flhealth.gov

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Angel Sanders
DATE JAN 21 2015

/AGM
PCP: January 20, 2015
PCP Members: Newman, Horne, and Habgood

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs; on the Respondent in addition to any other discipline imposed.

Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



Rick Scott
Governor

John H. Armstrong, MD, FACS
State Surgeon General & Secretary

Vision: To be the Healthiest State in the Nation

NOTICE OF HEARING

March 5, 2015

To: LISA MARIE BOITSCHENKO
11120 NW GAINESVILLE ROAD
LOWELL CORRECTIONAL INSTITUTION
OCALA, FL 34482

YOU ARE HEREBY NOTIFIED THAT THE BOARD OF NURSING WILL CONSIDER YOUR CASE AT THE FOLLOWING MEETING:

Date: Friday, April 17, 2015
Time: 8:30 am EST or thereafter
Type: Determination of Waiver
Re: LISA MARIE BOITSCHENKO: 1702/201316979
Place: DoubleTree by Hilton Deerfield Beach-Boca Raton
100 Fairway Drive
Deerfield Beach, FL 33441
(954) 427-7700

Informal hearings, informal waivers and informal licensure hearings are heard individually by the Board. **Respondents have the opportunity to address the Board but attendance is not mandatory unless otherwise indicated.** Should you plan to attend, please arrive approximately 15 minutes prior to the beginning of the meeting to sign in.

After the conclusion of the meeting, the Board will file a final order stating the facts of the case and the outcome voted on by the Board. A copy of the order will be sent to the respondent, typically within 30 days of the board meeting.

Do not send additional materials to the Board office at this time. Additional material will not be considered at the Board meeting, except at the discretion of the Board Chair.

Requests for continuance must be received in the Board Office at least 7 days in advance of the meeting and are subject to approval by the Board Chair or designee. Any request due to medical conditions must be accompanied by a statement from a Physician or Advanced Registered Nurse Practitioner. Requests for continuances can be mailed to the board office or faxed to (850) 617-6460. Please include your full name and contact information.

For questions regarding meeting location directions, contact the hotel at the number listed above under "Place."

If you have any further questions regarding the upcoming board meeting, please contact Akaiba Cummings at (850) 245-4444, ext. 3781. For questions regarding your case, please contact Prosecution Services Unit at (850) 245-4640.

Florida Department of Health

Division of Medical Quality Assurance • Board of Nursing
4052 Bald Cypress Way, Bin C-02 • Tallahassee, FL 32399-3252
PHONE: 850/ 245-4125 • FAX 850/ 245-4172

www.FloridasHealth.gov

TWITTER:HealthyFLA
FACEBOOK:FLDepartmentofHealth
YOUTUBE: fldoh

Mission:

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Rick Scott
Governor

John H. Armstrong, MD, FACS
State Surgeon General & Secretary

Vision: To be the Healthiest State in the Nation

NOTICE OF HEARING

March 5, 2015

To: LISA MARIE BOITSCHENKO
7140 B LAKE MAGNOLIA DRIVE
NEW PORT RICHEY, FL 34653

YOU ARE HEREBY NOTIFIED THAT THE BOARD OF NURSING WILL CONSIDER YOUR CASE AT THE FOLLOWING MEETING:

Date: Friday, April 17, 2015

Time: 8:30 am EST or thereafter

Type: Determination of Waiver

Re: LISA MARIE BOITSCHENKO: 1702/201316979

Place: DoubleTree by Hilton Deerfield Beach-Boca Raton
100 Fairway Drive
Deerfield Beach, FL 33441
(954) 427-7700

Informal hearings, informal waivers and informal licensure hearings are heard individually by the Board. **Respondents have the opportunity to address the Board but attendance is not mandatory unless otherwise indicated.** Should you plan to attend, please arrive approximately 15 minutes prior to the beginning of the meeting to sign in.

After the conclusion of the meeting, the Board will file a final order stating the facts of the case and the outcome voted on by the Board. A copy of the order will be sent to the respondent, typically within 30 days of the board meeting.

Do not send additional materials to the Board office at this time. Additional material will not be considered at the Board meeting, except at the discretion of the Board Chair.

Requests for continuance must be received in the Board Office at least 7 days in advance of the meeting and are subject to approval by the Board Chair or designee. Any request due to medical conditions must be accompanied by a statement from a Physician or Advanced Registered Nurse Practitioner. Requests for continuances can be mailed to the board office or faxed to (850) 617-6460. Please include your full name and contact information.

For questions regarding meeting location directions, contact the hotel at the number listed above under "Place."

If you have any further questions regarding the upcoming board meeting, please contact Akaiba Cummings at (850) 245-4444, ext. 3781. For questions regarding your case, please contact Prosecution Services Unit at (850) 245-4640.

Florida Department of Health

Division of Medical Quality Assurance • Board of Nursing
4052 Bald Cypress Way, Bin C-02 • Tallahassee, FL 32399-3252
PHONE: 850/ 245-4125 • FAX 850/ 245-4172

www.FloridasHealth.gov

TWITTER: HealthyFLA
FACEBOOK: FLDepartmentofHealth
YOUTUBE: fldoh

Mission:

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Rick Scott
Governor

John H. Armstrong, MD, FACS
State Surgeon General & Secretary

Vision: To be the Healthiest State in the Nation

NOTICE OF HEARING

March 5, 2015
Case # 201316979

To: DEPARTMENT OF CHILDREN AND FAMILIES
11351 ULMERTON ROAD, SUITE 436
ADULT PROTECTIVE SERVICES INVESTIGATION
LARGO, FL 33778-1630

YOU ARE HEREBY NOTIFIED THAT THE BOARD OF NURSING WILL CONSIDER THIS CASE AT THE FOLLOWING MEETING:

Date: Friday, April 17, 2015
Time: 8:30 am EST or thereafter
Type: Determination of Waiver
Re: LISA MARIE BOITSCHENKO: 1702/201316979
Place: DoubleTree by Hilton Deerfield Beach
Boca Raton
100 Fairway Drive
Deerfield Beach, FL 33441
(954) 427-7700

This notice is to inform you, as an involved party or complainant, that the above listed case is scheduled to go before the Board of Nursing. While you are not required to attend, the meeting is open to the public. **There is no action needed on your part at this time.**

After the conclusion of the meeting, the Board file will file a final order stating the facts of the case and the Board's decision. A copy of the order will be sent to the respondent, typically within 30 days of the board meeting. This information will also be available on the Department of Health's website at: www.flhealthsource.com.

For questions regarding meeting location directions, contact the hotel at the number listed above under "Place."

If you have any further questions regarding the upcoming board meeting, please contact Akaiba Cummings at (850) 245-4444, ext 3781.

Mission:

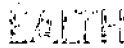
To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.

Rick Scott

Governor

John H. Armstrong, MD, FACS

State Surgeon General & Secretary


Vision: To be the Healthiest State in the Nation**MEMORANDUM**

TO: Joe Baker, Jr., Executive Director, Florida Board of Nursing
FROM: Judson Searcy, Assistant General Counsel *JS*
RE: **Determination of Waiver**
SUBJECT: DOH v. Lisa Marie Boitschenko, L.P.N.
 DOH Case Number 2013-16979
DATE: January 8, 2015

Enclosed you will find materials in the above-referenced case to be placed on the agenda for final agency action for the **April 17, 2015**, meeting of the board. The following information is provided in this regard.

Subject: Lisa Marie Boitschenko
Subject's Address of Record: 7140 B Lake Magnolia Drive
 New Port Richey, FL 34653
Enforcement Address: 11120 NW Gainesville Road
 Lowell Correctional Institution
 Ocala, FL 34482

Subject's License No: 5188242 **Rank:** PN
Licensure File No: 137298
Initial Licensure Date: 7/1/2009
Board Certification: No
Required to Appear: No
Current IPN/PRN Contract: No
Allegation(s): 464.018(1)(h), FS (2013)
Prior Discipline: None
Probable Cause Panel: June 9, 2014; Kemp, Nichols, Tryblyski
Subject's Attorney: Pro Se
Complainant/Address: Department Of Children And Families
 11351 Ulmerton Road, Suite 436
 Adult Protective Services Investigation
 Largo, FL 33778-1630

Materials Submitted: Memorandum to the Board
 Motion for Determination of Waiver
 Exhibit A – Administrative Complaint
 Exhibit B – Certified Mail Receipt
 Exhibit C – Affidavit of Service
 Exhibit D – Board Affidavit
 Exhibit E – Clerks Affidavit
 Motion to Assess Costs
 Exhibit A – Affidavit of Fees & Costs Expended

Florida Department of Health

Office of the General Counsel • Prosecution Services Unit
 4052 Bald Cypress Way, Bin C-65 • Tallahassee, FL 32399-1701
 Express mail address: 2585 Merchants Row – Suite 105
 PHONE: 850/245-4444 • FAX 850/245-4683

www.FloridaHealth.gov

TWITTER:HealthyFLA

FACEBOOK:FLDepartmentofHealth

YOUTUBE: fldoh

Exhibit 1 – Cost Summary
Exhibit 2 – Itemized Cost
Memorandum of Probable Cause
Final Investigative Report with exhibits 1-14

**STATE OF FLORIDA
BOARD OF NURSING**

**DEPARTMENT OF HEALTH,
Petitioner,**

v.

