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

# DEFAULT ORDER

**IN THE MATTER OF**

**The Louisiana State Board of Practical Nurse Examiners (Board)**
**v.**
**Erin O'Daniel (respondent), LPN, license #20100339**
**2505 Rosedale Place, Bossier City, LA 71111**

On **August 29, 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 March 2, 2010.

2. On September 28, 2015, the respondent self-reported, that while employed as a licensed practical nurse with Cypress Point Nursing and Rehabilitation Center she tested positive for Buprenorphine on a random urine drug screen. The respondent was terminated from the facility.

3. The board received information from Roseview Nursing Center indicating on April 10, 2012, the respondent was counseled for leaving 3 residents at the dining room table while they ate, which was against facility policy. She was terminated from the facility on July 12, 2012.

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## CONCLUSIONS OF LAW

Based on the findings of fact, enumerated above, the respondent is in violation of:
1. The Louisiana Revised Statutes of 1950, Title 37, Chapter 11, Part II, Section 969 A. (4)

**(c) is unfit, or incompetent by reason of negligence habit, or other causes;**
**(d) is habitually intemperate or is addicted to the use of habit forming drugs;**
**(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 Part B. And**

2. The Louisiana Administrative Code, Title 46, Part XLVII, Subpart 1, Sections 306 T.

**3. being unfit, or incompetent by reason of negligence, habit or other causes;**
**4. being habitually intemperate or addicted to the use of habit-forming drugs;**
**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;**
**q. using or being under the influence of alcohol, while on duty, and/or while making application for employment, or using or being under the influence of drugs which impair judgment while on duty, or using or being under the influence of illegal drugs whether on or off duty;**
**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.

That the license of the respondent, **Erin O'Daniel, license #20100339** be suspended for a minimum period of **one (1) year** from the date of this order.

During this suspension time, the respondent must abide by the following stipulations:

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1. **Return license to the board office:**

   A. The respondent shall return his/her current practical nursing license to the board office within **ten (10) days** of the date of this order.

   B. The respondent shall not practice nursing during the period that his/her license is suspended.

2. **Obey all laws:**

   A. The respondent shall obey all laws/rules governing the practice of practical nursing in this state and obey all federal, state, and local laws.

   B. The respondent shall report to the board within **ten (10) days** any misdemeanor and/or felony arrest(s) or conviction(s).

3. **Notify board of change of address/telephone number:**

   A. The respondent shall notify the board in writing within **ten (10) days** of any change in personal address or telephone number.

4. **Obtain the following evaluation(s):**

   ☐ **chemical dependency**

   A. Within **thirty (30) days** of the date of this order, the respondent shall undergo the above ordered evaluation(s). The evaluation(s) shall be conducted by a licensed certified psychologist/psychiatrist/addictionologist of the respondent's choice. The evaluation(s) shall be conducted using both objective and subjective assessment tools.

   B. Prior to the evaluation(s), the respondent shall furnish the evaluator with a copy of the board order/consent order to include the findings of fact, conclusions of law, and the **Board Order Acknowledgement Form**. The evaluator shall verify receipt and review of these documents in the evaluation(s) of the respondent.

   C. The respondent shall execute the **Release of Information Form** to allow the evaluator to communicate with and supply information to the board.

D. The respondent shall direct the evaluator to submit directly to the office of the board the **Release of Information Form, the Board Order Acknowledgement Form** and the evaluative report(s).

E. The report of the evaluation(s) shall include, but not be limited to, the following:

i. history of chemical/alcohol use
ii. past and present treatment and/or recovery activities
iii. results of any testing conducted
iv. a summary of the findings
v. treatment plan, if applicable
vi. list of medications prescribed, if applicable
vii. an assessment as to respondent's ability to practice safely as a practical nurse

F. The respondent shall satisfactorily complete any and all recommendations made by the evaluator. If treatment or therapy is recommended, the respondent shall, within **thirty (30) days** of the evaluator's report, initiate all treatment and/or therapeutic activities. If treatment or therapy is recommended, the respondent shall submit to the board the name and credentials of the therapists and/or the name and address of the treatment facilities.

G. The respondent shall undergo subsequent evaluations by a board approved psychologist/psychiatrist/addictionologist if requested by the board following a relapse or for other related causes.

