

**BEFORE THE OREGON
STATE BOARD OF NURSING**

In the Matter of) **STIPULATED ORDER FOR**
Kathy Florian, CNA Applicant) **PROBATION**
)
) **Reference No. 13-02134**

In May 2013, Kathy Florian (Applicant) submitted an application to the Oregon State Board of Nursing (Board) for certification as a Certified Nursing Assistant.

On her application for CNA certification, Applicant disclosed she had been arrested on August 17, 2011 for Driving Under the Influence of Intoxicants (DUII), and in 2001 for theft. A criminal background check revealed several other arrests in Applicant's background, all of which occurred prior to 2001.

In explaining her arrest history, Applicant stated she had made mistakes in her past related to chemical dependency issues. Following her August 17, 2011 arrest, Applicant completed a chemical dependency treatment program and continues to be involved in a program for recovery support. Applicant stated she has been clean and sober since the date of her arrest.

Applicant completed a diversion program, and in October 2012, Applicant's 2011 DUII charge was dismissed. In addition, Applicant petitioned courts regarding the older arrests in her history and provided court documentation to the Board showing her requests to have those charges dismissed were granted.

By the above actions, Applicant is subject to discipline pursuant to ORS 678.442(2)(c) and OAR 851-063-0080(3), which provide as follows:

ORS 678.442 Certification of nursing assistants; rules.

- (2) 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:
 - (c) Impairment as defined in ORS 676.303.

OAR 851-063-0080 Causes for Denial, Reprimand, Suspension, Probation or Revocation of CNA Certificate

Under the contested case procedure in ORS 183.310 to 183.550 the Board may deny, reprimand, suspend, place on probation or revoke the certificate to perform duties as a CNA for the following causes:

- (3) Use of any controlled substance or intoxicating liquor to an extent or in a manner injurious to the certificate holder or others or to an extent that such use impairs the ability to conduct safely the duties of a nursing assistant; ORS 678.442(2)(c).

Applicant admits that the above allegations occurred and constitute violations of the Nurse Practice Act. Applicant wishes to cooperate with the Board in resolving the present disciplinary matter. The following will be proposed to the Oregon State Board of Nursing and is agreed to by Applicant:

Applicant shall be placed on probation upon the issuance of her CNA certificate and effective the date the Board approves this Stipulated Order for Probation. Applicant's compliance with this Order will be monitored by the Oregon State Board of Nursing. Applicant must complete a twenty-four (24) month period of probation to begin upon Applicant's return to work, monitored as outlined below. Applicant must work a minimum of sixteen (16) hours per week, and no more than a maximum of one (1.0) FTE. Applicant must work in a setting where Applicant can exercise the full extent of Applicant's scope of duties, in order to demonstrate Applicant's competence. Limited overtime may be approved on occasion, at the discretion of Board staff. Any period in which Applicant does not work in the state of Oregon will not count toward the probationary period.

Applicant shall comply with the following terms and conditions of probation:

1. Applicant shall not violate the Nurse Practice Act (ORS 678) or the rules adopted thereunder.
2. Applicant shall have thirty-six (36) months from Board's acceptance of this Order to complete twenty-four (24) months of monitored practice.
3. Applicant shall notify Board staff, in writing, prior to any change of address or employment setting during the probation period.
4. Applicant shall maintain active certification.
5. Applicant shall inform Board staff in advance of any absences from Oregon and/or any move from Oregon to another licensing jurisdiction. If Applicant leaves the state and is unable to work in the state of Oregon, Applicant's probationary status will be re-evaluated.
6. Applicant shall appear in person or by phone, to designated Board staff for interviews on a monthly basis during the probationary period. Frequency of contact may be reviewed and revised periodically at the discretion of Board staff.
7. Applicant shall notify Board staff of any citations, arrests, or convictions for any offense, whether felony, misdemeanor, violation, or citation within seven (7) days of the occurrence.
8. Applicant will not look for, accept, or begin a new nursing assistant position without prior approval of the Board. This includes changes of the employer itself or changes within the facility or institution.
9. Applicant shall inform current and prospective employers, including any Nurse

Executive, of the probationary status of Applicant's certification, the reasons for probation, and terms and conditions of probation. If Applicant's employer has a Nurse Executive, Applicant shall inform Board staff of the name of the Nurse Executive and Board staff will provide the Nurse Executive with a copy this Order.

