State of Vermont
Office of the Secretary of State

Office of Professional Regulation
89 Main Street, 3rd Floor
Montpelier, VT 05620-3402
sos.vermont.gov

James C. Condos, Secretary of State
Christopher D. Winters, Deputy Secretary
S. Lauren Hibbert, Director

September 13, 2022

Amanda Marston
16 Jackbon Road
Mashpee, MA 02649-3638

Case: In Re Amanda Marston
Credential: License # 025.0135072
Docket No.: 2021-65

Dear Ms. Marston:

Enclosed, please find a *Default Order* in the matter captioned above. This is a final administrative determination.

If you are aggrieved by this decision, you may begin the appeal process by filing a Notice of Appeal with the Office of Professional Regulation. **The notice must be received no later than 30 days from the decision's date of entry** (see last page of order). Send the appeal to:

Office of Professional Regulation
Attn: S. Lauren Hibbert, Director
89 Main Street, 3rd Floor
Montpelier, VT 05620-3402

The appeal does not stop the disciplinary action from going into effect. If you wish to have the disciplinary action stayed during the appeals process, you must specifically request a stay in writing. Your request for a stay will be considered, and a decision to grant or deny your request will be issued. Please see the enclosed instructions.

If you have questions, please do not hesitate to contact the Office at (802) 828-2367.

Sincerely,

DocuSigned by:
S. Lauren Hibbert
9CDAB598B5664EE...
S. Lauren Hibbert
Director

Enclosure: *Default Order*

cc: Michael Kupersmith, Hearing Officer
Ultan Doyle, Esq., Prosecuting Attorney
Kristin Donnelly, Case Manager
Amanda Marston, Respondent, First Class Mail, Certified Mail & Email

STATE OF VERMONT
SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF NURSING

In re: Amanda Marston **Docket No. 2021-65**
License No. 025.0135072

DEFAULT ORDER

Appearances:
Prosecuting Attorney: Ultan Doyle, Esq.
Respondent: Did not appear

Hearing Officer: Michael S. Kupersmith, Esq.

Introduction

The Hearing Officer conducted a default hearing in the above-entitled matter on September 6, 2022 pursuant to 3 V.S.A. § 129(f). The hearing was conducted remotely as provided in the Emergency Rules for Remote Hearings adopted by the Office of Professional Regulation (OPR). The State requested a default order because the Respondent had not responded to the Specification of Charges filed in this case. The State was represented by Ultan Doyle, Esq. The Respondent did not appear and was not represented by counsel.

Findings of Fact

1. The Respondent is licensed by the State of Vermont as a Licensed Practical Nurse (LPN) and is therefore subject to the regulatory authority of the Board of Nursing. See 3 V.S.A. §§ 129 and 129a; 26 V.S.A. Chapter 28; the Administrative Rules of the Board of Nursing; and the Rules of the Office of Professional Regulation.
2. A Specification of Charges was filed by the Prosecuting Attorney on or about June 23, 2021. On June 24, 2021 a copy of the Charges and Notice of Hearing was sent to the Respondent at the address which is on file with OPR, by certified mail and first class mail. Respondent's Answer was due on July 13, 2021.
3. By notice sent with the Charges, Respondent was advised that she was required to file an Answer within 20 days. See Administrative Rules of

Practice 3.3. As of the default hearing, the Respondent had failed to submit an Answer.

4. On August 17, 2022, the State filed a Motion for Default. On that date the motion as well as a notice of the default hearing were sent via certified mail and first class mail to the Respondent at the address on file with OPR. As of this date, no response to the Motion for Default has been received by either the Docket Clerk or the Prosecuting Attorney. Furthermore, no communication has been received by either office since the filing of the Specification of Charges.
5. Upon consideration of the State's presentation, and taking judicial notice of the OPR file in this matter, the Hearing Officer finds the Respondent to be in default. Pursuant to the Administrative Rules of Practice 3.4, the allegations made in the Specification of Charges are treated as proven and the Board may take disciplinary action based on its findings. See also 3 V.S.A. §§ 809(d) and 814(c). A copy of the Specification of Charges is appended to this Order.
6. It is specifically found that in November 2019, The Respondent was licensed as an LPN by the Commonwealth of Massachusetts and was employed in that capacity by a facility in that state. On November 16, 2019, Respondent was found "passed out" while at work, and was observed unsteady on her feet, speaking incoherently, and nodding off. The Respondent submitted to a toxicology screen which revealed positive results for barbiturates, benzodiazepines, butalbital, and oxazepam. Respondent could not explain the presence of these substances. In November 2015, Respondent failed to document treatment consistent with the physician's order for a patient who had recently been transferred to her care. The patient died soon afterwards. The Respondent failed to respond to professional misconduct charges and, as a result of these incidents, the Massachusetts Board of Registration in Nursing issued a default order which revoked Respondent's Massachusetts license for a period of three years.
7. It is the recommendation of the Prosecuting Attorney that the Respondent's license be suspended indefinitely and that the Board order that the following pre-reinstatement conditions be required: (a) That prior to any petition for reinstatement, Respondent must (i) submit to an independent substance abuse evaluation to determine her ability to safely practice as a Licensed Practical Nurse; and (ii) submit to at least three random urine analysis examinations; and (b) that any reinstatement of Respondent's license be subject to conditions as deemed appropriate by the Board.