5. **Participate in any and all treatment/aftercare programs as prescribed:**

A. The respondent shall enroll and participate in board approved treatment/aftercare programs as prescribed or recommended by the chemical addiction/psychological evaluator.

B. The respondent shall have the aftercare counselor submit to the board office proof of the respondent's entry into an appropriate facility, inpatient program, outpatient program, halfway house, residential long-term treatment, and/or a combination thereof.

C. The respondent shall execute the **Release of Information Form** to allow the treatment facility/center/counselor/practitioner of record to communicate with and supply information to the board.

D. The respondent shall submit evidence of **continued compliance with the treatment plan/counseling.** Treatment/aftercare compliance must be maintained throughout the duration of this order or until treatment is deemed complete.

E. The respondent shall cause the aftercare counselor to submit quarterly to the board office progress reports indicating compliance with treatment recommendations. Reports are due on or before the 10th day of January, April, July, and October of each year until treatment is deemed complete.

F. Upon completion of the treatment/aftercare program(s), the respondent shall have the aftercare counselor provide the board with documentation indicating the respondent's successful completion of the program.

6. **Select one primary pharmacy:**

A. The respondent shall notify the board of the name, address, and telephone number of his/her selected pharmacy within **ten (10) days** of the date of this order. If the respondent acquires a new pharmacy, written notification must be received within **ten (10) days** of the first use.

7. **Select one primary care physician:**

A. The respondent shall notify the board within **ten (10) days** of the date of this order, the name, address and telephone number of his/her selected primary care physician. The physician must hold an unencumbered license. All medical care received by the respondent for the duration of this order shall be furnished by the primary care physician or by the referral of the primary physician with the exception of emergency care. In the event emergency medical care is necessary, the respondent must notify the board within **three (3) days** from the date the emergency care was rendered if the treatment included administration of mood-altering, controlled, or addictive substances.

B. The respondent shall execute the **Release of Information Form** to allow the primary care physician/referred specialist to communicate with and supply information to the board.

8. **Abstain from unauthorized drug use and controlled/abuse potential substances**

The respondent shall abstain at all times from the use of controlled or abuse potential substances and illegal drugs as defined by law, except as prescribed by the primary care physician/referred specialist from whom he/she seeks medical attention.

The respondent shall not consume hemp, poppy seeds, or any product or by-product containing the same, nor shall the respondent consume any product(s) containing alcohol if it is stipulated that the respondent must abstain from alcohol.

A. The respondent shall present a copy of his/her board order/consent order to include the findings of fact and conclusions of law to their primary care physician/referred specialist at the time of obtaining a prescription for controlled/abuse potential substances.

B. In the event the respondent obtains a prescription from their primary care physician/referred specialist for any controlled/abuse potential substance, **the respondent shall submit a copy of the prescription to the board within 48 hours**. The prescription must be for a current condition. The respondent must not arbitrarily take medications prescribed for a past illness or take a medication that is prescribed for another person.

   No medications from a prescription over **six (6) months old** will be accepted without an updated prescription verification. Using prescribed medication(s) over **six (6) months old** without an updated verification is grounds for further disciplinary action as stated in this order.

C. The respondent's primary care physician/referred specialist must complete the board's **Medication Form** for controlled medication(s)/abuse potential substances, and the **Board Order Acknowledgement Form**. He/she must submit the forms within **ten (10) days** of the date of the prescription directly to the board office. The forms must come from the provider to the board office by mail. **They may not pass through the respondent's hands. THEY MAY NOT BE SENT BY FACSIMILE.**

   The **Medication Form** must contain identification of the primary care physician/referred specialist along with the condition(s) being treated and the prescription(s) ordered. The condition that warrants the medication must be identified.

   If prescription medications are refilled, the board must also have a letter from the primary care physician/referred specialist attesting to the continued need for the medication(s) and the **Medication Form** must be updated every **six (6) months**. The form is required to be re-submitted to the board at that time directly from the primary care physician/referred specialist.