CASE NO. 2013-16979

**LISA MARIE BOITSCHENKO, L.P.N.,
Respondent.**

**MOTION FOR DETERMINATION OF WAIVER AND FOR
FINAL ORDER AFTER A HEARING NOT INVOLVING
DISPUTED ISSUES OF MATERIAL FACT**

PETITIONER, the Florida Department of Health, by and through the undersigned counsel, hereby moves the Board of Nursing for entry of a Final Order in the above-styled cause on a date and time that has been determined and noticed by the Board. As grounds therefore Petitioner states:

1. An Administrative Complaint was filed against Respondent on June 11, 2014. A copy of said Administrative Complaint is attached hereto as Petitioner's Exhibit A.

2. Copies of the Administrative Complaint, Explanation of Rights form, and Election of Rights form were sent to Respondent via certified US mail on July 28, 2014, (9414 7266 9904 2007 0984 36). Service on Respondent via certified

mail was not successful. A copy of the certified mail receipt and envelope is attached as Petitioner's Exhibit B.

3. Thereafter, Petitioner requested personal service on Respondent, which was completed on October 10, 2014. The affidavit of personal service is attached as Petitioner's Exhibit C.

4. Rule 28-106.111(2), Florida Administrative Code, provides in pertinent part that:

. . . persons seeking a hearing on an agency decision which does or may determine their substantial interests shall file a petition for hearing with the agency within 21 days of receipt of written notice of the decision.

5. Rule 28.106.111(4), Florida Administrative Code, provides that:

Any person who received written notice of an agency decision and who fails to file a written request for a hearing within 21 days waives the right to request a hearing on such matters.

6. Respondent has not filed an Election of Rights form, or any other responsive pleading, with Petitioner or the Board of Nursing within the required twenty-one (21) day period of time. Copies of affidavits supporting the same are attached hereto as Petitioner's Exhibits D and E.

7. Based upon the foregoing, Respondent has waived the right to dispute any materials facts contained within the Administrative Complaint.

Therefore, there are no disputed issues of material fact to be resolved by the Board.

8. Respondent has been advised by way of this Motion, that a copy of the investigative file in this case will be furnished to the Board, establishing a prima facie case regarding the violations as set forth in the Complaint.

WHEREFORE, Petitioner respectfully requests that the Board find that Respondent has waived the right to dispute any materials facts contained within the Administrative Complaint and enter a Final Order imposing whatever discipline upon Respondent's license that the Board deems appropriate.

John H. Armstrong, MD, FACS
State Surgeon General and Secretary of Health



Judson M. Searcy
Assistant General Counsel
Fla. Bar No. 98772
Florida Department of Health
Office of the General Counsel
4052 Bald Cypress Way, Bin #C65
Tallahassee, FL 32399-3265
Telephone: (850) 245-4444
Facsimile: (850) 245-4683
Email: Judson.searcy@flhealth.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been provided by U.S. mail this 29th day of September, 2015, to Lisa Boitschenko, Lowell Correctional Institution for Women, 11120 NW Gainesville Road, Ocala, FL 34482; and 7140 B Lake Magnolia Drive, New Port Richey, FL 34653.

Judson Searcy
Judson Searcy
Assistant General Counsel

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2013-16979

LISA MARIE BOITSCHENKO, L.P.N.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

~~COMES NOW, Petitioner, Department of Health, by and through its~~
undersigned counsel, and files this Administrative Complaint before the
Board of Nursing against Respondent, Lisa Marie Boitschenko, L.P.N., and
in support thereof alleges:

1. Petitioner is the state agency charged with regulating the
practice of nursing pursuant to Section 20.43, Florida Statutes; Chapter
456, Florida Statutes; and Chapter 464, Florida Statutes.

~~2. At all times material to this Administrative Complaint,~~
~~Respondent was a licensed practical nurse (L.P.N.) within the state of~~
Florida, having been issued license number PN 5188242.



3. Respondent's address of record is 7140 B Lake Magnolia Drive, New Port Richey, Florida 34653.

4. At all times material to this Administrative Complaint, Respondent was employed as a licensed practical nurse by Abundant Life Home Health, a home health care provider, located in Clearwater, Florida.

5. At all times material to this Administrative Complaint, J.K. was a twenty-four year old female patient, with congenital hydrocephalus, is quadriplegic, is on a ventilator, and requires around the clock care.

~~6. Respondent was scheduled to care for J.K. on or about September 11, 2013, from 12:00 a.m. to 8:00 a.m.~~

7. On or about September 11, 2013, during the period from 12:00 a.m. and 8:00 a.m., Respondent pinched and grabbed J.K. causing approximately 172 bruises and/or welts.

8. Section 464.018(1)(h), Florida Statutes (2013), provides that unprofessional conduct as defined by board rule constitutes grounds for disciplinary action.

9. Rule 64B9-8.005(14), Florida Administrative Code, provides that unprofessional conduct includes using force against a patient, striking a patient, or throwing objects at a patient.


10. Respondent engaged in unprofessional conduct by using force against patient J.K., by pinching and grabbing J.K., causing bruises and welts.

11. Based on the foregoing, Respondent violated Section 464.018(1)(h), Florida Statutes (2013), by engaging in unprofessional conduct as defined by Rule 64B9-8.005(14), Florida Administrative Code, to include using force against a patient, striking a patient, or throwing objects at a patient.

WHEREFORE, the Petitioner respectfully requests that the Board of Nursing enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 11th day of June, 2014.

~~John H. Armstrong, MD, FACS~~
State Surgeon General and Secretary of Health


JUDSON SEARCY
Assistant General Counsel
Fla. Bar No. 98772
Florida Department of Health
Office of the General Counsel
4052 Bald Cypress Way, Bln #C65
Tallahassee, FL 32399-3265
Telephone: (850) 245-4444 ex. 8100
Facsimile: (850) 245-4683
Email: judson.searcy@flhealth.gov

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK ANGEL SANDERS
DATE JUN 11 2014

PCP: 06/09/2014

PCP Members: Trybulski, Walker Nichols, Kemp

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.

9414 7266 9904 2007 0984 36

TO:

Lisa M Boitschenko LPN
2013-16979
ab/JS - Stip Pk
Sent 7/28/14

Lisa Boitschenko
11969 Parker Road
East Aurora, NY 14052

SERVICE	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

USPS®
Receipt for
Certified Mail™

No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE



Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



Vision: To be the Healthiest State in the Nation

Rick Scott
Governor

John H. Armstrong, MD, FACS
State Surgeon General & Secretary

AFFIDAVIT OF SERVICE OR DILIGENT SEARCH

Florida Department of Health
Petitioner

v.

Case No.: **L.P.N. 2013-16979**

Lisa Marie Boitschenko, L.P.N.
Respondent

COMES NOW, the affiant, who first being duly sworn, deposes and states:

1) Affiant is an Investigator/Inspector employed by the DEPARTMENT OF HEALTH, State of Florida.

2) That on **10/08/2014**, Affiant made a diligent effort to locate Respondent, to serve XXX Administrative Complaint and related papers; _____ Order compelling examination(s); _____ Subpoena(s); _____ Final order; _____ Notice to cease and desist; _____ ESO/ERO and related papers; _____ Citation and related papers.

3) Check applicable answer below:

XXX Affiant made personal service on Respondent or on some person at Respondent's usual place of abode over the age of 15 residing there, **on 10/08/2014 at approximately 11:54 AM.**

_____ Affiant was unable to make service after searching for Respondent at: (a) all addresses for Respondent shown in the DOH investigation of the case; (b) all official addresses for Respondent shown in his licensing records on the computer terminal or Board office; (c) Local telephone company for the last area Respondent was known to frequent; (d) Division of Drivers Licenses; and (e) Utilities (electric, cable, etc.); any others: _____

[Handwritten Signature]

Affiant

State of Florida
County of Alachua

Before me, personally appeared Tanya Thompson whose identity is known to me by personal knowledge and who, acknowledges that his/her signature appears above.

Sworn to or affirmed by Affiant before me this 10th day of October 2014.