Conclusions of Law

Respondent has received adequate actual and/or constructive notice of the Charges in this matter as indicated by the Board's file and the Prosecutor's presentation. Because the Respondent has failed to file an Answer, the factual allegations contained in the Specification of Charge are taken as proven. Accordingly, the Board concludes that the Respondent engaged in unprofessional conduct as alleged, to wit: (1) practicing the profession while medically unfit to do so in violation of 3 V.S.A. § 129a(a)(5); (2) failing to practice competently by reason of her failure to conform to the standards of acceptable and prevailing practice in violation of 3 V.S.A. § 129a(b)(2); (3) failing to practice competently by performance of unsafe and unacceptable patient care in violation of 3 V.S.A. § 129a(b)(1); (4) willfully failing to record medical reports in violation of 26 V.S.A. § 1582(a)(4); (5) failing to exercise independent professional judgement in violation of 3 V.S.A. § 129a(a)(15); and (6) engaging in conduct of a character likely to harm the public in violation of 26 V.S.A. § 1582(a)(3).

PROPOSED ORDER

In accordance with the Findings of Fact and Conclusions of Law set forth above, and consistent with the recommendations of the Prosecuting Attorney, the Board orders that the Respondent's license be **INDEFINITELY SUSPENDED.** The Board further orders that prior to any petition for reinstatement, Respondent (a) submit to an independent substance abuse evaluation to determine her ability to safely practice as a Licensed Practical Nurse; and (b) submit to at least three random urine analysis examinations.

Reinstatement of Respondent's license may be subject to conditions as deemed appropriate by the Board.

The Hearing Officer reports the above facts, conclusions of law, and finding of default to the Board with the recommendation that the Board approve them and enter the Order as above.

Dated this 8th day of September, 2022

Michael S. Kupersmith
Hearing Officer

The Board of Nursing considered the report of findings of fact and conclusions of law at its meeting on September 12, 2022. After considering the report, the Board takes the following action:

/ / Rejects the report and schedules the matter for hearing.
/ / Schedules the matter for additional evidence.
/ x / Accepts the report, adopts the findings of fact and conclusions of law, and orders the recommended discipline as set forth in the proposed order above.

SO ORDERED,

DocuSigned by:
Jennifer Laurent
EB1741915719477...

Board of Nursing, by: Jennifer Laurent, Chair

Date of Entry: 9/13/22

Appeal Rights

This is a final administrative determination by the Board of Nursing. A party aggrieved by a final decision by the Board may appeal this decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, 89 Main Street, 3rd floor, Montpelier, VT 05620-3402, within 30 days of the date of entry of this order. If an appeal is filed, the Director of the Office of Professional Regulation shall assign the case to an Appellate Officer. The appeal shall be conducted based on the record created before the Board. In cases of alleged irregularities in procedure before the Board not shown on the record, proof of that issue may be taken by the Appellate Officer. 3 V.S.A. §§ 129(d) and 130a. A stay of this Order may also be requested.

STATE OF VERMONT
SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF NURSING

IN RE:	**)**	
AMANDA JACKSON MARSTON	**)**	**Docket No. 2021-65**
License No. 025.0135072	**)**	

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont (the "State") and makes the following charges against Licensed Practical Nurse Amanda Jackson Marston.

Board Authority

1. The Board of Nursing (the "Board") has authority to issue warnings or reprimands; suspend, revoke, limit, or condition current licenses; or prevent the renewal of lapsed licenses if, after disciplinary hearing, the Board finds that the Respondent has engaged in unprofessional conduct. 3 V.S.A. § 129(a); 3 V.S.A. § 129a; 3 V.S.A. § 814(d); 26 V.S.A. Chapter 28; the Administrative Rules of the Board of Nursing (the "ARBN"); and the Rules of the Office of Professional Regulation ("OPR Rules").

Statement of Facts

2. Amanda Jackson Marston ("Respondent") of Mashpee, Massachusetts is licensed by the State as a Licensed Practical Nurse ("LPN") under license number 025.0135072. This license was issued on February 22, 2020 and will expire on January 31, 2022.

3. On October 19, 2020, the Massachusetts Board of Registration in Nursing (the "MA Board") issued and served an Order to Show Cause (the "Show Cause Order") on Respondent related to two (2) complaints concerning Respondent's Massachusetts LPN license (a true and accurate copy of the Show Cause Order is attached hereto as "Exhibit 1").

4. On November 16, 2019, Respondent was found "passed out" and unable to be awaken by colleagues while on LPN duty at Royal Health Group in Pembroke, Massachusetts (the "Facility").

5. Prior to being found unresponsive, Respondent was observed nodding off, speaking incoherently, and appearing to lose balance.

6. As a result, Facility staff's inability to wake Respondent, 9-1-1 was called and Respondent was transferred to the local emergency room.

7. Approximately six (6) hours later, Respondent returned to the Facility and was prohibited from resuming work without undergoing a toxicology screen.

8. On or about November 19, 2019, Respondent submitted to a toxicology screen that revealed positive results for barbiturates, benzodiazepines, butalbital, and oxazepam (the "Substances").

9. Respondent could not provide an explanation for why the Substances were present in the toxicology screen results.

10. The Show Cause Order also alleges that, in or around November of 2015, Respondent was employed as an LPN at Kindred Transitional Care & Rehabilitation – Forestview in Wareham, Massachusetts.