The primary care physician/referred specialist must acknowledge in writing and by documenting on the **Medication Form** that said provider has knowledge of the respondent's dependency and/or use of controlled or abuse potential substances. The provider must identify the medication, dosage, and the date the medication was prescribed. **The practitioner must state whether the medication(s) being prescribed will negatively impact the respondent's ability to perform his/her nursing duties.**

D. In the event of an emergency or referral to a specialist by the primary care physician the respondent must notify the emergency care provider and/or specialist of any/all medication already being prescribed. Should the respondent obtain any prescriptions from the emergency care provider and/or specialist for controlled medication(s)/abuse potential substance(s), the respondent shall inform his/her primary care physician. Each prescriber/physician/specialist must submit a letter to the board office indicating they are aware that the respondent is being prescribed controlled medication(s)/abuse potential substance(s) by the other provider(s) and include the reason(s). These notices must be received at the board office within **ten (10) days** of the date of the prescription(s) and must include a list of medication(s) being prescribed by each physician.

E. The respondent, if enrolled in aftercare, shall inform the aftercare counselor of any/all prescriptions, and the aftercare counselor must submit a letter to the board within **ten (10) days** of the prescription date indicating that they are aware of any/all prescriptions.

Failure to follow these procedures when obtaining a prescription may be grounds for further disciplinary action as stated in this order.

9. **Enroll in a drug screening program:**

A. Within **ten (10) days** of the date of this order, the respondent shall register with the drug screening firm selected by the board. The respondent is required to call into the system immediately upon registering with the drug screening firm.

B. It is the responsibility of the respondent to ensure that he/she has properly registered with the drug screening firm selected by the board.

C. The respondent shall submit to and pay for random drug and/or alcohol screens. The random testing shall be done at a minimum of once per month but may be required more frequently as requested by the board. All drug screens must be observed. The board may at any time request additional testing, including but not limited to, hair and/or blood samples.

D. Occurrence of any of the following conditions constitutes noncompliance with this board order: 1) failure to register with the selected drug testing firm within **ten (10) days** of the date of this order; 2) a positive drug screen; 3) failure to contact the testing firm daily; 4) failure to submit a specimen on the date selected for screening; 5) refusal to furnish a specimen; 6) failure to be observed when submitting a specimen or reporting that the facility did not observe screening process; 7) submission of a specimen where the integrity has been compromised, as indicated by the presence of adulterants or submission of a sample that is below acceptable volume or temperature to be tested; 8) failure to follow requested procedure in obtaining a specimen.

E. Drug screen results indicating an abnormal/dilute specimen, or a result indicating a low specific gravity with low creatinine levels will be considered non-compliant with this board order. Positive screens are grounds for further disciplinary action as stated in this order.

F. When checking in with the drug testing company daily by telephone, the respondent must listen to the entire message. Failing to complete the call will be considered non-compliant with this order and grounds for further disciplinary action as stated in this order.

G. Failure to properly fill out or maintain a proper chain of custody form in any way that is not accepted by the drug testing facility will be considered positive and non-compliant with the board order and grounds for further disciplinary action as stated in this order.

H. The respondent shall adhere to all guidelines set forth by the board and the drug screening firm. The drug screening firm will report any/all violations of their guidelines, policies and procedures to the board.

10. **Fines/Fees:**

A. The respondent is hereby fined **$1000.00**, **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.

B. The respondent must pay any/all fines/fees owed to the board, including a reinstatement fee, if/when applicable. Fines/fees are **payable by cashier's check or money order only**.

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11. **Reinstatement requirements:**

A. All stipulations of the suspension must be successfully fulfilled prior to a request for reinstatement.

B. The respondent is to submit a written request for reinstatement to the board office.

C. If a chemical and/or psychological assessment was stipulated before reinstatement can be considered, the provider who conducted the original assessment must submit a letter to the board office indicating that he/she feels the respondent can safely return to the practice of practical nursing and under what conditions (i.e., recommendations for on going treatment and a list of medications being prescribed). If the assessment includes a treatment plan, evidence of compliance with this plan must also be submitted to the board.

Upon favorable review of the reinstatement request, the license of the respondent may then be placed on probation for a minimum period of **two (2) years**. During this probationary period the respondent shall follow **stipulations #2, 3, 5, 6, 7, 8, and 9 as stipulated above and the following stipulations as stipulated below:**

1. **License:**

A. The license of the respondent will be stamped "**PROBATION**".

2. **Fines/Fees:**

A. The respondent is to submit a $500.00 annual probation monitoring fee, **payable by cashier's check or money order only**.

B. The probation monitoring fee is due within **three (3) months** of receiving a probated license, and annually thereafter until the probation is satisfactorily completed.

C. Failure to pay this fee in the time allotted will result in the immediate suspension of the respondent's practical nursing license.