[Handwritten Signature]

Notary Public-State of Florida



[Handwritten Signature]

Type or Print Name

My Commission Expires _____



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Rick Scott
Governor

John H. Armstrong, MD, FACS
State Surgeon General & Secretary

VISION: To be the Healthiest State in the Nation

2014 SEP 10 PM 1:10

June 16, 2014

Lisa Marie Boitschenko
7140 B Lake Magnolia Drive
New Port Richey, FL 34653

Certified Article Number
7196 9008 9111 2485 2003
SENDERS RECORD

RE: DOH v. Lisa Marie Boitschenko, L.P.N.
Case Number 2013-16979

Dear Ms. Boitschenko:

Enclosed is a copy of an Administrative Complaint that has been filed against your license, along with an Explanation of Rights and an Election of Rights form. You have also been provided with a Settlement Agreement containing disciplinary terms I believe will be acceptable in resolving this matter. If you agree with the terms of the Settlement Agreement, please sign it before a notary public and return it to my office. Please be aware that the Settlement Agreement is subject to final approval by the Board of Nursing. A Voluntary Relinquishment form has also been included in this package for your consideration. Voluntarily relinquishing your license is considered disciplinary action. However, signing the Voluntary Relinquishment form will allow you to avoid costs and forgo further disciplinary hearings.

You may also want to read and understand the several provisions of Florida Statutes and administrative rules related to this disciplinary action. For further information, please consult with your attorney or refer to the following websites: www.leg.state.fl.us and <http://www.flrules.org>.

If you accept the Settlement Agreement, your case will be scheduled for the next available Board meeting for consideration. Your attendance at this meeting may be required. You will receive details regarding the meeting date, time, and location once the case is scheduled. If the Board accepts the Settlement Agreement, then its terms become the final resolution of the case. Should the Board not accept the Settlement Agreement, then your response on the Election of Rights form will determine how the case will proceed.

PLEASE NOTE the signed and notarized Election of Rights form must be received by the Department of Health within twenty-one (21) days of the date you were served. Failure to file this form within twenty-one (21) days may be considered a waiver of your right to dispute the allegations in this matter.

Regards,

Judson Searcy
Assistant General Counsel

JS/ab

Enclosures: Administrative Complaint, Election of Rights
Settlement Agreement and Voluntary Relinquishment

Date: 10/8/14 Time: 11:54 AM
Received by:
Print Name: LISA BOITSCHENKO
Initials/GI#:

Florida Department of Health
Office of the General Counsel • Prosecution Services Unit
4052 Bald Cypress Way, Bin C-85 • Tallahassee, FL 32399-1701
Express mail address: 2585 Merchants Row - Suite 105
PHONE: 850/245-4444 • FAX 850/245-4883

FACEBOOK: FLDepartmentofHealth
YOUTUBE: fldoh

**AFFIDAVIT OF
NON-SERVICE**



10469

Index no : 2013-16979
Date Index Number Purchased: 09/10/2014

Petitioner:	Department of Health
Respondent:	Lisa Marie Boitschenko, L.P.N.


STATE OF NEW YORK
COUNTY OF CATTARAUGUS ss.:

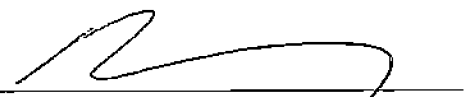
ERIK JOHNSON, the undersigned, being duly sworn, deposes and says that I was at the time of attempting service over the age of eighteen and not a party to this action. I reside in the STATE OF NEW YORK.

On 10/09/2014 at 2:17 PM, I was unable to effect service of the **Administrative Complaint package** on **Lisa Marie Boitschenko, L.P.N.** at **11969 Parker Road, EAST AURORA, NY 14052** for the reason(s) indicated below:

AUNT OF RESPONDENT SAID SHE HAS NEVER LIVED HERE AND NEVER WILL. IS IN JAIL IN FLORIDA.

Sworn to and subscribed before me on
10/11/2014
by an affiant who is personally known to
me or produced identification.

X 
ERIK JOHNSON
Atty File#:


Bruce E. Kenney
Notary Public, State of New York
No. 01KE6176098
Qualified in Cattaraugus County
My Commission Expires 10/29/15

2014 OCT 17 PM 1:36

Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



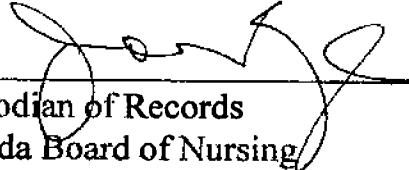
Rick Scott
Governor

John H. Armstrong, MD, FACS
State Surgeon General & Secretary

Vision: To be the Healthiest State in the Nation

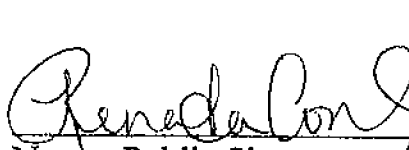
Affidavit of Non-Receipt

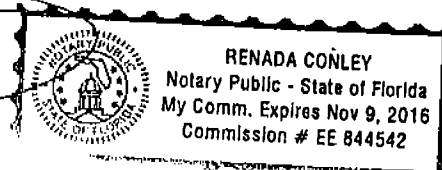
I, Joe Baker, Jr., hereby certify in my official capacity as custodian for the Board of Nursing's licensure files that the Board, as of 1/9/2015, has no evidence of an Election of Rights form or other responsive pleading requesting a hearing prior to any agency action regarding Lisa Marie Boitschenko, LPN; 2013-16979, which would affect the Subject's substantial interests or rights.


Custodian of Records
Florida Board of Nursing

Before me, personally appeared Joe Baker, Jr., whose identity is known to me personally and who, under, oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 9 day of January, 2015.


Notary Public Signature
My commission expires:



Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



Rick Scott
Governor

John H. Armstrong, MD, FACS
State Surgeon General & Secretary

Vision: To be the Healthiest State in the Nation

AFFIDAVIT

I, Angel Sanders, Deputy Clerk for the Department Clerk's Office, hereby certify in my official capacity as custodian for the Department Clerk's records, that the Department Clerk's Office has not received an Election of Rights form or other responsive pleading, which requests a hearing prior to any Department action regarding Lisa Marie Boitschenko, LPN; 2013-16979, which would affect the Respondent's substantial interests or rights.

Angel Sanders
Custodian of Record
Department Clerk's Office

Before me, personally appeared Angel Sanders, whose identity is known to me personally and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 8th day of January, 2015.

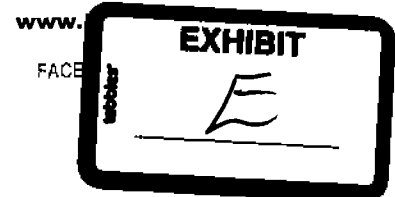
Amy L. Carraway

Notary Public

My Commission Expires:



AMY L. CARRAWAY
MY COMMISSION # FF 073892
EXPIRES: January 17, 2018
Bonded Thru Budget Notary Services



**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NO. 2013-16979

LISA MARIE BOITSCHENKO, L.P.N.,

Respondent.

_____ /

MOTION TO ASSESS COSTS
IN ACCORDANCE WITH SECTION 456.072(4), F.S.

The Department of Health, by and through counsel, and moves the Board of Nursing for entry of a Final Order assessing costs against Respondent for the investigation and prosecution of this case in accordance with Section 456.072(4), Florida Statutes (2013). As grounds therefore, the Petitioner states the following:

1. At its next regularly scheduled meeting, the Board of Nursing will take up for consideration the above-styled disciplinary action and will enter a Final Order.

2. Section 456.072(4), Florida Statutes (2013), states, in pertinent part, as follows:

In addition to any other discipline imposed through final order, or citation, entered on or after July 1, 2001, under this section or discipline imposed through final order, or citation, entered on or after July 1, 2001, for a violation of any practice act, the board, or the department when there is no board, shall assess costs related to the investigation and prosecution of the case. The costs related to the investigation and prosecution include, but are not limited to, salaries and benefits of personnel, costs related to the time spent by the attorney and other personnel working on the case, and any other expenses incurred by the department for the case. The board, or the department when there is no board, shall determine the amount of costs to be assessed after its consideration of an affidavit of itemized costs and any written objections thereto....

3. As evidenced in the attached affidavit (Exhibit A), the investigation and prosecution of this case has resulted in costs in the total amount of \$4,350.67, based on the following itemized statement of costs:

Complaint Number: 201316979
Subject's Name: BOITSCHENKO, LISA MARIE

	***** Cost to Date *****	
	Hours	Costs
Complaint:	1.90	\$103.84
Investigation:	56.25	\$3,589.90
Legal:	6.10	\$621.93
Compliance:	0.00	\$0.00
	*****	*****
Sub Total:	64.25	\$4,315.67
Expenses to Date:		\$35.00
Prior Amount:		\$0.00
Total Costs to Date:		\$4,350.67

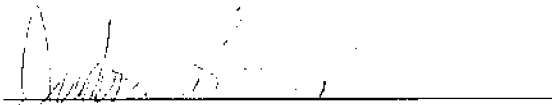
4. The attached affidavit reflects the Department's costs for attorney time in this case as \$621.93 (Exhibit A). However, the Department is not seeking costs for attorney time in this case.

5. Should Respondent file written objections to the assessment of costs, within ten (10) days of the date of this motion, specifying the grounds for the objections and the specific elements of the costs to which objections are made, Petitioner requests that the Board determine the amount of costs to be assessed based upon its consideration of the affidavit attached as Exhibit A and any timely-filed written objections.