11. On November 17, 2015, a patient (the "Patient") was transferred to Kindred from New Bedford Hospital with physician orders.

12. On November 18, 2015, Respondent was assigned to care for the Patient.

13. Respondent completed the Patient's progress notes concerning medication administration on November 18, 2015 at 1:54 A.M. and 1:55 A.M.

14. On November 18, 2015 at 4:42 A.M., Respondent completed a progress note indicating that Patient 1 was found unresponsive.

15. Respondent failed to document any treatment of the Patient consistent with the physician orders accompanying the Patient's transfer referenced in Paragraph 11.

16. On November 18, 2015, the Patient was transferred to Toby Hospital where he was later pronounced dead.

17. On January 20, 2021, the MA Board issued a Final Decision and Order by Default (the "MA Order") that found the allegations contained in the Show Cause Order to be deemed true, resulting in the revocation of Respondent's Massachusetts LPN license for three (3) years, amongst other discipline (a true and accurate copy of the MA Order is attached hereto as "Exhibit 2").

Violation One: 3 V.S.A. § 129a(a)(5) – Practicing the Profession When Medically or Psychologically Unfit to Do So.

18. The State re-alleges and incorporates Paragraphs 2 through 17 above.

19. Under Vermont law, an LPN must not practice the profession when medically or psychologically unfit to do so.

20. Paragraphs 3 through 9 above demonstrate that Respondent engaged in LPN practice when she was medically or psychologically unfit to do so as shown by discipline of the MA Board for being found unresponsive while on LPN duty at the Facility and testing positive for the Substances after the resulting toxicology screen.

21. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent committed unprofessional conduct in violation of 3 V.S.A. § 129a(a)(5).

Violation Two: 3 V.S.A. § 129a(b)(2) – Failure to Practice Competently by Reason of Any Cause on a Single Occasion or on Multiple Occasions May Constitute Unprofessional Conduct, Whether Actual Injury to a Client, Patient, or Customer has Occurred. Failure to practice Competently includes: (2) Failure to Conform to the Essential Standards of Acceptable and Prevailing Practice.

22. The State re-alleges and incorporates Paragraphs 2 through 17 above.

23. Under Vermont law, an LPN must practice competently by conforming to the essential standards of acceptable and prevailing practice.

24. The essential standards of acceptable care and prevailing practice include a prohibition on being impaired, diminished, or incapacitated state while on duty.

25. Paragraphs 3 through 9 above demonstrate that Respondent failed to conform to the essential standards of acceptable and prevailing practice as shown by discipline of the MA Board for being found unresponsive while on LPN duty at the Facility and testing positive for the Substances after the resulting toxicology screen.

26. The essential standards of acceptable care and prevailing practice include an obligation to document performing treatment consistent with physician orders.

27. Paragraphs 10 through 17 above demonstrate that Respondent failed to conform to the essential standards of acceptable and prevailing practice as shown by discipline of the MA Board for failing to document performing treatment on the Patient consistent with physician orders.

28. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent committed unprofessional conduct in violation of 3 V.S.A. § 129a(b)(2).

Violation Three: 3 V.S.A. § 129a(b)(1) – Failure to Practice Competently by Reason of Any Cause on a Single Occasion or on Multiple Occasions May Constitute Unprofessional Conduct, Whether Actual Injury to a Client, Patient, or Customer has Occurred. Failure to practice Competently includes: (1) Performance of Unsafe or Unacceptable Patient or Client Care.

29. The State re-alleges and incorporates Paragraphs 2 through 17 above.

30. Under Vermont law, an LPN must practice competently through the performance of safe and acceptable patient or client care.

31. Paragraphs 10 through 17 above demonstrate that Respondent failed to competently perform safe and acceptable patient care as shown by discipline of the MA Board for failing to document performing treatment on the Patient consistent with physician orders where the Patient was pronounced dead the same day.

32. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent committed unprofessional conduct in violation of 3 V.S.A. § 129a(b)(1).

Violation Four: 26 V.S.A. § 1582(a)(4) – Willfully Failing to File or Record, or Willfully Impeding or Obstructing Filing or Recording, or Inducing Another Person to Omit to File or Record Medical Reports.

33. The State re-alleges and incorporates Paragraphs 2 through 17 above.

34. Under Vermont law, an LPN is prohibited from willfully failing to file or record, or willfully impeding or obstructing filing or recording, or inducing another person to omit to file or record medical reports.

35. Paragraphs 10 through 17 above demonstrate that Respondent willfully failed to file or record, or willfully impeded or obstructed the filing or recording of, medical reports as shown by discipline of the MA Board for failing to document performing treatment on the Patient consistent with physician orders.

36. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent committed unprofessional conduct in violation of 26 V.S.A. § 1582(a)(4).

Violation Five: 3 V.S.A. § 129a(a)(15) – Failing to Exercise Independent Professional Judgment in the Performance of Licensed Activities When That Judgment is Necessary to Avoid Action Repugnant to the Profession.

37. The State re-alleges and incorporates Paragraphs 2 through 17 above.

38. Under Vermont law, an LPN must exercise independent professional judgment in the performance of licensed activities when such judgment is necessary to avoid action repugnant to the profession.