3. **Employment:**

A. The respondent shall provide a copy of the entire board order/consent order including the findings of fact and conclusions of law immediately to any/all current employer(s) and at the time of application to any/all prospective employer(s).

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i. If the respondent is already employed as an lpn, the respondent and the current employer shall enter into the board's **Employer's Agreement** (form(s) issued by board). The signed form(s) shall be submitted to the board office within **ten (10) days** of the date of this order.

ii. Upon obtaining new employment as an lpn, the respondent shall enter into the board's **Employer's Agreement** (form(s) issued by board) with the prospective employer. The signed form(s) shall be submitted to the board office within **ten (10) days** of the date of hire.

B. All current and prospective employers must agree to allow the respondent's direct supervisor to monitor the respondent while on probation as well as timely submission of evaluations.

C. Probation will run concurrent with employment as an lpn.

D. The respondent must be employed a minimum of 80 hours per month.

E. The probationary period will not commence or progress until and unless the respondent is employed and delivering direct patient care as a licensed practical nurse.

F. Failure to maintain stable employment may be grounds for termination of probation.

G. The respondent must practice under the supervision of a nurse (rn or lpn) or physician whose license is unencumbered and must provide direct patient care as follows:

i. The respondent must be supervised on a regular and consistent basis by his/her assigned supervisor. The supervisor must observe and work closely enough with the respondent to be able to give an informed evaluation of the respondent. The employer must be willing to allow this supervision and provide opportunities for the same supervisor to evaluate the performance of the respondent.

ii. It is the respondent's responsibility to ensure that his/her supervisor submits the evaluation reports quarterly.

a. Reports are due on or before the 10th day of January, April, July, and October of each year. (Note: these forms will be provided to the employer).

b. Only the respondent's direct supervisor may complete the evaluations according to the observations made during the supervision.

H. The respondent is prohibited from working in temporary staffing, as an agency nurse, for a nursing pool and/or in the home health setting, or in any other similar setting including but not limited to working in a teaching capacity, as a travel nurse and/or on an "as needed" basis - prn.

I. The respondent shall notify the board in writing within **ten (10) days** of any change in employment. Changes in employment include accepting a new job, as well as resignation, or termination.

J. Upon obtaining a prescription for controlled/abuse potential substance(s) while holding a probated license, the respondent is responsible for informing his/her employer within **three (3) days** from the date of the prescription(s).

# Violations

The respondent is hereby notified that failure to comply with any stipulations of this order of the board may result in any or all of the following:

a) immediate suspension of license, b) indefinite suspension of license, c) ineligibility for annual renewal of license, d) additional fines/penalties up to $500.00 per occurrence, e) increased probationary period, f) summary suspension and g) revocation.

**FAILURE TO COMPLY WITH ANY SECTION OF THIS ORDER RELATED TO DRUG SCREENS, TREATMENT PLANS, AND/OR REGARDING PERSONAL SUBSTANCE ABUSE WHETHER PRESCRIPTION DRUGS OR ILLEGAL DRUGS MAY RESULT IN SUSPENSION OF UP TO A FOUR (4) YEAR PERIOD WITHOUT A HEARING BEFORE THE BOARD.** During the period of suspension, if related to substance abuse, appropriate consistent treatment must be obtained, and the respondent must show evidence of **two (2) consecutive years** of being drug/alcohol free immediately prior to the respondent's initiation of a reinstatement request. If during the **two (2) consecutive years** of sobriety the respondent relapses, the **two (2) consecutive years** of sobriety will re-start on the date of the relapse occurrence, provided that the respondent is in treatment.

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## 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 9.14.16

M. Lynn Ansardi, RN
Executive Director

Date

Rendered this 14th day of **September, 2016**, and mailed this 14th day of **September, 2016**, by U.S. Postal Service, Regular and Certified Mail No. 7016 0910 0000 8350 1430 to:

Erin O'Daniel
2505 Rosedale Place
Bossier City, LA 71111

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August 29, 2016

**CERTIFIED MAIL**
**RETURN RECEIPT REQUESTED**
**7016 0910 0000 8350 2895**

**Erin O'Daniel**
**2505 Rosedale Place**
**Bossier City, LA 71111**

**LICENSE #20100339**
**D.O.B. 03/20/1983**

## 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: **September 22, 2016**
Time: **9:00 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.
**Erin O'Daniel**

