

**BEFORE THE OREGON
STATE BOARD OF NURSING**

**In the Matter of
Leo Burns, CNA**

)
)
) **FINAL ORDER BY DEFAULT**
)
)

Certificate No. 200110755CNA) **Reference No. 12-01003**

The Oregon State Board of Nursing (Board) is the state agency responsible for licensing, regulating and disciplining certain health care providers, including Certified Nursing Assistants. Leo Burns (Certificate Holder) is a Certified Nursing Assistant in the State of Oregon.

This matter was considered by the Board at a meeting held on August 15, 2012. Certificate Holder did not appear personally.

On July 23, 2012, a Notice stating that the Board intended to suspend the Nursing Assistant Certificate of Certificate Holder was sent to Certificate Holder by certified mail to his address of record. This Notice alleged that Certificate Holder failed to cooperate with the Board's investigation.

The Notice granted Certificate Holder an opportunity for hearing, if requested within 20 days of the mailing of the Notice. No such request for hearing has been received by the Board. The Notice designated the Board's file on this matter as the record for purposes of default.

NOW THEREFORE, after consideration of the records and files of the Board related to this matter, the Board enters the following Order.

-I-

FINDINGS OF FACT

Based on the evidence submitted through the Notice and the agency file in this case, the Board finds the following:

- 1.1 Certificate Holder was initially certified as a nursing assistant (CNA) in the State of Oregon on April 16, 2001.
- 1.2 On or about October 26, 2011, Certificate Holder came to the Board's attention for allegations of abuse. The Board opened an investigation into this matter.
- 1.3 On May 08, 2012, Board staff mailed a letter to Certificate Holder's address of record requesting that Certificate Holder schedule an interview to discuss the allegations.

Certificate Holder was further instructed to send additional documentation to the Board.

- 1.4 On May 17, 2012, Certificate Holder called Board staff and scheduled a personal interview to be held at the Board office on June 11, 2012 at 1:00 p.m.
- 1.5 On June 8, 2012, Certificate Holder called Board staff and cancelled his interview. Certificate Holder advised Board staff he would call and reschedule his appointment.
- 1.6 On July 2, 2012, a second letter was sent to Certificate Holder's address of record requesting that Certificate Holder contact the Board within five (5) business days to schedule an interview to discuss the allegations. Certificate Holder was also asked to send additional documentation regarding the allegations to the Board. Certificate Holder failed to schedule an interview and did not provide any documents to the Board.
- 1.7 On July 23, 2012, a Notice of Proposed Suspension of Nursing Assistant Certificate was sent by regular and certified mail to Certificate Holder's address of record. The Notice granted Certificate Holder an opportunity for a hearing, if requested within 20 days of mailing of the Notice.
- 1.8 Certificate Holder did not request a hearing within 20 days of mailing of the Notice.

-II-

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board makes the following Conclusions of Law:

- 2.1 That the Board has jurisdiction over Certificate Holder, Leo Burns, and over the subject matter of this proceeding.
- 2.2 That Certificate Holder's failure to cooperate with the Board during the course of an investigation is grounds for disciplinary action pursuant to ORS 678.442(2)(f) and OAR 851-063-0080(6) and OAR 851-063-0090 (9)(a)(c).
- 2.3 That Certificate Holder defaulted on the Notice by not requesting a hearing within the allotted 20 days and, as a result, pursuant to ORS 183.310 to 183.750, the Board may enter a Final Order by Default.

-III-

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and the Board being fully advised in the premises, it is hereby:

ORDERED that the certificate of Leo Burns is **SUSPENDED** for a minimum of two (2) weeks,

commencing five (5) business days from the date this Order is signed, and shall continue until such time as Mr. Burns has fully cooperated with the Board's investigation. Should the Board reinstate the certificate of Mr. Burns, he would be subject to whatever terms and conditions the Board may impose.

DATED this ____ day of August, 2012

FOR THE BOARD OF NURSING OF THE STATE OF OREGON

Kay Carnegie, RN, MS
Board President

You may file a petition for reconsideration or rehearing of this Order. Reconsideration or rehearing may be obtained by filing a petition with the Board of Nursing within 60 days from the service of this Order. Your petition shall set forth the specific grounds for reconsideration. Reconsideration or rehearing is pursuant to the provisions in ORS 183.482.