39. Paragraphs 3 through 17 above demonstrate that Respondent failed to exercise independent professional judgment in the performance of licensed activities when such judgment is necessary to avoid action repugnant to the profession as shown by discipline of the MA

Board for (i) being found unresponsive while on LPN duty at the Facility; (ii) testing positive for the Substances after the resulting toxicology screen; and (iii) for failing to document performing treatment on the Patient consistent with physician orders.

40. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent committed unprofessional conduct in violation of 3 V.S.A. § 129a(a)(15).

Violation Six: 26 V.S.A. § 1582(a)(3) – Engaging in Conduct of a Character Likely to Deceive, Defraud, or Harm the Public.

41. The State re-alleges and incorporates Paragraphs 2 through 17 above.

42. Under Vermont law, an LPN is prohibited from engaging in conduct of a character likely to deceive, defraud, or harm the public.

43. Paragraphs 3 through 17 above demonstrate that Respondent engaged in conduct of a character likely to harm the public as shown by discipline of the MA Board for being found unresponsive while on LPN duty at the Facility and testing positive for the Substances after the resulting toxicology screen.

44. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent committed unprofessional conduct in violation of 26 V.S.A. § 1582(a)(3).

Relief Requested

WHEREFORE, the State of Vermont respectfully requests that the Board revoke, suspend, condition, or otherwise discipline Amanda Jackson Marston's Licensed Practical Nurse license.

DATED at Williston, Vermont this 22nd day of June, 2021.

STATE OF VERMONT
SECRETARY OF STATE

By: /s/ Benjamin E. Novogroski

Benjamin E. Novogroski
State Prosecuting Attorney
Office of Professional Regulation
802.828.1217
benjamin.novogroski@vermont.gov

EXHIBIT 1

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION IN NURSING

Board of Registration in Nursing, Petitioner,	
v.	
Amanda Jackson Marston LN License No. LN92802 License Expires: 09/27/2021 Respondent	**Docket Nos.: NUR-2019-0273 & NUR-2017-0037**

ORDER TO SHOW CAUSE

Amanda Jackson Marston you are hereby ordered to appear and show cause why the Massachusetts Board of Registration in Nursing (Board) should not suspend, revoke or otherwise take action against your license to practice as a Licensed Practical Nurse (LN) in the Commonwealth of Massachusetts, License No. LN92802, or your right to renew such license, pursuant to Massachusetts General Laws (G.L.) chapter 112, § 61 and Code of Massachusetts Regulations (CMR), Title 244, § 9.03, based upon the following facts and allegations:

Factual Allegations

1. On or about July 9, 2015, the Board issued to you a license to engage in the practice of nursing as a Licensed Practical Nurse (LN) in the Commonwealth of Massachusetts, License No. LN92802. This license is due to expire on or about September 27, 2021, unless renewed.

NUR-2019-0273

2. On or about November 16, 2019, you were employed and on duty as an LN at Royal Health Group in Pembroke, MA ("Royal Health").

3. While on duty as an LN at Royal Health on or about November 16, 2019, you were found "passed out" and unable to be woken up by your colleagues at a desk at the nurse's station.

4. Prior to being found unresponsive, your colleague(s) at Royal Health made the following observations of you while you were on duty as an LN on November 16, 2019:
   a. You were nodding off;
   b. You were speaking incoherently; and
   c. You appeared to be losing your balance.

5. As a result of your colleagues' inability to wake you, 911 was called and you were transferred to a local emergency room.

6. Approximately six (6) hours later, you returned to Royal health and were told you could not go back to work without undergoing a toxicology screen.

7. On or about November 19, 2019, you submitted to a toxicology screen which revealed positive results for Barbituates, Benzodiazepines, Butalbital, and Oxazepam. You could not provide an explanation for why those substances appeared in your results.

NUR-2017-0037

8. In or around November 2015, you were employed as an LN at Kindred Transitional Care & Rehabilitation – Forestview in Wareham, MA (Kindred).

9. Patient 1 had redacted redacte Patient 1 was transferred to Kindred Healthcare from New Bedford Hospital on November 17. 2015.

10. Patient 1's Discharge Summary from New Bedford Hospital dated November 17, 2015 stated in relevant part:
redacted

11. The orders described in paragraph 9 above were not entered into the computer at Kindred.

12. On or about November 18, 2015, you were on duty as an LN at Kindred and assigned to care for Patient 1.

13. You completed progress notes on November 18, 2015 at 1:55 a.m. and 1:54 a.m. regarding medication administration.

14. You completed a progress note on November 18, 2015 at 4:42 a.m. which indicted Patient 1 was found unresponsive.

15. You did not document performing any treatment of Patient 1 consistent with the physician's orders described in paragraph 9 above.

16. Patient 1 was transferred to Toby Hospital on November 18, 2015 where he was later pronounced dead.

Grounds for Discipline[1]

A. Your conduct as alleged in paragraphs Nos. 1 through 15, as well as other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your license to practice as an LN in the Commonwealth of Massachusetts pursuant to G.L. c. 112, § 61 for being guilty of deceit, malpractice, and/or gross misconduct in the practice of the profession, or of any offense against the laws of the Commonwealth relating thereto.

B. Your conduct as alleged in paragraphs Nos. 1 through 15, as well as other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your license to practice as an LN in the Commonwealth of Massachusetts pursuant to Board regulation 244 CMR 9.03(5) for failing to engage in the practice of nursing in accordance with accepted standards of practice.