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);
   - **(c) is unfit, or incompetent by reason of negligence habit, or other causes;**
   - **(d) is habitually intemperate or is addicted to the use of habit forming drugs;**
   - **(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.
   - **3. being unfit, or incompetent by reason of negligence, habit or other causes;**
   - **4. being habitually intemperate or addicted to the use of habit-forming drugs;**
   - **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;**
     - **q. using or being under the influence of alcohol, while on duty, and/or while making application for employment, or using or being under the influence of drugs which impair judgment while on duty, or using or being under the influence of illegal drugs whether on or off duty;**
     - **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 March 2, 2010.

2. On September 28, 2015, the respondent self-reported, that while employed as a licensed practical nurse with Cypress Point Nursing and Rehabilitation Center she tested positive for Buprenorphine on a random urine drug screen. The respondent was terminated from the facility.



ATTACHMENT
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3. The board received information from Roseview Nursing Center indicating on April 10, 2012, the respondent was counseled for leaving 3 residents at the dining room table while they ate, which was against facility policy. She was terminated from the facility on July 12, 2012.

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 R N

M. Lynn Ansardi, RN
Executive Director



ATTACHMENT
A

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August 29, 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:** _____



**ATTACHMENT A**

# Part XLVII. Nurses: Practical Nurses and Registered Nurses

## Subpart 1. Practical Nurses

### §306. Adjudication Proceedings

A. All adjudication proceedings (as defined in R.S. 49:951) conducted by the board shall be in accordance with the Administrative Procedure Act, R.S. 49:955 et seq.

B. All proceedings calling for disciplinary action, as set forth in R.S. 37:969(4) or as set forth in this Section 306(R), regarding a license, shall begin with the receipt by the board of allegation(s) pertaining to the violation(s) of any provisions of R.S. 37:961 et seq., as stated in that statute, or any provision of these rules and regulations of the Louisiana State Board of Practical Nurse Examiners.

C. Communications received by the board expressing such allegation(s) shall be privileged, confidential, and shall not be revealed to any person except when such document(s) are offered for evidence in a formal hearing.

D. The allegation(s) shall be investigated by the executive director, his/her designee, and/or staff. Any information and/or documents generated pursuant to such investigation of the allegation(s) shall be considered the work product of the board and shall be privileged, confidential, and shall not be revealed to any person except when such investigative information and/or documents are offered for evidence in a formal hearing.

E. Unless precluded by law, informal disposition may be made of any case of adjudication by stipulation, agreed settlement, consent order, or default. A consent order or agreed settlement shall be presented to the board for approval before it becomes binding on the board.

F. If formal proceedings are deemed necessary by the executive director, a formal hearing shall be conducted before a hearing officer designated by the board. A decision to initiate formal proceedings may be made if one or more of the following conditions exist.

1. The allegation(s) are sufficiently serious.

2. The respondent fails to reply to the board's correspondence concerning the allegation(s).

3. The response to the board's correspondence is deemed insufficient or unsatisfactory.

a. In furtherance of the objective(s) set forth in R.S. 37:961 et seq., and these rules and regulations of the Louisiana State Board of Practical Nurse Examiners, a respondent shall, upon written request, provide the board with any and all information, document(s) and/or thing(s) requested, within 10 days, including weekends and holidays, from the date of the board's request.

b. Failure to respond to a request by the board, or failure to provide a response that the board deems satisfactory or sufficient, may result in the immediate suspension of the respondent's license or may result in the board taking any other action the board deems necessary commensurate with its philosophy of commitment to the health, safety and welfare of the public.

4. An informal proceeding has failed to resolve all of the issues or allegation(s).

G. Proceedings that require an opportunity for hearing shall commence with the filing of a formal complaint by the board. The complaint shall serve as the notice required by the Administrative Procedure Act 49:955(B) and shall include the following:

1. a statement of the time, place and nature of the hearing;

2. a statement of the legal authority and jurisdiction under which the hearing is to be held;

3. a reference to the particular sections of R.S. 37:961 et seq., and a reference to the particular section of the rules and regulations of the Louisiana State Board of Practical Nurse Examiners;

4. a short and plain statement of the matters asserted. If the board is unable to state the matters in detail at the time the complaint is served, the initial complaint may be limited to a statement of the issues involved. Thereafter, upon request, a more definite and detailed statement shall be furnished.