10. Applicant shall work under the direct supervision of another licensed healthcare professional, functioning at the same or higher level of licensure, who is working in the same physical location and readily available to observe Applicant's work and provide assistance. Applicant shall be employed in a setting where Applicant's nursing assistant supervisor agrees to submit written evaluations of work performance (on forms provided by the Board) every three (3) months during the probationary period. The quarterly evaluation is expected to be received by Board staff within ten (10) days of the due date. If the evaluation is not timely received, Board staff will contact the employer with a reminder. If Board staff is not in receipt of the report within five (5) business days from the reminder date, Applicant may be restricted from performing the duties of a nursing assistant.
11. Between quarterly reporting periods, the Nurse Executive or a person designated by Applicant's employer shall inform Board staff of any instance of Applicant's non-compliance with the terms and conditions of this Order or of any other concern regarding Applicant's work-related conduct or personal behavior that may affect Applicant's ability to perform the duties of a nursing assistant.
12. Applicant shall notify Board staff when there is a change in status of employment, including resignations and terminations.
13. Applicant shall not work in any work setting when on-site supervision is not available. This generally includes home health agencies, traveling agencies, float pools, temporary agencies, assisted living facilities, adult foster care, independent consulting contracts, home hospice, and night shifts outside of acute care settings.
14. Applicant shall not be allowed to participate in the CNA2 training pursuant to Division 62 of the Oregon Administrative Rules.
15. Applicant shall participate in and comply with any treatment recommendations set forth by a third party evaluator approved by the Board. Within fourteen (14) days of completing treatment, Applicant shall submit to Board staff a copy of Applicant's completion certificate or discharge summary. Applicant shall attend Narcotics Anonymous (NA), Alcoholics Anonymous (AA) or similar recovery program on a weekly basis and provide proof of attendance to Board staff. Applicant shall sign any release of information necessary to allow Board staff to communicate with Applicant's treatment provider and release Applicant's treatment records to the Board.
16. Applicant shall participate in the Board's random urine drug testing program. Failure to comply with random urine or any other requested drug test shall result in Applicant's immediate removal from working as a nursing assistant. Applicant shall submit to tests to determine the presence of unauthorized substances immediately upon request by

Board staff or Applicant's employer. Applicant shall sign any release of information necessary to ensure the Board will receive the results of such testing. The presence of unauthorized substances may be considered a violation of the terms and conditions of this Order. Upon request of Board staff, Applicant shall obtain an evaluation by a Board approved chemical abuse or dependence evaluator. Applicant understands that Applicant is financially responsible for any and all costs related to testing and evaluating. Applicant's failure to maintain an account in good standing with the Board's laboratory vendor may be considered a violation of this Order.

17. Applicant shall abstain from using alcohol and/or other intoxicating, mind altering, or potentially addictive drugs, including over-the-counter or prescription drugs while on probation, except as provided in Section 18 below. Applicant shall avoid any over-the-counter products and food items containing alcohol and/or poppy seeds.
18. Applicant may take medication for a documented medical condition provided that the medication is from a valid prescription prescribed by a person authorized by law to write such a prescription for the documented medical condition. Applicant shall notify Board staff of any prescription within seventy-two (72) hours of its issuance. Applicant shall sign any release of information necessary to allow Board staff to communicate with the prescribing person and release Applicant's records to the Board. Applicant shall discard any unused prescription medication when no longer needed or when expired.
19. Applicant shall cease performing the duties of a nursing assistant upon the occurrence of a relapse, or at the request of Board staff because of a relapse or relapse behavior. The performance of nursing assistant duties may resume only when approved in writing by Board staff, in consultation with Applicant's employer.
20. Applicant shall notify any and all healthcare providers of the nature of Applicant's chemical dependency to ensure that Applicant's health history is complete before receiving any treatment, including medical and dental. Applicant shall provide a copy of this Order to Applicant's healthcare providers. Applicant shall provide Board staff with the names and contact information of any and all health care providers. Applicant shall sign any release of information necessary to allow Board staff to communicate with Applicant's healthcare providers and release Applicant's medical and treatment records to the Board. Applicant is financially responsible for any costs incurred for compliance with the terms and conditions of this Order.
21. Applicant shall notify Board staff at least three (3) business days prior to leaving town or going on vacation, with the exception of a family emergency.
22. Applicant shall cooperate fully with Board staff in the supervision and investigation of Applicant's compliance with the terms and conditions of this Order.

Applicant understands that the conduct resulting in the violations of law described in this Order are considered by the Board to be of a grave nature and, if continued, constitutes a serious danger to public health and safety.

Applicant understands that in the event Applicant engages in future conduct resulting in violations of law or the Nurse Practice Act, the Board may take further disciplinary action against Applicant's certificate, up to and including revocation of Applicant's certification to perform the duties of a nursing assistant.

Applicant understands that this Order will be submitted to the Board of Nursing for its approval and is subject to the Board's confirmation.

Applicant understands that by signing this Stipulated Order, Applicant waives the right to an administrative hearing under ORS 183.310 to 183.540. Applicant acknowledges that no promises, representations, duress or coercion have been used to induce Applicant to sign this Order.

Applicant understands that this Order is a document of public record.

Applicant has read this Stipulated Order, understands this Order completely, and freely signs this Stipulated Order for Probation.

IT IS SO AGREED:

Kathy Florian

Date

ORDER

IT IS SO ORDERED:

BOARD OF NURSING FOR THE STATE OF OREGON

Kay Carnegie, RN, MS
Board President

Date