C. Your conduct as alleged in paragraphs Nos. 1 through 6, as well as other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your license to practice as an LN in the Commonwealth of Massachusetts pursuant to Board regulation 244 CMR 9.03(36) for practicing nursing while impaired.

D. Your conduct as alleged in paragraphs Nos. 7 through 15, as well as other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your license to practice as an LN in the Commonwealth of Massachusetts pursuant to Board regulation 244 CMR 9.03(44) for failing to make complete, accurate, and legible entries in all records required by federal and state laws and regulations and accepted standards of nursing practice.

E. Your conduct as alleged in paragraphs Nos. 1 through 15, as well as other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your license to practice as an LN in the Commonwealth of Massachusetts pursuant to Board regulation 244 CMR 9.03(47) for engaging in any other conduct that fails to conform to accepted standards of nursing practice or in any behavior that is likely to have an adverse effect upon the health, safety, or welfare of the public.

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[1] It is well-settled administrative law that due process requires that "notice must be given that is reasonably calculated to apprise an interested party of the proceeding and to afford him an opportunity to present his case," and does not require Prosecuting Counsel to provide a detailed description of evidence he intends to introduce at a disciplinary hearing. *Langlitz v. Board of Registration of Chiropractors*, 396 Mass. 374, 376-377 (1985). *See Lapointe v. License Board of Worcester*, 389 Mass. 454, 458 (1983) ("Due process requires notice of the grounds on which the board might act rather than the evidentiary support for those grounds"). Certainly, notice pleadings do not require Prosecuting Counsel to match factual allegations to grounds for discipline. Accordingly, where, as here, there exists significant overlap between factual allegations and grounds for discipline contained within the Order to Show Cause, Prosecuting Counsel's matching of factual allegations to grounds for discipline is offered as suggestions, and not as an exhaustive characterization of the evidence to be adduced at a hearing.

F. Your conduct as alleged in paragraphs Nos. 1 through 15, as well as other evidence that may be adduced at hearing, also constitute unprofessional conduct and conduct which undermines public confidence in the integrity of the profession. *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338, 342 (1996); *see also Kvitka v. Board of Registration in Medicine*, 407 Mass. 140, *cert. denied*, 498 U.S. 823 (1990); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708, 713 (1982).

***

You have a right to an adjudicatory hearing (hearing) on the allegations contained in the Order to Show Cause before the Board determines whether to suspend, revoke, or impose other discipline against your license. G.L. c. 112, § 61. Your right to a hearing may be claimed by submitting a written request for a hearing *within twenty-one (21) days of receipt of this Order to Show Cause*. You must also submit an Answer to this Order to Show Cause in accordance with 801 CMR 1.01(6)(d) *within twenty-one (21) days of receipt of this Order to Show Cause*. The Board will give you prior written notice of the time and place of the hearing following receipt of a written request for a hearing.

Hearings shall be conducted in accordance with the State Administrative Procedure Act, G.L. c. 30A, §§ 10 and 11, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 and 1.03, under which you are granted certain rights including, but not limited to, the rights: to a hearing; to secure legal counsel or another representative to represent your interests; to call and examine witnesses; to cross-examine witnesses who testify against you; to testify on your own behalf; to introduce evidence; and to make arguments in support of your position.

The Board will make an audio recording of any hearing conducted in the captioned matter. In the event that you wish to appeal a final decision of the Board, it is incumbent on you to supply a reviewing court with a "proper record" of the proceeding, which may include a written transcript. *New Bedford Gas and Light Co. v. Board of Assessors of Dartmouth*, 368 Mass. 745, 749-750 (1975). Upon request, the Board will make available a copy of the audio recording of the proceeding at your own expense. Pursuant to 801 CMR 1.01(10)(i)(1), upon motion, you "may be allowed to provide a public stenographer to transcribe the proceedings at [your] own expense upon terms ordered by the Presiding Officer." Those terms may include a requirement that any copy of the transcript produced must be sent immediately upon completion, and on an ongoing basis, directly to the Presiding Officer by the stenographer or transcription service. The transcript will be made available to the Prosecutor representing the Board. Please note that the administrative record of the proceedings, including, but not limited to, the written transcript of the hearing, is a public record and subject to the provisions of G.L. c. 4, § 7 and G.L. c. 66, § 10.

Your failure to submit a written request for a hearing within twenty-one (21) days of receipt of this Order to Show Cause *shall constitute a waiver of the right to a hearing* on the allegations herein and on any Board disciplinary action. Your failure to submit an Answer to the Order to Show Cause within twenty-one (21) days of receipt of the Order to Show Cause *shall result in the entry of default* in the captioned matter.

Notwithstanding the earlier filing of an Answer and/or request for a hearing, your failure to respond to notices or correspondence, your failure to appear for any scheduled status conference, pre-hearing conference or hearing dates, or your failure to otherwise defend this action shall result in the entry of default.

If you are defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations in this Order to Show Cause, and may revoke, suspend, or take other disciplinary action against your license to practice nursing in the Commonwealth of Massachusetts, including any right to renew your license.

Your Answer to the Order to Show Cause and your written request for a hearing must be filed with Jaclyn K. Gagné, Prosecuting Counsel, at the following address:

Jaclyn K. Gagné, Esq.
Prosecuting Counsel
Department of Public Health
Office of the General Counsel
250 Washington Street, 2nd Floor
Boston, MA 02108

You or your representative may examine Board records relative to this case prior to the date of the hearing during regular business hours at the office of the Prosecuting Counsel. If you elect to undertake such an examination, then please contact Prosecuting Counsel in advance at Jaclyn.K.Gagne@mass.gov to schedule a time that is mutually convenient.