H. The formal complaint shall be sent by mail, at least 20 days, including weekends and holidays, prior to the hearing date, to the last known address of the respondent. It is the licensee's obligation and duty to keep the board informed of his/her whereabouts.

I. The respondent shall return his/her reply to the complaint to the board at least 10 days, including weekends and holidays, prior to the date fixed for the hearing or shall be deemed to have waived his/her right to a hearing. In reply, the respondent shall either deny or admit the allegations of the complaint and may either:

1. appear for the scheduled hearing;

2. submit a written response to the hearing officer to be presented at the hearing in lieu of the respondent's live testimony; or

3. waive his/her right to a hearing.

J. If the respondent waives his/her right to a hearing, the board may take any appropriate disciplinary action by default. If the respondent does not reply in writing within the time allotted, the hearing may proceed as scheduled in the respondent's absence or the board may take any appropriate disciplinary action by default.

K. Opportunity shall be afforded to all parties to respond and present evidence on all issues of fact involved and argument on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

L. Except for conditions of extreme emergency, motions requesting the continuance of a formal hearing must be received by the board at least seven days, including weekends and holidays, prior to the date fixed for a formal hearing. Such motion must express the specific reason(s) and show good cause why a continuance is warranted and necessary in promoting due process.

M. Discovery

1. Prior to a formal hearing, a respondent shall have the right to retain an attorney to represent his/her interest before, during, and after the proceedings. All costs and/or expenses incurred by a respondent as a result of his/her exercise of said right shall be the sole responsibility and obligation of the respondent.

2. Prior to a formal hearing, the executive director or his/her designee will, upon written request received by the board at least 10 days, including weekends and holidays, prior to the formal hearing, issue subpoenas on behalf of the board and/or the accused. Such subpoenas include or are for the purpose of:

a. requiring that a person appear and give testimony in the formal hearing; and/or

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b. requiring that a person produce books, records, correspondence, or other materials over which he/she has control providing:

i. the information requested is reasonable in terms of amount; and

ii. the scope of the information requested is limited to documentary material that is relevant to the proceeding;

iii. the information requested does not include those documents referred to in §306.C-D; and

iv. the requesting party deposits with the board a sum of money sufficient to pay all fees and expenses to which a witness in the proceedings is entitled pursuant to R.S. 13:3661 and R.S. 13:3671.

3. Prior to a formal hearing, the respondent shall, upon written notice received by the board at least seven days, including weekends and holidays, prior to said hearing, be given a list of all witnesses the board will or may call to give testimony during a formal hearing.

4. Prior to a formal hearing the respondent, his/her attorney, or any party representing his/her interest is prohibited from having any contact whatsoever with any witness who will or may be called to give testimony in a formal hearing.

5. Depositions for the purposed of discovery are permitted and may also be allowed for the perpetuation of a witness' testimony upon good showing to the board that a witness will be unavailable to appear in person at a formal hearing. All costs of a deposition are borne by the requesting party.

6. Motions may be made before, during, and/or after a formal hearing. All motions made before or after a formal hearing shall be made in writing and in a timely manner in accordance with the nature of the request.

N. During a formal hearing, all parties shall be afforded the opportunity to present documentary, visual, physical or illustrative evidence and to cross-examine witnesses as well as call witnesses to give oral testimony. All testimony given during a formal hearing shall be under oath and may be before a certified stenographer.

O. The record of the proceeding shall be retained until such time for any appeal has expired or until an appeal has been concluded. The record of the proceeding need not be transcribed until such time as a party to the proceeding so requests and the requesting party pays for the cost of the transcript.

P. After the hearing is concluded, the hearing officer shall issue a report containing his/her findings of fact, conclusions of law and recommendations. This report shall be presented to the board in executive session and shall be considered privileged and confidential until and unless it is adopted in final form by the board.

Q. The board shall make a decision based on the entire record, including the hearing officer's report and determine what sanctions, if any, should be imposed and issue an appropriate order with respect thereto. This order of the board shall be sent to the respondent by mail.

R. Disciplinary action(s) imposed by the board may include reprimand, probation, suspension, revocation, denial, as well as penalties provided under R.S. 37:961 et seq., as amended and/or these rules and regulations of the Louisiana State Board of Practical Nurse Examiners and/or any combination thereof.

