

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
OREGON STATE BOARD OF NURSING**

IN THE MATTER OF: ) FINAL ORDER  
)  
)  
) OAH Case Nos.: 1504248 & 1504306  
**JOSEPH FINEL, CNA** ) Agency Case No.: 15-01022  
)  
**Certificate No. 201401581CNA**

**HISTORY OF THE CASE**

On June 22, 2015, the Oregon State Board of Nursing (Board) issued a Notice of Proposed Suspension of Nursing Assistant Certificate (Suspension Notice) to Joseph Finel. The Suspension Notice alleged Mr. Finel did not respond to the Board's inquiries and requests, failed to cooperate with the Board during the course of its investigation, and engaged in conduct unbecoming a nursing assistant. On June 29, 2015, the Board received Mr. Finel's request for hearing. The Board referred the matter to the Office of Administrative Hearings (OAH) on July 22, 2015. The OAH assigned the case (OAH case number 1504248) to Senior Administrative Law Judge (ALJ) Monica A. Whitaker.

ALJ Whitaker convened a telephone prehearing conference in OAH case number 1504248 on September 15, 2015. Senior Assistant Attorney General Thomas Cowan represented the Board. Attorney Thomas Doyle represented Mr. Finel. The parties agreed to convene a hearing on May 9 and 10, 2016, and, because of scheduling conflicts, the OAH reassigned the matter to Senior ALJ Alison Webster.

Also on September 15, 2015, Mr. Cowan filed the Board's Motion to Consolidate OAH case number 1504248 with a newly referred matter – an August 21, 2015 Notice of Proposed Revocation of Nursing Assistant Certificate (Revocation Notice) issued by the Board to Mr. Finel (OAH case number 1504306).<sup>1</sup> The Revocation Notice alleged Mr. Finel failed to comply with a Board order. Mr. Doyle did not oppose the Board's Motion to Consolidate and on September 16, 2016, ALJ Whitaker granted the Board's Motion to Consolidate.

Also on September 15, 2015, Mr. Cowan filed the Board's Motion for Qualified Protective Order for case 1504248. On September 16, 2015, ALJ Whitaker issued a Qualified

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<sup>1</sup> Mr. Finel, through counsel, requested a hearing on the Revocation Notice on or about September 3, 2015.

Protective Order Limiting Use and Disclosure.<sup>2</sup>

On January 8, 2016, the OAH reassigned the cases to Senior ALJ Joe L. Allen. On February 2, 2016, Mr. Cowan filed the Board's Motion for Summary Determination (Motion). On February 26, 2016, Mr. Doyle filed Respondent's Opposition to the Board's Motion for Summary Determination (Respondent's Opposition). On March 1, 2016, Mr. Cowan requested the opportunity to submit a reply. On March 3, 2016, ALJ Allen granted that request. On March 4, 2016, Mr. Cowan filed the Board's Reply to Licensee's Response to Motion for Summary Determination (Reply).<sup>3</sup>

On March 10, 2016, the OAH assigned the cases to Senior ALJ Whitaker for purposes of ruling on the Board's Motion.

On March 16, 2016, ALJ Whitaker issued a Ruling on Motion for Summary Determination and Proposed Order. ALJ Whitaker found that Mr. Finel failed to cooperate with the Board during the course of an investigation, thereby engaging in conduct unbecoming a nursing assistant pursuant to ORS 678.442(2)(f), OAR 851-063-0080(4) and (6), and OAR 851-063-0090(10)(a), (c), and (d). ALJ Whitaker granted the Board's Motion for Summary Determination. ALJ Whitaker recommended the Board affirm its Notice of Proposed Suspension, thereby suspending Mr. Finel's Certified Nursing Assistant Certificate and also affirmed the Board's Notice of Proposed Revocation and recommended the Board revoke Mr. Finel's Certified Nursing Assistant Certificate. ALJ Whitaker allowed Mr. Finel 10 days to submit exceptions to the Board. Mr. Finel did submit exceptions to the Board on March 28, 2016.

