

DEFAULT ORDER

IN THE MATTER OF

The Louisiana State Board of Practical Nurse Examiners (Board)

v.

**Cary Payton (respondent), LPN, license #850257
2644 Taffy Drive, Marrero, LA 70058**

On April 5, 2016, a formal complaint/notice of hearing (attachment A) was mailed to the last known address of the respondent. The respondent did not reply to the complaint/notice of hearing, as required by the LAC 46: XLVII. 306.I and therefore the respondent waived the right to a formal hearing. In accordance with the LAC 46: XLVII. 306.J, this order is issued by default.

LEGAL AUTHORITY AND JURISDICTION

The board's legal authority and jurisdiction, in adjudication proceedings, are provided for in:

1. The Louisiana Revised Statutes of 1950, Title 37, Chapter 11, Part II, Section 961 et seq., as amended; and
2. The Louisiana Administrative Code, Title 46, Part XLVII, Subpart 1, Section 101 et seq., as amended; and
3. The Louisiana Administrative Procedure Act, Title 49, Chapter 13, Section 950 et seq., as amended.

FINDINGS OF FACT

1. The respondent was issued a license to practice practical nursing in the state of Louisiana on June 5, 1985.
2. The board received information that the respondent was named in a federal indictment. According to the indictment, he was charged with count 1, conspiracy to commit healthcare fraud. It was alleged that he knowingly and willfully executed and attempted to execute a scheme to defraud Medicare. He was one of the named LPNs assigned to beneficiaries to perform skilled nursing visits in which he routinely falsified documentation to support the ongoing fraudulent billing.

He was also charged with count 2, conspiracy to pay and receive illegal healthcare kickbacks. It was alleged that he unlawfully paid and received illegal kickbacks and bribes in exchange for providing Medicare beneficiary information that was used to submit fraudulent claims to Medicare. On 4/26/12, he was paid \$300.00 for his referral to ABIDE of an insurance beneficiary for home health services.

3. On October 15, 2015, the respondent's practical nursing license was suspended for failing to respond to the board's request for information.
4. The board received additional information that the respondent pled guilty to one count of Conspiracy to Receive Illegal Kickbacks. He unlawfully paid and received illegal kickbacks and bribes in exchange for providing Medicare beneficiary information that was used to submit fraudulent claims to Medicare. He admitted to receiving a \$300.00 payment for his referral to ABIDE of an insurance beneficiary for home health services. He faces a maximum term of imprisonment of five years, a \$250,000.00 fine, and three years of supervised release following imprisonment.
5. To date, the respondent's practical nursing license remains suspended.

CONCLUSIONS OF LAW

Based on the facts set forth in the entire record and outlined herein above, the respondent is in violation of the following provisions of Louisiana Revised Statutes, Title 37, Chapter 11. Nurses, Part II. Practical Nurses, §969 A. (4):

- (b) is guilty of a crime;
- (c) is unfit, or incompetent by reason of negligence habit, or other causes;
- (f) is guilty of unprofessional conduct;
- (g) has violated any provisions of this Part;

And § 978 A (8) Violate any provisions of this Part and B.

As further defined in the Louisiana Administrative Code, Title 46, Part XLVII, Subpart 1, §306. T.

2. being guilty of a crime;
3. being unfit, or incompetent by reason of negligence, habit or other causes;
8. being guilty of unprofessional conduct;
 - a. failure to practice practical nursing in accordance with the standards normally expected;
 - b. failure to utilize appropriate judgment in administering nursing practice;
 - g. improper use of drugs, medical supplies, or patients' records;
 - h. misappropriating personal items of an individual or the agency;

- i. **falsifying records;**
- j. **intentionally committing any act that adversely affects the physical or psychosocial welfare of the patient;**
- m. **failing to report, through the proper channels, facts known regarding the incompetent, unethical, or illegal practice of any health care provider;**
- n. **being convicted of a crime or offense which reflects the inability of the nurse to practice practical nursing with due regard for the health and safety of clients or patients or enters a plea of guilty or nolo contendere to a criminal charge regardless of final disposition of the criminal proceeding including, but not limited to, expungement or nonadjudication or pardon;**
- o. **being guilty of moral turpitude;**
- p. **inappropriate, incomplete or improper documentation;**
- t. **violating any provisions of R.S. 37:961 et seq. (the practical nursing practice act), as amended or aiding or abetting therein.**

ORDER

In view of the above findings of fact and conclusions of law, the board issues the following order by default:

The license of the respondent, **Cary Payton, license #850257** is hereby **revoked**, effectively immediately upon execution of this order. Revocation is permanent in the state of Louisiana.

Furthermore, the respondent must:

- A. Return his/her current practical nursing license to the board office within **five (5) days** of the date of this order.
- B. Shall not practice as a practical nurse in the state of Louisiana.
- C. Submit a fine of **\$500.00, payable by cashier's check or money order only**, for the violations detailed in the conclusions of law, payable within **90 days** of the date of this order.

LOUISIANA STATE BOARD OF PRACTICAL NURSE EXAMINERS
131 AIRLINE DRIVE, SUITE 301
METAIRIE, LOUISIANA 70001-6266
(504) 838-5791
FAX (504) 838-5279
www.lsbpne.com

PUBLIC RECORDS

This order is public record. All disciplinary actions of the board will be reported to all required data banks and agencies as required by law.