6. Petitioner requests that the Board grant this motion and assess costs in the amount of \$3,728.74 as supported by competent, substantial evidence. This assessment of costs is in addition to any other discipline imposed by the Board and is in accordance with Section 456.072(4), Florida Statutes (2013).

WHEREFORE, the Department of Health requests that the Board of Nursing enter a Final Order assessing costs against Respondent in the amount of \$3,728.74.

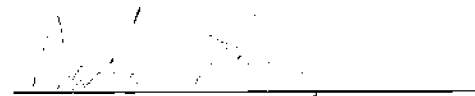
Respectfully submitted,



Judson M. Searcy
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar # 98772
(850) 245-4444 Phone
(850) 245-4683 FAX

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Assess Costs has been provided by U.S. mail, this 23rd day of June, 2015, to Lisa Boitschenko, Lowell Correctional Institution, 11120 NW Gainesville Road, Ocala, FL 34482; and 7140 B Lake Magnolia Drive, New Port Richey, FL 34653.



Judson Searcy
Assistant General Counsel

AFFIDAVIT OF FEES AND COSTS EXPENDED

STATE OF FLORIDA
COUNTY OF LEON:

BEFORE ME, the undersigned authority, personally appeared **NICOLE SINGLETON** who was sworn and states as follows:

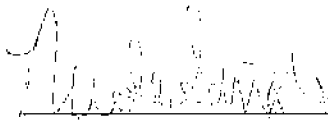
- 1) My name is Nicole Singleton.
- 2) I am over the age of 18, competent to testify, and make this affidavit upon my own personal knowledge and after review of the records at the Florida Department of Health (DOH).
- 3) I am the Senior Management Analyst II (SMAll) for the Consumer Services and Compliance Management Unit for DOH. The Consumer Services Unit is where all complaints against Florida health care licensees (e.g., medical doctors, dentists, nurses, respiratory therapists) are officially filed. I have been in my current job position for more than one year. My business address is 4052 Bald Cypress Way, Bin C-75 Tallahassee, Florida 32399-3275.
- 4) As SMAll of the Consumer Services and Compliance Management Unit, my job duties include reviewing data in the Time Tracking System and verifying that the amounts correspond. The Time Tracking System is a computer program which records and tracks DOH's costs regarding the investigation and prosecution of cases against Florida health care licensees.
- 5) As of today, DOH's total costs for investigating and prosecuting DOH case number(s) **2013-16979** (Department of Health v **LISA MARIE BOITSCHENKO**) are **FOUR THOUSAND THREE HUNDRED FIFTY DOLLARS AND SIXTY-SEVEN CENTS (\$4,350.67)**.
- 6) The costs for DOH case number(s) **2013-16979** (Department of Health v **LISA MARIE BOITSCHENKO**) are summarized in Exhibit 1 (Cost Summary Report), which is attached to this document.
- 7) The itemized costs and expenses for DOH case number(s) **2013-16979** (Department of Health v **LISA MARIE BOITSCHENKO**) are detailed in Exhibit 2 (Itemized Cost Report and Itemized Expense Report and receipts), which is attached to this document.
- 8) The itemized costs as reflected in Exhibit 2 are determined by the following method: DOH employees who work on cases daily are to keep track of their time in six-minute increments (e.g., investigators



and lawyers). A designated DOH employee in the Consumer Services Unit, Legal Department, and in each area office, inputs the time worked and expenses spent into the Time Tracking System. Time and expenses are charged against a state health care Board (e.g., Florida Board of Medicine, Florida Board of Dentistry, Florida Board of Osteopathic Medicine), and/or a case. If no Board or case can be charged, then the time and expenses are charged as administrative time. The hourly rate of each employee is calculated by formulas established by the Department. (See the Itemized Cost Report)

- 9) Nicole Singleton, first being duly sworn, states that she has read the foregoing Affidavit and its attachments and the statements contained therein are true and correct to the best of her knowledge and belief.

FURTHER AFFIANT SAYETH NOT.



Nicole Singleton, Affiant

State of Florida
County of Leon

Sworn to and subscribed before me this 9th day of January, 2015,
by Nicole Singleton, who is personally known to me.

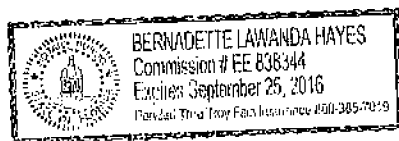


Notary Signature



Name of Notary Printed

Stamp Commissioned Name of Notary Public:



Complaint Cost Summary

Complaint Number: 201316979

Subject's Name: **BOITSCHENKO, LISA MARIE**

***** Cost to Date *****		
	Hours	Costs
Complaint:	1.99	\$103.84
Investigation:	56.25	\$3,589.90
Legal:	6.10	\$621.93
Compliance:	0.00	\$0.00
	*****	*****
Sub Total:	64.25	\$4,315.67
Expenses to Date:		\$35.00
Prior Amount:		\$0.00
Total Costs to Date:		\$4,350.67





*** CONFIDENTIAL ***

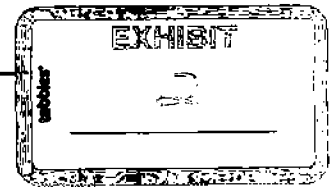
Time Tracking System
Itemized Cost by Complaint

Complaint 201316979

Report Date 01/09/2015

Page 1 of 2

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
CONSUMER SERVICES UNIT						
HA110	1.80	\$54.65	\$98.37	10/29/2013	78	INITIAL REVIEW AND ANALYSIS OF COMPLAINT
HA78	0.10	\$54.65	\$5.47	11/22/2013	137	PRIORITY DOWNGRADES/UPGRADES
Sub Total	1.90		\$103.84			
INVESTIGATIVE SERVICES UNIT						
PI43	5.25	\$63.82	\$335.06	10/30/2013	4	ROUTINE INVESTIGATIVE WORK
PI43	1.30	\$63.82	\$82.97	10/30/2013	76	REPORT PREPARATION
PI43	2.40	\$63.82	\$153.17	10/31/2013	76	REPORT PREPARATION
PI43	5.60	\$63.82	\$357.39	10/31/2013	4	ROUTINE INVESTIGATIVE WORK
PI43	1.30	\$63.82	\$82.97	11/01/2013	76	REPORT PREPARATION
PI43	6.40	\$63.82	\$408.45	11/01/2013	4	ROUTINE INVESTIGATIVE WORK
PI43	5.80	\$63.82	\$370.16	11/05/2013	4	ROUTINE INVESTIGATIVE WORK
PI43	3.20	\$63.82	\$204.22	11/05/2013	76	REPORT PREPARATION
PI43	8.70	\$63.82	\$555.23	11/06/2013	4	ROUTINE INVESTIGATIVE WORK
PI43	2.40	\$63.82	\$153.17	11/06/2013	76	REPORT PREPARATION
PI43	4.50	\$63.82	\$287.19	11/07/2013	76	REPORT PREPARATION
PI43	4.30	\$63.82	\$274.43	11/07/2013	76	REPORT PREPARATION
PI43	1.30	\$63.82	\$82.97	09/12/2014	6	SUPPLEMENTAL INVESTIGATION
PI43	0.30	\$63.82	\$19.15	09/15/2014	6	SUPPLEMENTAL INVESTIGATION
GI34	0.20	\$63.82	\$12.76	09/22/2014	100	SERVICE OF ADMINISTRATIVE COMPLAINTS, SUBPOENAS, NOTICE TO CEASE
GI34	0.50	\$63.82	\$31.91	10/02/2014	100	SERVICE OF ADMINISTRATIVE COMPLAINTS, SUBPOENAS, NOTICE TO CEASE
GI34	1.80	\$63.82	\$114.88	10/08/2014	100	SERVICE OF ADMINISTRATIVE COMPLAINTS, SUBPOENAS, NOTICE TO CEASE
GI34	1.00	\$63.82	\$63.82	10/10/2014	100	SERVICE OF ADMINISTRATIVE COMPLAINTS, SUBPOENAS, NOTICE TO CEASE
Sub Total	56.25		\$3,589.90			
PROSECUTION SERVICES UNIT						





**Time Tracking System
Itemized Cost by Complaint**

Complaint 201316979

Report Date 01/09/2015

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
HLL101B	0.50	\$101.95	\$50.98	11/13/2013	25	REVIEW CASE FILE
HLL101B	0.20	\$101.95	\$20.39	11/20/2013	26	PREPARE OR REVISE MEMORANDUM
HLL100B	2.00	\$101.95	\$203.90	12/12/2013	25	REVIEW CASE FILE
HLL100B	0.30	\$101.95	\$30.59	02/11/2014	25	REVIEW CASE FILE
HLL100B	0.90	\$101.95	\$91.76	02/14/2014	25	REVIEW CASE FILE
HLL96B	0.50	\$101.95	\$50.98	03/25/2014	25	REVIEW CASE FILE
HLL96B	0.30	\$101.95	\$30.59	03/25/2014	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE,DEPT STAFF OR ATTY GEN OFF
HLL96B	1.10	\$101.95	\$112.15	03/25/2014	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL96B	0.20	\$101.95	\$20.39	04/16/2014	29	REVIEW ADMINISTRATIVE COMPLAINT
HLL96B	0.10	\$101.95	\$10.20	06/09/2014	63	PRESENTATION OF CASES TO PROBABLE CAUSE PANEL
Sub Total	6.10		\$621.93			