As an alternative to filing a Petition for Reconsideration of this Order, you are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition with the Oregon Court of Appeals for review within 60 days from the date of service of this Order. Judicial review is pursuant to the provisions of ORS 183.482 to the Oregon Court of Appeals.

**BEFORE THE OREGON
STATE BOARD OF NURSING**

In the Matter of) **STIPULATED ORDER FOR**
Leo Burns, CNA) **VOLUNTARY SURRENDER OF**
) **NURSING ASSISTANT CERTIFICATE**
Certificate No. 200110755CNA) **Reference No. 12-01003**

Leo Burns, hereinafter referred to as “Certificate Holder,” is a Certified Nursing Assistant (CNA) in the State of Oregon.

Certificate Holder initially received his CNA certificate in Oregon on April 16, 2001.

On or about October 27, 2011, Certificate Holder came to the attention of the Board after he disclosed on his renewal application that he was investigated for allegations of abuse. The Board opened an investigation into the matter.

On or about April 27, 2010, the Department of Human Services, Adult Protective Services, received a complaint alleging that Spruce Point Memory Care had failed to protect two residents from rough treatment and threats of punishment and inappropriate comments. An investigation was opened in the matter. The investigation determined that Certificate Holder’s actions constituted abuse as defined by the department’s rules.

On or about April 24, 2012, The Department of Human Services issued a Final Order stating that Certificate Holder was found responsible for resident abuse, resident neglect or misappropriation of resident funds, and a finding of abuse shall be placed against his certification # 200110755CNA on the nurse assistant registry.

WHEREAS by the above actions, Leo Burns is subject to disciplinary action pursuant to violations of ORS 678.442 (2)(f) and OAR 851-063-0080(6) OAR 851-063-0090(2)(d)(e)(f), 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:

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

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:

(6) Conduct unbecoming a nursing assistant in the performance of duties ORS 678.442(2)(f).

OAR 851-063-0090 Conduct Unbecoming a Nursing Assistant

A CNA, regardless of job location, responsibilities, or use of the title “CNA,” who, in the performance of nursing related duties, may adversely affect the health, safety or welfare of the public, may be found guilty of conduct unbecoming a nursing assistant. Conduct unbecoming a nursing assistant includes, but is not limited to:

(2) Conduct related to other federal or state statutes/rule violations:

(d) Abusing a client. The definition of abuse includes but is not limited to intentionally causing physical harm or discomfort, striking a client, intimidating, threatening or harassing a client;

(e) Neglecting a client. The definition of neglect includes but is not limited to unreasonably allowing a client to be in physical discomfort or be injured;

(f) Engaging in other unacceptable behavior or verbal abuse towards or in the presence of a client such as using derogatory names or gestures or profane language;

Certificate Holder admits to the above violations and wishes to cooperate with the Board in resolving the present disciplinary matter. He has elected to voluntarily surrender his Certified Nursing Assistant certificate.

THEREFORE, the following will be proposed to the Oregon State Board of Nursing and is agreed to by Certificate Holder :

That the voluntary surrender of the Certified Nursing Assistant certificate of Leo Burns be accepted. If, after a minimum of three years Mr. Burns wishes to reinstate his Certified Nursing Assistant certificate, he may submit an application to the Board to request reinstatement. Should the Board reinstate the Certified Nursing Assistant certificate of Certificate Holder, he would be subject to whatever terms and conditions the Board may impose.

Certificate Holder agrees that he will not perform duties as a Certified Nursing Assistant from the date of signature on this Stipulated Order.

Certificate Holder understands that this Stipulated Order will be submitted to the Board of Nursing for their approval and is subject to the Board's confirmation.

Certificate Holder understands that by signing this stipulated agreement he waives the right to an administrative hearing. He acknowledges that no promises, representations, duress or coercion have been used to induce him to sign this Stipulated Order.

Certificate Holder has read the Stipulated Order, understands the Stipulated Order completely, and freely signs the Stipulated Order.

Leo Burns, CNA

Date

ORDER

IT IS SO ORDERED:

BOARD OF NURSING FOR THE STATE OF OREGON

Kay Carnegie, RN, MS
Board President

Date