At the Board meeting of April 13, 2016, the Board deliberated regarding the Ruling on Motion for Summary Determination and Proposed Order and Mr. Finel's exceptions to the Order. The Board voted to accept the Ruling and Proposed Order as written and to accept the recommendation of ALJ Whitaker to affirm the Board's Notice of Suspension of Certified Nurse Assistant and Notice of Proposed Revocation of Certified Nurse Assistant and the ALJ's proposed sanction to Suspend and Revoke Mr. Finel's Certified Nurse Assistant Certificate. The Board voted to issue this Final Order. The Board now issues the Final Order in this matter. In accordance with ORS 183.650(2) and (3) and OAR 137-003-0665(3) and (4), an agency must identify and explain those modifications to proposed findings of historical fact that change the outcome or basis for this Final Order from those in the Ruling on Motion for Summary Determination and Proposed Order. The Board has not made any changes that substantially modify the ALJ's proposed findings

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<sup>2</sup> The Board's Motion for Qualified Protective Order, and the Qualified Protective Order Limiting Use and Disclosure prepared by the Board and signed by the ALJ, reference Agency Case number 15-01022 and only OAH case number 1504248. However, to be clear, the two cases at issue, OAH case number 1504248 and OAH case number 1504306, were consolidated and the Qualified Protective Order Limiting Use and Disclosure applies to both OAH cases.

<sup>3</sup> The Board's Motion, Respondent's Opposition, and the Board's Reply reference only OAH case number 1504248. However, the Board's Motion addresses the matters alleged in both the Suspension Notice and the Revocation Notice.

of historical fact or change the ALJ's recommended outcome. The Board has made changes to correct spelling, grammar, and/or textual placement.

## **ISSUES**

1. Whether there are any genuine issues as to any material facts and, if not, whether the Board is entitled to a favorable ruling as a matter of law. OAR 137-003-0580.
2. Whether Mr. Finel failed to cooperate with the Board during the course of an investigation, thereby engaging in conduct unbecoming a nursing assistant. ORS 678.442(2)(f), OAR 851-063-0080(4) and (6), and OAR 851-063-0090(10)(a), (c), and (d).
3. If so, whether the Board may suspend and/or revoke Mr. Finel's nursing assistant certificate.

## **DOCUMENTS CONSIDERED**

The ALJ considered the following documents: the Board's Motion, the Affidavit of Jessica Van Horn, and supporting Exhibits A through G; Respondent's Opposition; and the Board's Reply and its supporting Affidavit of Jessica Van Horn (herein referred to as the Supplemental Affidavit of Van Horn).

## **FINDINGS OF FACT**

1. Mr. Finel has been licensed as a Certified Nursing Assistant (CNA) with the Board since March 24, 2014. (Aff. of Van Horn at 1.)
2. On January 22, 2015, the Board received a report alleging that Mr. Finel had sexually abused his children. The Board opened an investigation into the matter. (Aff. of Van Horn at 1.)
3. On March 25, 2015, the Board mailed a letter to Mr. Finel's address of record requesting that he contact the Board to schedule an interview. (Ex. A; Aff. of Van Horn.) The letter also requested Mr. Finel provide the Board with the following documentation no later than April 8, 2015:
  - Send a copy of your work history with each job in chronological order, listing dates of employment and reasons for leaving.
  - Send a written statement, in your own words, describing details of the event(s) that brought you to our attention.
  - Send a copy of the police report from your arrest in August 2011. The charges listed are: Criminal Mistreatment and Assault.
  - Send any information from the court regarding the above charges

(Criminal Mistreatment and Assault)[.]