LOUISIANA STATE BOARD OF PRACTICAL NURSE EXAMINERS

M. Lynn Ansardi RN

M. Lynn Ansardi, RN
Executive Director

4/19/16

Date

Rendered this 19th day of April, 2016, and mailed this 19th day of April, 2016, by U.S. postal service certified mail return receipt #7015 1730 0001 8796 9680 and regular mail to the following address:

**Cary Payton
2644 Taffy Drive
Marrero, LA 70058**

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April 5, 2016

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7015 1730 0001 8796 9628**

**Cary Payton
2644 Taffy Drive
Marrero, LA 70058**

**LICENSE #850257
D.O.B. 02/28/1955**

FORMAL COMPLAINT

The Louisiana State Board of Practical Nurse Examiners, hereinafter called the board, files this formal complaint against the respondent. This serves as notice required by the Administrative Procedure Act R.S. 49:955(B).

A hearing will be conducted at the offices of the board on the date and at the time specified here:

**Date: April 25, 2016
Time: 8:00 a.m.
Place: 131 Airline Dr., Suite 301, Metairie, LA 70001**

The nature of the hearing is prosecution of the matter:

The Louisiana State Board of Practical Nurse Examiners
v.
Cary Payton

The board's legal authority and jurisdiction, in this process of adjudication, are provided for in:

1. The Louisiana Revised Statutes of 1950, Title 37, Chapter 11, Part II, Section 961 et seq., as amended; and
2. The Louisiana Administrative Code, Title 46, Part XLVII, Subpart 1, Section 101 et seq., as amended; and
3. The Louisiana Administrative Procedure Act, Title 49, Chapter 13, Section 950 et seq., as amended.

ATTACHMENT

A

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The hearing concerns alleged violations of the following sections of the statutes/rules:

1. The Louisiana Revised Statutes of 1950, Title 37, Chapter 11, Part II, Section 969 A. (4);
 - (b) **is guilty of a crime;**
 - (c) **is unfit, or incompetent by reason of negligence habit, or other causes;**
 - (f) **is guilty of unprofessional conduct;**
 - (g) **has violated any provisions of this Part;**

And 978 A (8) Violate any provisions of this Part and B.

2. The Louisiana Administrative Code, Title 46, Part XLVII, Subpart 1, Sections § 306 T.
2. **being guilty of a crime;**
3. **being unfit, or incompetent by reason of negligence, habit or other causes;**
8. **being guilty of unprofessional conduct;**
 - a. **failure to practice practical nursing in accordance with the standards normally expected;**
 - b. **failure to utilize appropriate judgment in administering nursing practice;**
 - g. **improper use of drugs, medical supplies, or patients' records;**
 - h. **misappropriating personal items of an individual or the agency;**
 - i. **falsifying records;**
 - j. **intentionally committing any act that adversely affects the physical or psychosocial welfare of the patient;**
 - m. **failing to report, through the proper channels, facts known regarding the incompetent, unethical, or illegal practice of any health care provider;**
 - n. **being convicted of a crime or offense which reflects the inability of the nurse to practice practical nursing with due regard for the health and safety of clients or patients or enters a plea of guilty or nolo contendere to a criminal charge regardless of final disposition of the criminal proceeding including, but not limited to, expungement or nonadjudication or pardon;**
 - o. **being guilty of moral turpitude;**

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- p. inappropriate, incomplete or improper documentation;**
- t. violating any provisions of R.S. 37:961 et seq. (the practical nursing practice act), as amended or aiding or abetting therein.**

The major issues involved include, but are not limited to the following:

1. The respondent was issued a license to practice practical nursing in the state of Louisiana on June 5, 1985.
2. The board received information that the respondent was named in a federal indictment. According to the indictment, he was charged with count 1, conspiracy to commit healthcare fraud. It was alleged that he knowingly and willfully executed and attempted to execute a scheme to defraud Medicare. He was one of the named LPNs assigned to beneficiaries to perform skilled nursing visits in which he routinely falsified documentation to support the ongoing fraudulent billing.

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You have ten (10) days prior to the date fixed for the hearing to respond (response form enclosed) to this complaint. If you fail to respond, in writing, within this time, you will be deemed to have waived the right to a hearing and action may be taken on this complaint by default, or the hearing may proceed in your absence.

Please find enclosed, a copy of rules related to the formal hearing process.

RIGHT TO PETITION FOR REHEARING/APPEAL/JUDICIAL REVIEW

A decision issued by the board, after the hearing in this matter, may be appealed. LRS 37:976 provides: "Appeals from decisions of the board shall be to the Civil District Court of Jefferson Parish..." The petition for appeal must be filed within thirty days of the date of the mailing of the notice of the board's final decision; copies of the petition must be served on the board and all parties of record (LRS 49:964). A request may also be made to the board for rehearing, re-opening or reconsideration of the board's order. This request must be filed within ten days from the date of the board order and set forth legally sufficient reasons for granting the requests. (LRS 49:959 and LAC 46:XLVII.306.S).

By: M Lynn Ansardi, RN
M. Lynn Ansardi, RN
Executive Director

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April 5, 2016

Please sign, date and return to the board office at 131 Airline Dr., Ste. 301, Metairie, LA 70001.

_____ I **admit** to the allegations contained in the notice of complaint and **will appear** for the scheduled formal hearing.

_____ I **deny** the allegations contained in the notice of complaint and **will appear** for the scheduled formal hearing.

_____ I **admit** to the allegations and **hereby waive my rights** to a formal hearing in the matter. I **will not appear** for the scheduled formal hearing and understand that in doing so my case may either be heard without my appearance, or the Board may issue an order by default.

_____ I **deny** the allegations and **hereby waive my rights** to a formal hearing in the matter. I **will not appear** for the scheduled formal hearing and understand that in doing so my case may either be heard without my appearance, or the Board may issue an order by default.

_____ I enclose my written response to the allegation(s) contained in the notice of complaint and **will not appear** for the scheduled formal hearing. I understand that in doing so my case will be heard without my appearance.

NAME: _____

ADDRESS: _____

PHONE#: _____

DATE: _____

SIGNATURE: _____