1. Reprimand. May include a personal conference between the licensee and the executive director and/or a letter to the licensee regarding the incident or incidents which have been brought to the board's attention and which may or may not be determined to warrant a hearing.

2. Probation. Will include stipulations which may be imposed by the board as a result of the findings of facts of a hearing and the order shall clarify the obligations of the licensee through a specified period of time. A licensee who is placed on probation by the board may practice practical nursing in the state of Louisiana provided the probation terms are met.

3. Suspension. A license to practice practical nursing in the state of Louisiana may be withheld by the board. A licensee whose license is suspended may not practice practical nursing in the state of Louisiana during the suspension period so designated. The time of suspension may be a definite stated period or an indefinite term.

a. Definite time of suspension shall be stipulated by the board in the order to the licensee. Upon termination of the time period, the licensee shall be entitled to receive his/her license upon payment of the required fee and upon documented compliance with the conditions that may have been imposed by the board at the time of the original order.

b. If a license is suspended for an indefinite term, the licensee may petition for reinstatement of his/her license only after one calendar year has lapsed from the date of the original order. The board may terminate the suspension and reinstate such license after the board determines, with or without hearing, that the cause/causes for the suspension no longer exist or that intervening circumstances have altered the condition leading to the suspension. If reinstatement is granted, the licensee shall pay the required reinstatement fee.

4. Revocation. A license to practice practical nursing in the state of Louisiana may be withdrawn by the board. A person whose license is so revoked shall never again be allowed to practice practical nursing in the state.

5. Denial. An applicant may be denied licensure in the state of Louisiana. An applicant who has been denied licensure shall never be allowed to practice practical nursing in the state of Louisiana.

S. A petition by a party for reconsideration or rehearing must be filed in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

T. The grounds for disciplinary proceedings include, but are not limited to:

1. being guilty of fraud or deceit in procuring or attempting to procure a license to practice practical nursing;

2. being guilty of a crime;

3. being unfit, or incompetent by reason of negligence, habit or other causes;

4. being habitually intemperate or addicted to the use of habit-forming drugs;

5. being mentally incompetent;

6. practicing practical nursing without being duly licensed to do so by the board;

7. using in connection with his/her name any designation tending to imply that he/she is a practical nurse without being duly licensed to practice by the board; or

8. being guilty of unprofessional conduct; unprofessional conduct includes, but is not limited to the following:

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a. failure to practice practical nursing in accordance with the standards normally expected;

b. failure to utilize appropriate judgment in administering nursing practice;

c. failure to exercise technical competence in carrying out nursing care;

d. violating the confidentiality of information or knowledge concerning a patient;

e. performing procedures beyond the authorized scope of practical nursing;

f. performing duties and assuming responsibilities within the scope of the definition of practical nursing when competency has not been achieved or maintained, or where competency has not been achieved or maintained in a particular specialty;

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;

k. delegating nursing care, functions, tasks, or responsibilities to others contrary to regulation;

l. leaving a nursing assignment without properly notifying appropriate personnel;

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 entering 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;

q. using or being under the influence of alcohol while on duty, and/or while making application for employment, or using or being under the influence of drugs which impair judgment while on duty, or using or being under the influence of illegal drugs whether on or off duty;

r. possessing a physical or psychological impairment that interferes with the judgment, skills or abilities required for the practice of practical nursing;

s. refusing to cooperate with employer's request to submit to a drug screen;

t. violating any provisions of R.S. 37:961 et seq. (the practical nursing practice act), as amended or aiding or abetting therein.

U. The board may, at its discretion, impose a reasonable monetary assessment against the respondent for the purpose of defraying expenses of a hearing and/or expenses of the board in monitoring any disciplinary stipulations imposed by order of the board.

V. If the board finds that the public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered by the executive director pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969 and 37:978 and Acts 675 and 827, 1993.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, LR 2:275 (September 1976), amended LR 3:193 (April 1977), LR 10:336 (April 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 18:1126 (October 1992), repromulgated LR 18:1259 (November 1992), amended LR 20:663 (June 1994), LR 26:2614 (November 2000), LR 28:2353 (November 2002), LR 30:1478 (July 2004), LR 34:1912 (September 2008), LR 35:1247 (July 2009), LR 35:2757 (December 2009), LR 36:2559 (November 2010).

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