- Send a detailed written statement regarding any investigations into you or your conduct conducted by DHS. Contact DHS and obtain copies of their investigations and forward them to the Board, you may need to sign a release with them to obtain the records. If you have never been investigated by DHS, please advise the Board in writing.
- Send a copy of the entire evaluation completed by Center for Behavioral Intervention in September 2012.
- Send a detailed written statement regarding any investigations into you or your conduct conducted by Polk County child welfare and or Polk County Mental Health. Contact Polk County and obtain copies of their investigations and forward them to the Board, you may need to sign a release with them to obtain the records. If you have never been investigated by Polk County, please advise the Board in writing.

(Ex. A at 1.)

4. On April 7, 2015, Board investigator Jessica Van Horn again requested that Mr. Finel provide the Board with a copy of the evaluation from the Center for Behavioral Intervention (CBI). (Ex. B.)

5. On April 8, 2015, Mr. Finel emailed Ms. Van Horn a copy of the evaluation from CBI. (Exs. C and D.) The copy he provided to the Board contained significant redactions. (*See* Ex. D.) In his email, Mr. Finel stated that he was submitting the CBI report “under protest.” (Ex. C.) He also stated that:

I still don't see how an allegation, that was proven false, can require such a great deal of private information. I would think that the letters from the DA and the expunction [*sic*] paperwork would suffice.

(*Id.*)

6. On April 28, 2015, Ms. Van Horn received notification that Mr. Finel had retained an attorney. (Ex. E at 3.) That same day, Ms. Van Horn notified Mr. Finel's attorney, Mr. Doyle, that Mr. Finel had not fully cooperated with the Board's investigation. Specifically, Ms. Van Horn noted that Mr. Finel had submitted only a portion of the CBI evaluation, despite the Board's request that he provide a complete copy of that evaluation. In addition, she noted Mr. Finel had not provided a Department of Human Services (DHS) release form. Ms. Van Horn requested that the requested documents be provided to the Board no later than 4:00 p.m. on May 1, 2015. (*Id.* at 2.)

7. On May 21, 2015, Ms. Van Horn demanded that Mr. Doyle provide the Board with an unredacted copy of the CBI evaluation. She asked that the evaluation be submitted no later than

4:00 p.m. on May 28, 2015. (Ex. F at 1.) On May 29, 2015, Ms. Van Horn followed-up with Mr. Doyle, noting that she had not received the unredacted CBI evaluation. (*Id.*)

8. To date, the Board has not received from Mr. Finel an unredacted version of the 2012 CBI evaluation. (Aff. of Van Horn at 2.)

9. On June 22, 2015, the Board issued an Order for Psychosexual Evaluation (Order) to Mr. Finel. (Ex. G.) The Order stated, in relevant part:

Therefore, the Board requires that you submit to a psychosexual evaluation pursuant to ORS 678.113(1) through (4). Failure to schedule and attend this evaluation within the allotted time is grounds for revocation of your certificate pursuant to ORS 678.442(2)(f) and OAR 851-063-0090(10)(d).

**You are hereby ordered** to undergo a psychosexual evaluation with an evaluator approved by the Board. To be approved by the Board, the evaluator should be currently certified as a clinical sex offender therapist by the Oregon Sex Offender Treatment Board. You must submit the name of the proposed evaluator along with the professional's curriculum vitae to the Board, requesting approval of the evaluator.

As part of the evaluation process, you must sign a release of information allowing the evaluator complete access to any other requested records (DHS, mental health, treatment, etc.). This includes your 2012 sexual assault/child maltreatment & criminal risk assessment, all tests and surveys administered and all \* \* \* treatment records with Center for Behavioral Intervention, Inc.

You are required to contact the Board's approved evaluator to schedule an appointment with the evaluator within 10 days of the date that this Order is mailed to you. You are required to notify the Board of the name of the selected evaluator, along with the date and time of your appointment at least 7 days prior to your evaluation. Your evaluation must be completed within 30 days of the date that this Order is mailed to you.

(*Id.* at 1; emphasis in original.)