BOARD OF REGISTRATION IN NURSING,

By: _____
Jaclyn K. Gagné, Esq.
Acting Chief Prosecuting Counsel
Department of Public Health

Date: October 19, 2020

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order to Show Cause was served upon the Respondent:

Amanda Jackson Marston
16 Jackson Road
Mashpee, MA 02649

by first class mail, postage prepaid, and by Certified Mail No. 7019 0700 0000 3087 7771

and by e-mail redacted

This 19th day of October, 2020.

Jaclyn K. Gagné
Acting Chief Prosecuting Counsel

EXHIBIT 2

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION IN NURSING

In the Matter of **AMANDA JACKSON MARSTON** License No. LN92802 License expires September 9, 2021	)	Docket Nos. NUR-2017-0037 NUR-2019-0273

FINAL DECISION AND ORDER BY DEFAULT

On October 19, 2020, the Board of Registration in Nursing ("Board") issued and duly served on Amanda Jackson Marston ("Respondent") an Order to Show Cause ("Show Cause Order")[1] related to two complaints regarding Respondent's license. In addition to stating the allegations against Respondent, the Show Cause Order notified Respondent that an Answer to the Show Cause Order ("Answer") was to be submitted within 21 days of receipt of the Show Cause Order.[2] The Show Cause Order also notified Respondent of the right to request a hearing on the allegations,[3] and that any hearing request ("Request for Hearing") was to be submitted within 21 days of receipt of the Show Cause Order.[4] Respondent was further notified that failure to submit an Answer within 21 days "shall result in the entry of default in the captioned matter" and, if defaulted, "the Board may enter a Final Decision and Order that assumes the truth of the allegations in the [Show Cause Order] and may revoke, suspend, or take other disciplinary action against [Respondent's] license ... including any right to renew [Respondent's] license." A copy of the Show Cause Order is attached to this Final Decision and Order by Default and is incorporated herein by reference.

The Board has afforded Respondent an opportunity for a full and fair hearing on the allegations in the Show Cause Order as required by M.G.L. c. 30A, § 10, and

[1] Pursuant to 801 CMR 1.01(6)(a).
[2] In accordance with 801 CMR 1.01(6)(d)(2).
[3] Pursuant to M.G.L. c. 112, § 61.
[4] Respondent was also notified that failure to timely submit a Request for Hearing would constitute a waiver of the right to a hearing.

sufficient notice of the issues involved to afford Respondent reasonable opportunity to prepare and present evidence and argument as required by M.G.L. c. 30A, § 11(1).

As authorized by M.G.L. c. 30A, § 10(2), the Board may make informal disposition of any adjudicatory proceeding by default. Upon default, the allegations of the complaint against Respondent are accepted as true. *Danca Corp. v. Raytheon Co.*, 28 Mass. App. Ct. 942, 943 (1990).

Based on the foregoing, the Board enters a default in the above-captioned matter and, consequently, the allegations in the Order to Show Cause are deemed to be true and Respondent has waived the right to be heard. In accordance with the Board's authority and statutory mandate, the Board orders as follows:

ORDER

Based on its Final Decision by Default, the Board **REVOKES** the Respondent's license to practice as a Licensed Practical Nurse in Massachusetts, License No. LN92802, for a minimum of three years. The Board further revokes the Respondent's right to renew her license. If Respondent renews her license to practice as a Licensed Practical Nurse in Massachusetts before the Effective Date of this Final Decision and Order by Default, the Board Revokes said license.

Respondent is hereby ordered to return any nursing license issued to her by the Board, whether current or expired, to the Board's office at 239 Causeway Street, Boston, Massachusetts 02114, by hand or by certified mail, within ten (10) days of the Effective Date set forth below.

Respondent shall not practice as a Licensed Practical Nurse in Massachusetts on or after the Effective Date of this Order. "Practice as a Licensed Practical Nurse" includes, but is not limited to, seeking and accepting a paid or voluntary position as a Licensed Practical Nurse or in any way representing herself as a Licensed Practical Nurse in Massachusetts. The Board shall refer any evidence of unlicensed practice to appropriate law enforcement authorities for prosecution as provided by M.G.L. c. 112, §§ 65 and 80A.

The Board may choose to reinstate Respondent's license if the Board determines in its sole discretion that reinstatement is in the best interests of the public health, safety and welfare.