Total Cost	\$4,315.67
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*** CONFIDENTIAL ***

Time Tracking System
Itemized Expense by Complaint
Complaint 201316979

Report Date: 01/09/2015

Page 1 of 1

Staff Code	Expense Date	Expense Amount	Expense Code	Expense Code Description
PROSECUTION SERVICES UNIT				
HLL96B	09/26/2014	\$35.00	497000	PAYMENT FOR INFORMATION AND EVIDENCE
	SubTotal	\$35.00		
	Total Expenses	\$35.00		

**STATE OF FLORIDA
BOARD OF NURSING**

CASE NUMBER:	2014-19228
COMPLAINT MADE BY:	IPN
DATE OF COMPLAINT:	December 2, 2014
RESPONDENT:	Harvey Virgil, L.P.N. 1157 B Green Road Boston, GA 31626
RESPONDENT'S ATTORNEY	Billy Strickland, Esq. 1700 N. Monroe, Suite 11-344 Tallahassee, FL 32303
INVESTIGATED BY:	Shondra A. Watson Consumer Services Unit
REVIEWED BY:	Judson Searcy Assistant General Counsel
RECOMMENDATION:	4097 Reconsideration

CLOSING ORDER ON RECONSIDERATION

THE COMPLAINT: The Complaint alleged Subject violated Section 456.072(1)(hh), Florida Statutes (2014), by being terminated from a treatment program for impaired practitioners, which is overseen by an impaired practitioner consultant as described in s. 456.076, for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee, or for not successfully completing any drug treatment or alcohol treatment program.

THE FACTS: On June 10, 2015, the Department filed an administrative complaint alleging that Respondent was terminated from IPN on or about November 11, 2014, for failing to comply, without good cause, with the terms of his monitoring contract.

Since filing the administrative complaint, Respondent submitted to a comprehensive forensic evaluation by IPN-approved evaluator, M.H., Ph.D. Dr. M.H. opined that "based on the results of the present evaluation, [it] is my professional opinion, within reasonable psychological probability, that Mr. Virgil does not manifest any psychopathology, behavioral aberration, or cognitive impairment that would interfere with his ability to practice as an LPN with reasonable skill and safety." Dr. M.H. did not recommend monitoring or treatment and IPN closed his file.

In light of the evidence available in this matter, it is recommended that this case be closed. The Panel therefore directs this case be dismissed.

LAW: There was sufficient evidence for the Panel to have found probable cause. However, based on the above facts, the Department, pursuant to the provisions of Section 20.43(3), Florida Statutes, has determined that there is insufficient evidence to support the continued prosecution of the allegations contained in the Administrative Complaint. Therefore, pursuant to Section 456.073(2), Florida Statutes, this case is hereby DISMISSED.

It is, therefore, ORDERED that this matter be, and same is hereby, DISMISSED.

DONE AND ORDERED this _____ day of _____, 2016.

CHAIRPERSON, PROBABLE CAUSE PANEL
BOARD OF NURSING

May, Lucas

From: William Strickland <Billy@stricklandlawoffice.com>
Sent: Friday, July 31, 2015 4:25 PM
To: May, Lucas
Subject: RE: Notice of Appearance - Harvey Virgil- CASE NO. 2014-19228
Attachments: Virgil Confidentiality.pdf

Mr. May:

Sorry for the delay. I have attached the form and my client waives the 45 - day requirement to send to DOAH, for the purposes of attempting to reach an agreement. Have a great weekend.

Best,

Billy

Billy Strickland | Billy@StricklandLawOffice.com

Attorney

Strickland Law

1700 N. Monroe, Suite 11-344

Tallahassee, Florida, 32303

Phone - (850) 792-5558 | Fax - (850) 254-9794

www.StricklandLawOffice.com

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Confidentiality Notice: The information in this e-mail and any attachments is confidential and may contain attorney-client work product which is privileged information. This information is intended solely for the attention and use of the named addressee(s). If you are not the intended recipient, or person responsible for delivering this information to the intended recipient, permanently delete this email and please immediately notify the sender at Strickland Law, via email or at (850) 792-5558.

From: May, Lucas <lucas.may@flhealth.gov>
Date: July 27, 2015 at 4:51:44 PM
To: 'William Strickland' <billy@stricklandlawoffice.com>>
Subject: RE: Notice of Appearance - Harvey Virgil- CASE NO. 2014-19228

Hello Mr. Strickland,

Here is a copy of the 456 investigative file request - confidentiality form. Also, can you please note that you intend to waive the 45 day DOAH referral requirement? Thanks, it was nice talking to you. - Luke

Lucas May

Assistant General Counsel
Office of the General Counsel
Prosecution Services Unit
Florida Department of Health
4052 Bald Cypress Way, Bin #C-65
Tallahassee, FL 32399-3265
Office 245F

(850) 245-4444 ext. 8242

From: William Strickland [mailto:Billy@stricklandlawoffice.com]
Sent: Friday, July 24, 2015 5:26 PM
To: May, Lucas
Subject: Notice of Appearance - Harvey Virgil- CASE NO. 2014-19228

Dear Mr. May:

I am writing to notify you that I am representing Mr. Harvey in the above-referenced case. Please notify me at billy@stricklandlawoffice.com or 850-792-5558 to verify that this is sufficient for the Department to accept my notice of appearance. I have also attached a notice with the case style.

Best,

Billy Strickland | Billy@StricklandLawOffice.com
Attorney

Strickland Law

1700 N. Monroe, Suite 11-344

Tallahassee, Florida, 32303

Phone - (850) 792-5558 | Fax - (850) 254-9794

www.StricklandLawOffice.com

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Confidentiality Notice: The information in this e-mail and any attachments is confidential and may contain attorney-client work product which is privileged information. This information is intended solely for the attention and use of the named addressee(s). If you are not the intended recipient, or person responsible for delivering this information to the intended recipient, permanently delete this email and please immediately notify the sender at Strickland Law, via email or at (850) 792-5558.

ELECTION OF RIGHTS

Please sign and complete all of the information below:

PRACTITIONER REGULATION LEGAL

I received the Administrative Complaint on the following date: June 16, 2015

2015 JUN 30 AM 7:55

PLEASE SELECT ONLY 1 OF THE 2 OPTIONS.

OPTION 1. I do not dispute the allegations of material fact in the Administrative Complaint. I request a hearing be conducted pursuant to Section 120.57(2), Florida Statutes, where I will be permitted to appear, if I so choose, and submit oral and/or written evidence in mitigation of the complaint to the Board.

OPTION 2. I do dispute the allegations of material fact contained in the Administrative Complaint and request this to be considered a petition for formal hearing, pursuant to Sections 120.569(2)(a) and 120.57(1), Florida Statutes, before an Administrative Law Judge appointed by the Division of Administrative Hearings. Pursuant to the requirement of Uniform Rule 28-106.2015(5), Florida Administrative Code, I specifically dispute the following material facts (identified by paragraph number and fact disputed) in the Administrative Complaint:

#7, #8, #9, #10, #11

In the event that you fail to make an election in this matter within twenty-one (21) days from receipt of the Administrative Complaint, your failure to do so may be considered a waiver of your right to elect a hearing in this matter, pursuant to Rule 28-106.111(4), Florida Administrative Code, and the Board may proceed to hear your case.

PLEASE NOTE: Regardless of which option you choose, you may be able to reach a settlement agreement with the Department in your case. Please contact the prosecuting attorney if you wish to do so.

Respondent's Signature: Harvey Virgil
Address: 1177 13 Green Rd Boston GA 31626
Lic. No.: 059228378 GA
Phone No.: 229-226-3839 Fax No.:

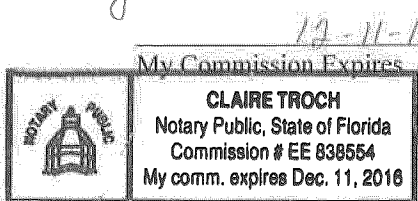
Attorney/Qualified Representative*
Address:
Phone No.:
Fax No.:
Email:

STATE OF FLORIDA COUNTY OF Leon

*Qualified Representatives must file written requests to appear as such pursuant to Rule 28-106.106, Uniform Rules of Procedure.