10. To date, to the Board's knowledge, Mr. Finel has not undergone a psychosexual evaluation with an evaluator approved by the Board. (Aff. of Van Horn at 2.)

11. The Board believes that Mr. Finel is unable to perform the duties of a nursing assistant with reasonable skill and safety to patients. The Board wants to review all of Mr. Finel's records to determine his safety to patients in the practice as a CNA. (Supplemental Aff. of Van Horn at 2.)

12. CNAs have a responsibility to the patients they serve and to the facilities at which they are employed. The patients CNAs serve are in very vulnerable positions and can be taken advantage of easily. CNAs can work with agencies that send CNAs to patient homes to provide care. This type of care is largely unsupervised. (Affidavit of Van Horn at 2-3.)

13. In 2012, Mr. Finel underwent a Sexual Assault/Child Maltreatment & Criminal Risk Assessment with CBI.<sup>4</sup> (Ex. D.) DHS had referred Mr. Finel to CBI after his estranged wife raised concerns regarding Mr. Finel's behavior toward his children. (*Id.* at 1.) The purpose of the evaluation was to assess Mr. Finel's history of criminal behavior, substance abuse, sexual behavior, interest and attitudes, antisocial attitudes and interpersonal stressors as they relate to the risk of future sexual misconduct and/or child maltreatment. (*Id.* at 9.) As part of the evaluation, Mr. Finel completed a number of paper and pencil tests, three interviews, an arousal assessment, and a polygraph examination. (*Id.*) When initially questioned about his criminal history, Mr. Finel declined to complete the appropriate sections related to his juvenile history.<sup>5</sup> (*Id.* at 13.) The evaluation included the following recommendations:

1. Mr. Finel should be referred for a second polygraph examination in order to clear up the inconclusive results.
2. Mr. Finel should be encouraged to engage in legitimate mental health therapy focused on the issues outlined in this report. We recommend that he be encouraged to sign a release of information so that his therapist can receive and review this report prior to beginning therapy.
3. Mr. Finel should participate in a series of sex offender treatment booster sessions focused on helping Mr. Finel learn to talk openly about his sexual offense, develop appropriate safety plans for contact with children and participate in arousal reconditioning to gain control over his deviant arousal.
4. Mr. Finel should participate in parenting classes and develop healthier strategies for disciplining his children. It might be necessary for him to participate in therapy sessions with his children in order to work toward more liberal visitation.
5. Finally, we recommend that Mr. Finel not be alone with his children at this time. This recommendation is offered due to his manipulative style of interacting, use of corporal punishment and the probably [*sic*] of future conflict and allegations.

(*Id.* at 19.)

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<sup>4</sup> This finding is based on portions of the CBI evaluation that were not redacted. (Ex. D.)

<sup>5</sup> Mr. Finel redacted the portion of the CBI evaluation that further discusses this. (*See* Ex. D at 13.) The record establishes that sometime in 1990, there was a juvenile case involving Mr. Finel's sexual predator behavior. (Supplemental Aff. of Van Horn at 1.)

14. At the time of the DHS investigation, the allegations regarding Mr. Finel's abuse of his children and his sexually predatory behavior as a juvenile were relevant to DHS's investigation. DHS used the police report and other information related to the juvenile sexual predator case as part of its investigation. The juvenile matter had not yet been expunged from Mr. Finel's criminal record. (Supplemental Aff. of Van Horn at 1-2.) Mr. Finel sought expungement of the juvenile case during the pendency of the DHS investigation. (*Id.* at 2.) The expungement, which was granted, did not cover the results of the DHS investigation. (*Id.*)

### CONCLUSIONS OF LAW

1. There are no genuine issues as to any material facts and the Board is entitled to a favorable ruling as a matter of law.
2. Mr. Finel failed to cooperate with the Board during the course of an investigation, thereby engaging in conduct unbecoming a nursing assistant.
3. The Board may suspend and revoke Mr. Finel's nursing assistant certificate.