Respondent may petition the Board in writing for reinstatement when she can provide documentation **satisfactory to the Board** demonstrating her ability to practice nursing in a safe and competent manner. Such documentation shall include evidence that Respondent has been in stable and sustained recovery from all substances of abuse for the three (3) years immediately preceding any petition for reinstatement. Accordingly, Respondent shall with any petition for reinstatement have submitted **directly to the Board**:

1) The results of random observed urine tests for substances of abuse for Respondent, collected no less than fifteen (15) times per year, according to the requirements outlined in **Attachment A**, during the three (3) years immediately preceding the petition for reinstatement, all of which are required to be negative;

2) Documentation that Respondent obtained a sponsor and regularly attended Alcoholics Anonymous (AA) and/or Narcotics Anonymous (NA) meetings at least three (3) times per week during the three (3) years immediately preceding any petition for license reinstatement, such documentation to include a letter of support from the Respondent's sponsor and weekly signatures verifying this required attendance;

3) Documentation prepared within thirty (30) days of the petition date and sent directly to the Board from a licensed mental health provider verifying that the Respondent has regularly attended group or individual counseling or therapy, or both, conducted by the mental health provider. Such documentation shall specify the frequency and length of the therapy and/or counseling and shall include a summary of the Respondent's progress in therapy and specific treatment recommendations for the Respondent's sustained recovery from substance abuse, dependency and addiction;

4) Reports from Respondent's primary care provider and any specialist(s) whom Respondent may have consulted verifying that Respondent is medically able to resume the safe and competent practice of nursing, which meets the requirements set forth in **Attachment B 1**;

5) If employed during the year immediately preceding Respondent's petition for reinstatement, have each employer from said year submit on official letterhead

an evaluation reviewing Respondent's attendance, general reliability, and overall job performance;[5]

6) Certified court and agency documentation that there are no pending actions or obligations, criminal or administrative, against the Respondent before any court or Administrative Agency including, but not limited to:

   a. Certified documentation that *at least one (1) year prior to any petition for reinstatement* the Respondent satisfactorily completed all court requirements (including probation) imposed on her in connection with any criminal matter and a description of those completed requirements and/or the disposition of such matters;[6] and

   b. Certified documentation from the state board of nursing of each jurisdiction in which the Respondent has ever been licensed to practice as a nurse, sent directly to the Massachusetts Board identifying her license status and discipline history, and verifying that her nursing license is, or is eligible to be, in good standing and free of any restrictions or conditions.

7) Documentation satisfactory to the Board of Respondent's successful completion of all continuing education equivalent to the continuing education required by Board regulations for the two (2) license renewal cycles immediately preceding any petition for reinstatement.

The Board may condition its approval of Respondent's petition for reinstatement upon the Respondent entering into a Consent Agreement for Probation of Respondent's nursing license for a period of time with such restrictions and requirements that the Board may at that time and in its sole discretion determine are reasonably necessary to protect the public health, safety, and welfare.

[5] If Respondent was not employed during this period, submit an affidavit so attesting.

[6] The Respondent shall also provide, if requested, an authorization for the Board to obtain a Criminal Offender Record Information (CORI) Report of the Respondent conducted by the Massachusetts Criminal History Systems Board and a sworn written statement that there are no pending actions or obligations, criminal or administrative, against the Respondent before any court or administrative body in any other jurisdiction.

The Board voted to adopt the within Final Decision by Default at its meeting held on January 13, 2021, by the following vote:

In favor:	A. Alley, MSN, RN; K. Barnes, JD, R.Ph.; D. Drew, MBA; J. Kaneb, MBA; L. Kelly, DNP, CNP; L. Keough, Ph.D., CNP; C. LaBelle, MSN, RN; D. Nikitas, BSN, RN; E. Pusey-Reid, DNP, M.Ed.; L. Wu, MBA, RN
Opposed:	None
Abstained:	None
Recused:	None
Absent:	G. Gravlin, Ed.D., RN; and K. Crowley, DNP, CNP

The Board voted to adopt the within Final Order by Default at its meeting held on January 13, 2021, by the following vote:

In favor:	A. Alley, MSN, RN; K. Barnes, JD, R.Ph.; D. Drew, MBA; J. Kaneb, MBA; L. Kelly, DNP, CNP; L. Keough, Ph.D., CNP; C. LaBelle, MSN, RN; D. Nikitas, BSN, RN; E. Pusey-Reid, DNP, M.Ed.; L. Wu, MBA, RN
Opposed:	None
Abstained:	None
Recused:	None
Absent:	G. Gravlin, Ed.D., RN; and K. Crowley, DNP, CNP

EFFECTIVE DATE OF ORDER

This Final Decision and Order by Default becomes effective upon the tenth (10^{th}) day from the date issued (see "Date Issued" below).

RIGHT TO APPEAL

Respondent is hereby notified of the right to appeal this Final Decision and Order by Default to the Supreme Judicial Court pursuant to M.G.L. c. 112, § 64. Respondent must file any appeal within thirty (30) days of receipt of this notice of Final Decision and Order by Default.

Board of Registration in Nursing,

Lorena M. Silva-Herman, MSN-L, MBA, DNP, RN
Executive Director
Board of Registration in Nursing

Date Issued: January 22, 2021

Notified:

By first-class and certified mail no. 7020 1810 0002 3137 6638
Amanda Jackson Marston
16 Jackson Road
Mashpee, Ma 02649

By inter-office mail
Jaclyn K. Gagne, Esq.
Prosecuting Counsel
Department of Public Health
250 Washington Street
Boston, MA 02108

MASSACHUSETTS BOARD OF REGISTRATION IN NURSING

ATTACHMENT A

Guidelines for Nurses' Participation in Random Urine Drug Screens for Evaluation by the Massachusetts Board of Registration in Nursing (Board)

I. Nurses who are required by a Board Agreement or Order to have random, observed urine drug screens are expected to remain abstinent from all substances of abuse, including alcohol. It is a nurse's responsibility not to ingest any substance(s) that may produce a positive drug screen, including over-the-counter medications. Unless otherwise stated in a nurse's Board Agreement or Order, all nurses shall be randomly tested a minimum of fifteen (15) times per year.