Before me, personally appeared HARVEY VIRGIL, whose identity is known to me or produced GA DL (type of identification) and who, acknowledges that his/her signature appears above. Sworn to or affirmed by Affiant before me this 29th day of June 2015

Claire Troch
Notary Public-State of Florida
Type or Print Name



PLEASE MAIL AND/OR FAX COMPLETED FORM TO: Lucas L. May, Assistant General Counsel, DOH, Prosecution Services Unit, 4052 Bald Cypress Way, Bin C-65, Tallahassee, Florida 32399-3265. Telephone Number: (850) 245-4444 ext. [8242]; FAX (850) 245-4662; TDD 1-800-955-8771

Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



Rick Scott
Governor

John H. Armstrong, MD, FACS
State Surgeon General & Secretary

Vision: To be the Healthiest State in the Nation

June 11, 2015

Intervention Project for Nurses
P.O. Box 49130
Jacksonville Beach, Florida 32240

RE: DOH v. Harvey Virgil, L.P.N.
Case No.2014-19228

Dear Sir/Madam:

The Probable Cause Panel of the Board of Nursing has found probable cause to believe that the subject referenced above has violated the Nurse Practice Act. The attached Administrative Complaint is a formal charging document, similar to an information/indictment in a criminal case, and represents the general factual basis upon which the subject's license may be disciplined. The subject has the right to an evidentiary hearing to dispute the allegations. Please be aware that you may be required to testify regarding your knowledge of this case.

You will be notified of any hearings or proceedings to which you are required to attend. If you have any questions in the interim, please feel free to contact me at the address or telephone number listed below.

Sincerely,

Lucas L. May
Assistant General Counsel

LLM/pb

Enclosures: Administrative Complaint
Explanation of Disciplinary Process

EXPLANATION OF THE DISCIPLINARY PROCESS

Once an Administrative Complaint has been filed against the license of a health care professional regulated by the Department of Health, the subject, also referred to as the Respondent, has three options to choose from to resolve the matter.

Option 1 – Settlement Agreement: Pursuant to Section 120.57(4), Florida Statutes, the subject and the Department may enter into a Settlement Agreement. A Settlement Agreement is an agreement between all parties resolving a case without the need for a Formal or Informal Hearing. Settlement Agreements save the Department of Health, the Board, and the subject time and money. In this situation, the Board will hear statements from both parties supporting the proposed Settlement Agreement. If the Board believes the Settlement Agreement is appropriate, the Board will accept the Settlement Agreement and impose its terms against the subject's license. If the Board rejects the Settlement Agreement, it may make a counter-offer to the subject. If the subject does not accept the Board's counter-offer, the subject may choose to proceed with a Formal or Informal Hearing at a later date.

Option 2 – Informal Hearing: Pursuant to Section 120.57(2), Florida Statutes, the subject may request a Hearing Not Involving Disputed Issues of Material Fact, also referred to as an Informal Hearing. In this situation the subject does not dispute the factual allegations in the Administrative Complaint, but is given the opportunity to present evidence to mitigate any penalty or discipline. After considering the evidence, the Board will determine whether the subject should be disciplined and what kind of discipline, if any, is appropriate.

Option 3 – Formal Hearing: Pursuant to Section 120.57(1), Florida Statutes, the subject may request a Hearing Involving Disputed Issues of Material Fact, also referred to as a Formal Hearing. In this situation, the subject has disputed some or all of the material facts upon which the Administrative Complaint is based. An Administrative Law Judge at the Division of Administrative Hearings hears the case. After presentation of evidence by both the Department and the subject, the Administrative Law Judge sends a Recommended Order to the Board. The Board will consider the Administrative Law Judge's Recommended Order, as well as any objections or exceptions presented by the Department or the subject. In these cases, the Board is restricted to the evidence and record that was presented to the Administrative Law Judge during the Formal Hearing, and cannot hear or accept any new evidence. After considering the Recommended Order, the Board will issue a Final Order reflecting their final decision on the case.

If the subject fails to respond to an Administrative Complaint within twenty-one (21) days of service, the right to dispute the issues of material fact may be waived. In the event of a waiver, the case may be heard by the Board at an Informal Waiver Hearing. An Informal Waiver Hearing is, essentially, identical to an Informal Hearing. The Board will review the case, and determine whether the subject should be disciplined and what kind of discipline, if any, is appropriate.

The complainant has the right to attend any and all of these public hearings, but is not required to do so unless called as a witness by the Department or by the subject. The complainant also has the right to present oral or written communication regarding the alleged violation or the penalty the Board may impose.

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2014-19228

HARVEY VIRGIL, L.P.N.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Nursing against Respondent, Harvey Virgil, L.P.N., and in support thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of nursing pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 464, Florida Statutes.
2. At all times material to this Administrative Complaint, Respondent was a licensed practical nurse (L.P.N.) within the state of Florida, having been issued license number PN 349301.

3. Respondent's address of record is 1157 B Green Road, Boston, Georgia 31626.

4. On or about April 10, 2013, Respondent entered into an Advocacy Contract with Intervention Project for Nurses (IPN).

5. IPN is the impaired nurses program for the Board of Nursing, designated pursuant to Section 456.076, Florida Statutes. IPN is a program that monitors the evaluation, care, and treatment of impaired nurses. IPN also provides for the exchange of information between treatment providers and the Department for the protection of the public.

6. The Advocacy Contract, entered into by Respondent, had a projected active monitoring period from on or about March 28, 2013, through on or about September 27, 2018.

7. On or about November 11, 2014, Respondent was terminated from IPN due to noncompliance with the terms of Respondent's Advocacy Contract.

8. Section 456.072(1)(hh), Florida Statutes (2014), provides that being terminated from a treatment program for impaired practitioners, which is overseen by an impaired practitioner

consultant as described in Section 456.076, Florida Statutes, for failure to comply without good cause, with the terms of the monitoring or treatment contract entered into by the licensee, or for not successfully completing any drug treatment or alcohol treatment program, constitutes grounds for disciplinary action.

9. Respondent is licensed pursuant to Chapter 464, Florida Statutes, and is a health care practitioner as defined in Section 456.001(4), Florida Statutes (2014).

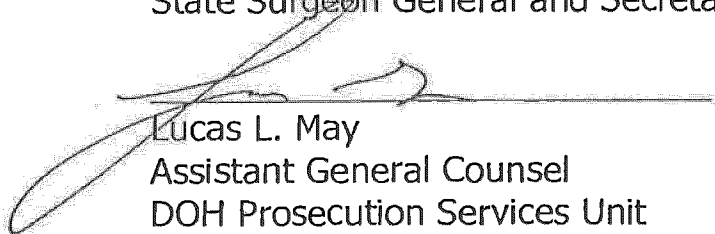
10. As set forth above, on or about November 11, 2014, Respondent was terminated from IPN due to noncompliance with the terms of Respondent's Advocacy Contract.

11. Based on the foregoing, Respondent violated Section 456.072(1)(hh), Florida Statutes (2014), by being terminated from a treatment program for impaired practitioners, which is overseen by an impaired practitioner consultant as described in Section 456.076, Florida Statutes, for failure to comply without good cause, with the terms of the monitoring or treatment contract entered into by the licensee, or for not successfully completing any drug treatment or alcohol treatment program.

WHEREFORE, the Petitioner respectfully requests that the Board of Nursing enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 9 day of June
2015.

John H. Armstrong, MD, FACS
State Surgeon General and Secretary of Health



Lucas L. May
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265
Florida Bar No.: 0102747
(850) 245 - 4444 ext. 8242 Telephone
(850) 245 - 4683 Facsimile
Lucas.May@flhealth.gov

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK Angel Sanders
DATE JUN 10 2015

/LLM

PCP: 6/8/2015

PCP Members: McKeen & Kirkpatrick

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.

9414 7266 9904 2017 4919 51

TO:

Bennett/LLM
Date Mailed 06/15/2015

SENDER:

REFERENCE: *gil*
Stip Pack
2014-19228

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

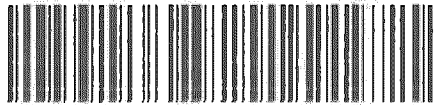
Harvey Virgil, L.P.N.
1157 B Green Road
Boston, Georgia 31626

USPS®
Receipt for
Certified Mail®

No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

2. Article Number



9414 7266 9904 2017 4919 51

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

Harvey Virgil

June 17, 2015

C. Signature

x Harvey Virgil

Agent
 Addressee

D. Is delivery address different from item 1?
If YES, enter delivery address below:

Yes
 No

3. Service Type **CERTIFIED MAIL®**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

Harvey Virgil, L.P.N.
1157 B Green Road
Boston, Georgia 31626

Lucas L. May - 2014-19228 Stip Pack

2015 JUN 19 AM 8:14
PRADITIONER REGULATIDS
LEGAL

Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



Rick Scott
Governor

John H. Armstrong, MD, FACS
State Surgeon General & Secretary

Vision: To be the Healthiest State in the Nation

July 12, 2015

Harvey Virgil, L.P.N.
1157 B Green Road
Boston, Georgia 31626

Certified Article Number

9414 7266 9904 2017 4919 51

SENDERS RECORD

RE: DOH v. Harvey Virgil, L.P.N.
Case No.: 2014-19228

Dear Mr. Virgil:

Enclosed please find a copy of an Administrative Complaint that has been filed against your license by the Department of Health. An Election of Rights form is also enclosed.