### OPINION

#### *1. Summary Determination Standard*

OAR 137-003-0580 is titled "Motion for Summary Determination" and provides, in relevant part:

(1) Not less than 28 calendar days before the date set for hearing, the agency or a party may file a motion requesting a ruling in favor of the agency or party on any or all legal issues (including claims and defenses) in the contested case. \* \* \*.

\* \* \* \* \*

(6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing[.]

\* \* \* \* \*

(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling or a final order in accordance with 137-003-0665 if the administrative law judge has authority to issue a final order without first issuing a proposed order.

The Board's Motion, Respondent's Opposition, the Board's Reply, and the supporting affidavits and exhibits were considered in reaching this ruling. The facts of this case have been considered in a light most favorable to Mr. Finel, the non-moving party. For the reasons explained below, there are no genuine issues as to any material facts that are relevant to resolution of the legal issues as to which a decision is sought. Therefore, ALJ Whiakar granted the Board's Motion.

## ***2. Failure to Cooperate with the Board's Investigation***

The Board contends that Mr. Finel failed to comply with its requests to provide a complete and unredacted copy of the CBI evaluation and to schedule and obtain a psychosexual evaluation. This, the Board argues, is conduct unbecoming a nursing assistant and warrants the suspension and revocation of Mr. Finel's nursing assistant certificate.

The Board bears the burden of proving its allegations by a preponderance of the evidence. ORS 183.450(2) and (5); *Reguero v. Teachers Standards and Practices Commission*, 312 Or 402, 418 (1991) (burden is on Commission in disciplinary action); *Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard of proof in administrative hearings is preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is convinced that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

OAR 851-063-0090 provides, in part:

A CNA, regardless of job location, responsibilities, or use of the title "CNA," whose behavior fails to conform to the legal standard and accepted standards of the nursing assistant profession, or who may adversely affect the health, safety or welfare of the public, may be found guilty of conduct unbecoming a nursing assistant. Such conduct includes but is not limited to:

\* \* \* \* \*

(10) Conduct related to the certification holder's relationship with the Board:

(a) Failing to fully cooperate during the course of an investigation, including but not limited to waiver of confidentiality, except attorney-client privilege.

\* \* \* \* \*

(c) Failing to provide the Board with any documents requested by the Board; or

(d) Violating the terms of a Board order.

*a. Failure to provide an unredacted copy of the September 2012 CBI evaluation*

As set out above, by letter dated March 25, 2015, the Board requested, among other things, that Mr. Finel provide a copy of the entire September 2012 CBI evaluation. The Board requested that Mr. Finel submit this documentation no later than April 8, 2015. On April 7, 2015, Ms. Van Horn renewed the Board's request for a copy of the CBI evaluation. On April 8, 2015, Mr. Finel provided the Board with a heavily redacted copy of the evaluation. Mr. Finel redacted those portions of the report that referred to his sexually predatory behavior as a juvenile. On May 21, 2015, Ms. Van Horn demanded an unredacted copy of the CBI evaluation from Mr. Finel's attorney. On May 29, 2015, Ms. Van Horn followed up with Mr. Finel's attorney, noting that she had not received an unredacted copy of the evaluation. To date, the Board has not received an unredacted copy of the CBI evaluation from Mr. Finel. Mr. Finel refuses to provide the entire 2012 CBI evaluation because it discusses an earlier criminal conviction that was subsequently expunged from his record.

Mr. Finel argues that the Board is not entitled to his expunged and sealed records. He contends that the court set aside the juvenile matter and sealed his juvenile record pursuant to ORS 137.225<sup>6</sup> and that the contents of his records, whatever they may be, have been deemed not

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<sup>6</sup> ORS 137.225 provides, in part:

(1)(a) Except as provided in paragraph (c) of this subsection, at any time after the lapse of three years from the date of pronouncement of judgment, any defendant who has fully complied with and performed the sentence of the court and whose conviction is described in subsection (5) of this section by motion may apply to the court where the conviction was entered for entry of an order setting aside the conviction[.]