II. The Board designates one Drug Testing Management Company (DTMC).[1] The Board will accept only the results of urine drug screens that are performed under the auspices of the DTMC and reported directly to the Board.

III. All costs related to a nurse's participation in the DTMC urine drug screening program are the responsibility of the participating nurse.

IV. A nurse is expected to sign an agreement with the DTMC and to comply with all of the conditions and requirements of the agreement with the DTMC and any related policies, including without limitation, any requirements related to observation of urine collection and/or temperature checks.

V. No vacations from calling to test or from testing shall be approved. This does not mean that a nurse cannot take a vacation while participating in random urine screens; arrangements can be made through the DTMC to have urine screens done at approved laboratories throughout the continental U.S.

VI. Failure to call the DTMC or failure to test when selected shall be considered non-compliance with the nurse's Board agreement or Order. Calls to the DTMC must be made between the hours of 4:00 a.m. and 4:00 p.m.

VII. Failure to test when selected, and/or a positive drug screen that is confirmed by the Medical Review Officer (MRO) and that is not supported by appropriate documentation of medical necessity and a valid prescription shall be considered as a relapse in the nurse's abstinence. All prescriptions for any medication (including renewal prescriptions) must be submitted to the DTMC within five (5) days.

VIII. Urine drug screen reports that show a low creatinine (<20 mg/dl) may be an indication of an adulterated or diluted specimen; further testing may be required.

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[1] The current DTMC is FirstSource Solutions. To contact FirstSource Solutions call (800) 732-3784.

IX. Nurses who do not have a current MA nursing license and who are enrolled in urine drug screening with the DTMC for the purpose of documenting to the Board that they are in stable and sustained recovery from substance abuse, must provide written authorization to the DTMC to release to the Board a complete record of their participation in the drug screening program, including documentation of missed calls, no shows, test results and a full history report at the completion of their DTMC participation. During their DTMC participation, nurses who do not have a current MA nursing license for whatever reason (surrender, suspension, lapse, revocation) are expected to designate a monitor of their choosing (e.g. friend, family member, health care provider, AA sponsor) who will be authorized to receive test results from the DTMC. The Board does not monitor the testing of unlicensed individuals and will evaluate a nurse's participation in the DTMC only when the DTMC testing is completed and the nurse applies for license reinstatement. Unlicensed nurses should identify themselves as such to the DTMC and sign an individual agreement with the DTMC.

X. Random observed urine tests are done in panels which shall include, but are not limited to, each of the following substances:

Ethanol and all ethanol products
Amphetamines
Barbiturates
Benzodiazepines
Buprenorphine
Cannabinoids
Cocaine (metabolite)
Opiates:
Codeine
Morphine
Hydromorphone
Hydrocodone
Oxycodone
Phencyclidine
Methadone
Propoxyphene
Meperidine
Tramadol
Suboxone

ATTACHMENT B 1

Minimum requirements for medical evaluations to be submitted to the Board

Medical evaluation

A medical evaluation of the Licensee conducted by a licensed, board certified physician or certified nurse practitioner written on the provider's letterhead, sent directly to the Board by the provider and completed within thirty (30) days before submission of the petition for reinstatement or other submission to the Board. The evaluation shall state that the provider has reviewed this document and any Board Consent Agreement, Order, and/or other relevant documents, and that he or she has reviewed the specific details of the Licensee's underlying conduct alleged or otherwise described.

The evaluation shall provide a detailed, clinically based assessment of the Licensee and shall be completed in accordance with all accepted standards for such an evaluation. The purpose of the evaluation is to provide the Board with the provider's analysis of the following materials and his or her opinion as to whether the Licensee is able to practice nursing in a safe and competent manner. To be most useful to the Board, the evaluation should include, but not be limited to, the following:

a. Record Review. A review of the Licensee's written or electronic medical and mental health records (for at least the preceding two years);

b. Conversation(s) with Provider(s). Follow up conversations with any currently or recently treating primary care physicians or advanced practice registered nurses and any mental health providers;

c. Review of Prescriptions. A list of all of the Licensee's prescribed medications with the medical necessity for each prescription; if there are or may be other prescribers than the evaluating provider then the evaluation should include a review of all of the Licensee's pharmacy records for the preceding two years;

d. In-Person Interview(s). Medical (and mental health if pertinent) history obtained by the provider through in-person interviews with the Licensee, which are as extensive as needed for the provider to reach a clinical judgment;

e. Detailed Statement of History. A detailed statement of the Licensee's medical (and mental health if pertinent) history including diagnoses, treatments and prognoses;

f. Detailed Description(s) of Current Conditions. Detailed descriptions of the Licensee's existing medical conditions with the corresponding status, treatments and prognosis including, but not limited to, each condition, if any, which gave rise to the conduct which is the subject of the Board's interest;

g. Any Existing Limitations. A detailed description of any and all corresponding existing or continuing limitations of any kind;

h. Ongoing Treatment Plan. Recommendations for the Licensee's on-going treatment and specific treatment plan, if any;

i. Evaluating Provider's Opinion as to Safety and Competence. The provider's opinion as to whether the Licensee is presently able to practice nursing in a safe and competent manner (in light of all of the above); and

j. Provider's C.V. A copy of the provider's curriculum vitae should be attached.