Please review the attached documents and return the Election of Rights form to my attention. You must return your election to my office within twenty-one (21) days of the date you received it. Failure to return your election within twenty-one (21) days will be considered a waiver of your right to dispute the facts alleged in the Administrative Complaint.

In addition, enclosed is a Settlement Agreement containing terms I believe will be acceptable in resolving this matter without the need for a Formal or Informal Hearing. If you would like to accept the terms of the Settlement Agreement, please sign it before a notary public and return it to my office. Please note that the Settlement Agreement is subject to final approval by the Board of Nursing and is considered disciplinary action.

A Voluntary Relinquishment form has also been included in this package for your consideration. Voluntarily relinquishing your license is giving up your ability to practice nursing in the state of Florida. If you no longer wish to practice nursing in Florida, please sign the voluntary relinquishment before a notary and return it to my office. Please note that voluntary relinquishment of your license is considered disciplinary action.

Please contact me by phone at 850-245-4444, extension 8242, if you have any questions.

Sincerely,



Lucas L. May
Assistant General Counsel
(850) 245-4444 Ext. 8242

Enclosures: Administrative Complaint, Election of Rights form, Settlement Agreement, and Voluntary Relinquishment form

ELECTION OF RIGHTS

Please sign and complete all of the information below:

I received the Administrative Complaint on the following date: _____

PLEASE SELECT ONLY 1 OF THE 2 OPTIONS.

OPTION 1. _____ I do not dispute the allegations of material fact in the Administrative Complaint. I request a hearing be conducted pursuant to Section 120.57(2), Florida Statutes, where I will be permitted to appear, if I so choose, and submit oral and/or written evidence in mitigation of the complaint to the Board.

OPTION 2. _____ I do dispute the allegations of material fact contained in the Administrative Complaint and request this to be considered a petition for formal hearing, pursuant to Sections 120.569(2)(a) and 120.57(1), Florida Statutes, before an Administrative Law Judge appointed by the Division of Administrative Hearings. Pursuant to the requirement of Uniform Rule 28-106.2015(5), Florida Administrative Code, I specifically dispute the following material facts (identified by paragraph number and fact disputed) in the Administrative Complaint:

In the event that you fail to make an election in this matter within twenty-one (21) days from receipt of the Administrative Complaint, your failure to do so may be considered a waiver of your right to elect a hearing in this matter, pursuant to Rule 28-106.111(4), Florida Administrative Code, and the Board may proceed to hear your case.

PLEASE NOTE: Regardless of which option you choose, you may be able to reach a settlement agreement with the Department in your case. Please contact the prosecuting attorney if you wish to do so.

Respondent's Signature _____
Address: _____

Attorney/Qualified Representative* _____
Address: _____

Lic. No.: _____

Phone No.: _____

Phone No.: _____ Fax No.: _____

Fax No.: _____

Email: _____

Email: _____

STATE OF FLORIDA
COUNTY OF _____

*Qualified Representatives must file written requests to appear as such pursuant to Rule 28-106.106, Uniform Rules of Procedure.

Before me, personally appeared _____, whose identity is known to me or produced (type of identification) and who, acknowledges that his/her signature appears above.

Sworn to or affirmed by Affiant before me this _____ day of _____ 20 _____

Notary Public-State of Florida _____

My Commission Expires _____

Type or Print Name

PLEASE MAIL AND/OR FAX COMPLETED FORM TO: Lucas L. May, Assistant General Counsel, DOH, Prosecution Services Unit, 4052 Bald Cypress Way, Bin C-65, Tallahassee, Florida 32399-3265. Telephone Number: (850) 245-4444 ext. [8242]; FAX (850) 245-4662; TDD 1-800-955-8771

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2014-19228

HARVEY VIRGIL, L.P.N.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Nursing against Respondent, Harvey Virgil, L.P.N., and in support thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of nursing pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 464, Florida Statutes.
2. At all times material to this Administrative Complaint, Respondent was a licensed practical nurse (L.P.N.) within the state of Florida, having been issued license number PN 349301.

3. Respondent's address of record is 1157 B Green Road, Boston, Georgia 31626.

4. On or about April 10, 2013, Respondent entered into an Advocacy Contract with Intervention Project for Nurses (IPN).

5. IPN is the impaired nurses program for the Board of Nursing, designated pursuant to Section 456.076, Florida Statutes. IPN is a program that monitors the evaluation, care, and treatment of impaired nurses. IPN also provides for the exchange of information between treatment providers and the Department for the protection of the public.

6. The Advocacy Contract, entered into by Respondent, had a projected active monitoring period from on or about March 28, 2013, through on or about September 27, 2018.

7. On or about November 11, 2014, Respondent was terminated from IPN due to noncompliance with the terms of Respondent's Advocacy Contract.

8. Section 456.072(1)(hh), Florida Statutes (2014), provides that being terminated from a treatment program for impaired practitioners, which is overseen by an impaired practitioner

consultant as described in Section 456.076, Florida Statutes, for failure to comply without good cause, with the terms of the monitoring or treatment contract entered into by the licensee, or for not successfully completing any drug treatment or alcohol treatment program, constitutes grounds for disciplinary action.

9. Respondent is licensed pursuant to Chapter 464, Florida Statutes, and is a health care practitioner as defined in Section 456.001(4), Florida Statutes (2014).

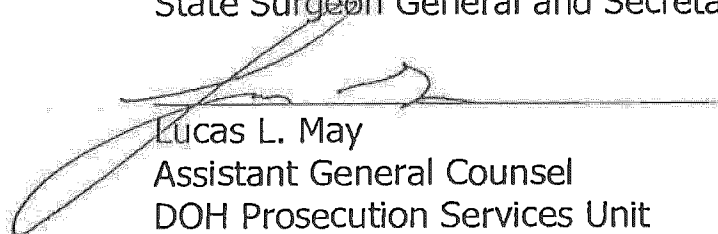
10. As set forth above, on or about November 11, 2014, Respondent was terminated from IPN due to noncompliance with the terms of Respondent's Advocacy Contract.

11. Based on the foregoing, Respondent violated Section 456.072(1)(hh), Florida Statutes (2014), by being terminated from a treatment program for impaired practitioners, which is overseen by an impaired practitioner consultant as described in Section 456.076, Florida Statutes, for failure to comply without good cause, with the terms of the monitoring or treatment contract entered into by the licensee, or for not successfully completing any drug treatment or alcohol treatment program.

WHEREFORE, the Petitioner respectfully requests that the Board of Nursing enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 9 day of June
2015.

John H. Armstrong, MD, FACS
State Surgeon General and Secretary of Health



Lucas L. May
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265
Florida Bar No.: 0102747
(850) 245 - 4444 ext. 8242 Telephone
(850) 245 - 4683 Facsimile
Lucas.May@flhealth.gov

/LLM
PCP: 6/8/2015
PCP Members: McKeen & Kirkpatrick

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Angel Sanders*
DATE JUN 10 2015

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2014-19228

HARVEY VIRGIL, L.P.N.,

RESPONDENT.

SETTLEMENT AGREEMENT

Pursuant to Section 120.57(4), Florida Statutes, the above named parties hereby offer this Settlement Agreement (Agreement) and agree to entry of a Final Order of the Board of Nursing (Board) incorporating this Agreement as disposition of the Administrative Complaint, in lieu of any other administrative proceedings. The terms herein become effective only if and when a Final Order accepting this Agreement is issued by the Board and filed with the Department of Health Agency Clerk.

In considering this Agreement, the Board may review all materials gathered during the investigation of this case. If this Agreement is rejected, it, and its presentation to the Board, shall not be used against either party.

STIPULATED FACTS

1. At all times material to this matter, Respondent was a **licensed practical nurse** in the State of Florida holding license number **349301**.

2. The Department charged Respondent with an Administrative Complaint that was properly served upon Respondent with violations of Chapters 456 and/or 464, Florida Statutes. A true and correct copy of the Administrative Complaint is attached hereto and incorporated by reference as Exhibit A.

3. Respondent neither admits nor denies the factual allegations contained in the Administrative Complaint.

STIPULATED LAW

4. Respondent admits that he/she is subject to the provisions of Chapters 456 and 464, Florida Statutes, and the jurisdiction of the Department and the Board.

5. Respondent admits that the stipulated facts, if proven true, constitute violations of Chapter 456 and/or 464, Florida Statutes as alleged in the Administrative Complaint.

6. Respondent agrees that the Agreement is a fair, appropriate, and reasonable resolution of this pending matter.

PROPOSED DISPOSITION

7. The Respondent shall pay investigative costs not to exceed one thousand nine hundred twenty-four dollars and six cents (**\$1,924.06**) within 2 years from the date of entry of the Final Order. Payment shall be made to the Board of Nursing and mailed to, DOH/HMQACS, Compliance Management Unit, Bin C76, Post Office Box 6320, Tallahassee, Florida 32314-6320, Attention: Nursing Compliance Officer. **Payment must be made by cashier's check or money order ONLY.** Personal checks will **NOT** be accepted.