\* \* \* \* \*

(3) Upon hearing the motion, the court may require the filing of such affidavits and may require the taking of such proofs as the court deems proper. The court shall allow the victim to make a statement at the hearing. Except as otherwise provided in subsection (12) of this section, if the court determines that the circumstances and behavior of the applicant from

to have occurred. Mr. Finel argues that the past events were legally deemed not to have occurred and that he is not required to answer “any questions as though the sealed events had occurred. Respondent is not claiming confidentiality; he is answering questions as though any alleged past proceedings had not occurred.” Respondent’s Opposition at 4.

The Board argues that it is not relying on convictions from past behaviors of the underlying juvenile case. Instead, the Board argues that it is relying upon the DHS investigation and its concurrent evaluation, in its entirety, which included information about the juvenile incident as well as Mr. Finel’s behavior as an adult. The Board contends that it is “properly entitled to access the DHS records, unredacted, because they existed independently from the juvenile case and were gathered by DHS prior to [Mr. Finel] expunging the juvenile records.” Board’s Reply at 3.

While the Board agrees with Mr. Finel that ORS 137.225(4) allows him to answer “no” to questions that ask him about an arrest or conviction related to the juvenile matter that the court set aside, the Board disagrees that he is entitled to broadly claim confidentiality or privilege when it comes to providing any document that discusses or mentions the facts of the underlying juvenile conviction. In *Bahr v. Statesman Journal Co.*, 51 Or App (1981), the Court of Appeals held that:

ORS 137.225 is a statute under which a privilege can be conferred upon persons convicted of certain crimes the privilege to act, and answer, in the future as if their conviction had never occurred. The statute was enacted to enhance employment and other opportunities for such formerly convicted persons. It was intended to remove the stigma associated with the conviction of a crime and to give those individuals another chance, so to speak, unencumbered by that stigma. The statute does not, however, impose a duty on members of the public who are aware of the conviction

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the date of conviction, or from the date of arrest as the case may be, to the date of the hearing on the motion warrant setting aside the conviction, or the arrest record as the case may be, the court shall enter an appropriate order that shall state the original arrest charge and the conviction charge, if any and if different from the original, date of charge, submitting agency and disposition. The order shall further state that positive identification has been established by the Department of State Police and further identified as to Department of State Police number or submitting agency number. Upon the entry of the order, the applicant for purposes of the law shall be deemed not to have been previously convicted, or arrested as the case may be, and the court shall issue an order sealing the record of conviction and other official records in the case, including the records of arrest whether or not the arrest resulted in a further criminal proceeding.

(4) The clerk of the court shall forward a certified copy of the order to such agencies as directed by the court. A certified copy must be sent to the Department of Corrections when the person has been in the custody of the Department of Corrections. Upon entry of the order, the conviction, arrest or other proceeding shall be deemed not to have occurred, and the applicant may answer accordingly any questions relating to its occurrence.

to pretend that it does not exist. In other words, the statute authorizes certain persons to misrepresent their own past. It does not make that representation true.

*Bahr* at 180. See also *Leong's Inv. v. Oregon State Lottery Commission*, 142 Or App 460 (1996) (affirming the Commission's authority to deny an application for a video lottery retailer contract based on the conduct underlying the applicant's expunged conviction, where the facts of the conviction were not learned of through official sealed records of the case.)

The Board has a duty to protect the public and has the ability, under OAR 851-063-0090(10), to compel Mr. Finel to provide any documents requested in order to evaluate his safety to the public, to patients, and to his fitness to safely practice as a CNA. Mr. Finel's refusal to provide the requested unredacted evaluation to the Board is conduct unbecoming a nursing assistant.