8. Respondent's license is suspended until Respondent personally appears before the Board and can demonstrate the present ability to engage in the safe practice of nursing. That demonstration shall include at least an in-depth psychological evaluation coordinated through the Intervention Project for Nurses. The Respondent shall supply a copy of the Final Order accepting this Settlement Agreement to the evaluator. The evaluation must contain evidence that the evaluator knows of the reason for referral. The evaluator must specifically advise this Board that the Respondent is presently able to engage in the safe practice of nursing or recommend the conditions under which safe practice could be attained. The Respondent must also submit prior to appearance before the Board proof of continued treatment and counseling if recommended in the psychological evaluation. The Board reserves the right to impose reasonable conditions of reinstatement at the time Respondent appears before the Board to demonstrate the present ability to engage in the safe practice of nursing.

9. Within 30 days, the Respondent shall return the license to DOH-Compliance Management Unit, 4052 Bald Cypress Way, Tallahassee, Florida 32399-3276, Attention: Nursing Compliance Officer, or shall surrender his/her license to an investigator with the Department of Health. The Respondent's employer shall immediately be informed of the suspension in writing by the Respondent with a copy to DOH-Compliance Management Unit, 4052 Bald Cypress Way, Tallahassee, Florida 32399-3276, Attention: Nursing Compliance Officer.

10. The Respondent shall not violate Chapter 456 or 464, Florida Statutes, the rules promulgated pursuant thereto, any other state or federal law, rule, or regulation relating to the practice or the ability to practice nursing. Violation of an order from another state/jurisdiction shall constitute grounds for violation of the Final Order accepting this Settlement Agreement.

11. It is expressly understood that this Settlement Agreement is subject to the approval of the Department and the Board, and has no force and effect until a Final Order is entered accepting this Settlement Agreement.

12. This Settlement Agreement is executed by the Respondent for the purpose of avoiding further administrative action by the Board of Nursing regarding the acts or omissions specifically set forth in the Administrative Complaint attached hereto.

In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to, or in conjunction with, consideration of the Agreement. Furthermore, should this Settlement Agreement not be accepted by the Board, it is agreed that presentation to, and consideration of, this Settlement Agreement and other documents and matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings. Respondent shall offer no evidence, testimony or argument that disputes or contravenes any stipulated fact or conclusion of law.

13. Respondent and the Department fully understand that this Settlement Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or Department against the Respondent for acts

or omissions not specifically set forth in the Administrative Complaint attached hereto.

This Agreement relates solely to the current disciplinary proceedings arising from the above-mentioned Administrative Complaint and does not preclude further action by other divisions, departments, and/or sections of the Department, including but not limited to the Agency for Health Care Administration's Medicaid Program Integrity Office.

14. The Respondent waives the right to seek any attorney's fees or costs from the Department in connection with this disciplinary proceeding.

15. Respondent waives all rights to appeal and further review of this Agreement and these proceedings.

WHEREFORE, the parties hereto request the Board enter a Final Order accepting and implementing the terms of the Settlement Agreement contained herein.

(Signatures follow on next page.)

SIGNED this ____ day of _____, 201__.

Harvey Virgil, L.P.N.

STATE OF FLORIDA

COUNTY OF _____

Before me personally appeared _____ whose identity is known to be by _____ (type of identification), and who under oath, acknowledges that his/her signature appears above. Sworn to and subscribed by Respondent before me this ____ day of _____, 201__.

Notary Public
My Commission Expires:

APPROVED this ____ day of _____, 201__.

John H. Armstrong, MD, FACS
State Surgeon General and
Secretary of Health

Lucas L. May
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar #0102747
(850) 245-4444 telephone
(850) 245-4662 facsimile
Email: lucas.may@flhealth.gov

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

Case No. 2014-19228

HARVEY VIRGIL, L.P.N.,

Respondent.

VOLUNTARY RELINQUISHMENT OF LICENSE

Respondent, Harvey Virgil, L.P.N., license number 349301 hereby voluntarily relinquishes Respondent's license to practice nursing in the State of Florida and states as follows:

1. Respondent's purpose in executing this Voluntary Relinquishment is to avoid further administrative action with respect to this case. Respondent understands that acceptance by the Board of Nursing (hereinafter the Board) of this Voluntary Relinquishment shall be construed as disciplinary action against Respondent's license pursuant to Section 456.072(1)(f), Florida Statutes. As with any disciplinary action, this relinquishment will be reported to the National Practitioner's Data Bank. Licensing authorities in other states may impose discipline in their jurisdiction based on discipline taken in Florida.

2. Respondent agrees to voluntarily cease practicing nursing immediately upon executing this Voluntary Relinquishment. Respondent further agrees to refrain from the

practice of nursing until such time as this Voluntary Relinquishment is presented to the Board and the Board issues a written Final Order in this matter.

3. In order to expedite consideration and resolution of this action by the Board in a public meeting, Respondent, being fully advised of the consequences of so doing, hereby waives the statutory privilege of confidentiality of Section 456.073(10), Florida Statutes, and waives a determination of probable cause, by the Probable Cause Panel, or the Department when appropriate, pursuant to Section 456.073(4), Florida Statutes, regarding the complaint, the investigative report of the Department of Health, and all other information obtained pursuant to the Department's investigation in this case. By signing this waiver, Respondent understands that the record and complaint become public record and remain public record and that information is immediately accessible to the public.

4. Upon the Board's acceptance of this Voluntary Relinquishment, Respondent agrees to waive all rights to seek judicial review, or to otherwise challenge or contest the validity of this Voluntary Relinquishment and of the Final Order of the Board incorporating this Voluntary Relinquishment.

5. Petitioner and Respondent hereby agree that upon the Board's acceptance of this Voluntary Relinquishment, each party shall bear its own attorney's fees and costs related to the prosecution or defense of this case.

6. Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent in connection with the Board's consideration of this

Voluntary Relinquishment. Respondent agrees that consideration of this Voluntary Relinquishment and other related materials by the Board shall not prejudice or preclude the Board, or any of its members, from further participation, consideration, or resolution of these proceedings if the terms of this Voluntary Relinquishment are not accepted by the Board.

SIGNED this ____ day of _____, 201__.

Harvey Virgil, L.P.N.

STATE OF FLORIDA

COUNTY OF _____

Before me personally appeared _____ whose identity is known to be by _____ (type of identification), and who under oath, acknowledges that his/her signature appears above. Sworn to and subscribed by Respondent before me this ____ day of _____, 201__.

Notary Public

My Commission Expires:

9414 7266 9904 2017 4909 23

TO:

Harvey Virgil LPN
2014-19228
ab/AM - extension ltr
May 21, 2015

Harvey Virgil
1157 B. Green Road
Boston, GA 31626

SENDER:

REFERENCE:

PS Form 3800, January 2005

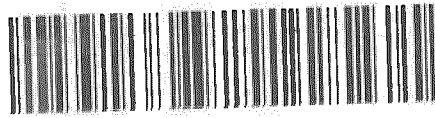
RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

USPS®
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No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

2. Article Number



9414 7266 9904 2017 4909 23

3. Service Type **CERTIFIED MAIL®**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

Harvey Virgil
1157 B. Green Road
Boston, GA 31626
DOI 2014-19228
ab/AM - extension ltr

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) <i>Cheryl Virgil</i>	B. Date of Delivery 5/23/15
C. Signature <i>Cheryl Virgil</i>	<input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee
D. Is delivery address different from item If YES, enter delivery address below:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

2015 MAY 28 AM 8:08
PRACTITIONER REGULATORY
LEGAL

PS Form 3811, January 2005

Domestic Return Receipt

Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



Rick Scott
Governor

John H. Armstrong, MD, FACS
State Surgeon General and Secretary

Vision: To be the Healthiest State in the Nation

May 8, 2015

CONFIDENTIAL

Harvey Virgil, L.P.N.
1157 B. Green Road
Boston, Georgia 31626

Certified Article Number

9414 7266 9904 2017 4909 23

SENDERS RECORD

Re: DOH v. Harvey Virgil, L.P.N.
DOH Case Number: 2014-19228

Dear Mr. Virgil:

This is to confirm our conversation of today. Pursuant to your request, the Department is providing you with two additional weeks from today, May 21, 2015, to submit additional documentation for the probable cause to review. After Thursday, June 4, 2015, the Department will proceed with your case.

Please submit your documentation to Lucas May, PSU, at the address below. If you have any further questions or concerns, please feel free to call me at extension 8133.

Sincerely,

Ana M. Gargollo-McDonald
Assistant General Counsel

Florida Department of Health

Office of the General Counsel – Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65 • Tallahassee, FL 32399-3265
Express mail address: 2585 Merchants Row, Suite 105
PHONE: 850/245/4444 • FAX 850/245-4662

www.FloridaHealth.gov

TWITTER: HealthyFLA
FACEBOOK: FLDepartmentofHealth
YOUTUBE: fldoh
FLICKR: HealthyFla
PINTEREST: HealthyFla