*b. Failure to comply with a Board Order*

On June 22, 2015, the Board issued an Order requiring Mr. Finel to undergo a psychosexual evaluation. The Order instructed Mr. Finel to contact a Board approved evaluator to schedule an appointment with the evaluator within 10 days of the date the Order was mailed. The Order also informed Mr. Finel that he was required to notify the Board of the name of the selected evaluator, along with the date and time of his appointment, at least seven days before the evaluation. Finally, the Order stated that Mr. Finel had 30 days from the date the Order was mailed in which to complete the evaluation.

The uncontroverted evidence establishes that to date, Mr. Finel has not complied with the Board's Order and has not undergone a psychosexual evaluation by a Board approved evaluator. In his response to the Board's Motion, Mr. Finel asserts that the Board "made a further unlawful demand that Respondent obtain another evaluation, still based on the unfounded and disproven allegations made against him during his disputed divorce." Respondent's Opposition at 2. Mr. Finel argues that the Board has no factual basis for demanding that he undergo another psychosexual evaluation. He asserts that the Board has arbitrarily required him to undergo an "invasive and burdensome" mental health evaluation without a reasonable belief that he is unable to practice nursing with reasonable skill and safety to patients. The Board disagrees.

Regardless of whether or not Mr. Finel had his juvenile record expunged, the 2012 DHS investigation and the subsequent psychosexual evaluation related to that investigation addressed matters that raised significant concerns with the Board regarding Mr. Finel's behavior and fitness for licensure as a CNA. The Board has a duty to protect the public, particularly vulnerable patients with whom Mr. Finel could come into contact as a CNA. Under the circumstances, considering Mr. Finel's refusal to disclose his past acts, the Board had a reasonable right to question Mr. Finel's ability to safely practice with reasonable skill and safety and to require that he undergo a second psychosexual evaluation.

### ***3. Suspension and Revocation***

ORS 678.442(2) provides, in part:

In the manner prescribed in ORS chapter 183, the board may revoke or suspend a certificate issued under this section or may reprimand a nursing assistant for the following reasons:

\* \* \* \* \*

(f) Conduct unbecoming a nursing assistant in the performance of duties.

OAR 851-063-0080 provides, in part:

Under the contested case procedure in ORS 183.310 to 183.550 the Board may impose a range of disciplinary sanctions including, but not limited to deny, reprimand, suspend, place on probation or revoke the certificate to perform duties as a CNA for the following causes:

(4) Violation of any provision of ORS 678.010 to 678.445 or rules adopted thereunder;

\* \* \* \* \*

(6) Conduct unbecoming a nursing assistant.

As previously discussed, Mr. Finel has engaged in conduct unbecoming a nursing assistant as described in OAR 851-063-0090(10). Under ORS 678.442(2) and OAR 851-063-0080(4) and (6), he is subject to discipline by the Board. Considering the legitimate and serious concerns the Board has with regard to Mr. Finel's past conduct, the obligation the Board has to protect the public safety and interest, and Mr. Finel's repeated refusals to provide the Board with the documentation it has requested, suspension and revocation of Mr. Finel's CNA certificate is appropriate.

### **RULING**

The Board's Motion for Summary Determination is GRANTED.

### **ORDER**

The Oregon State Board of Nursing hereby issues the following order:

The Notice of Proposed Suspension of Nursing Assistant Certificate, issued by the Oregon State Board of Nursing on June 22, 2015, is AFFIRMED. Joseph Finel's Certified Nursing Assistant certificate is hereby SUSPENDED.

The Notice of Proposed Revocation of Nursing Assistant Certificate, issued by the Oregon State Board of Nursing on August 21, 2015, is AFFIRMED. Joseph Finel's Certified Nursing Assistant certificate is hereby REVOKED.

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Bonnie Kostelicki, RN  
Board President  
Oregon State Board of Nursing

**APPEAL**

If you wish to appeal the final order, you must file a petition for review with the Oregon Court of Appeals within 60 days after the final order is served upon you. *See* ORS 183.480 *et seq.*