

The attached are Primary Source Documents of the Idaho Board of Nursing for:

KAREN DAMBERG GARCIA
N-20253 & CNM-55A



Idaho Board of Nursing – PO Box 83720 – Boise, Idaho 83720-0061 – (208) 334-3110



Board of Nursing – State of Idaho

PO Box 83720 (Mailing) 280 No 8th Street, Suite 210 - Boise, Idaho 83720-0061
(208) 334-3110 - Fax: (208) 334-3262 TDD - 1-800-377-3529

November 1, 2011
CERTIFIED MAIL

Karen Damberg Garcia
6202 River Pointe Dr Apt I-305
Boise, ID 83714-1870

Dear Ms. Damberg Garcia:

During their meeting on October 27-28, 2011, the Board of Nursing members took action to accept the Findings of Fact, Conclusions of Law and Final Order in which your professional nurse license, N-20253 and advanced practice professional nurse license, CNM-55A were revoked. During the period of revocation, you may not practice nursing in the State of Idaho. Enclosed is a copy of the Final Order.

The Order became effective October 28, 2011. Please be advised that you may not apply for reinstatement for a period of two (2) years from the date of this order.

Sincerely,

SANDRA EVANS, MAEd, RN
Executive Director

SE:lhc
enclosure



Board of Nursing - State of Idaho

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November 1, 2011
CERTIFIED MAIL

Karen Damberg Garcia
1411 State Highway M20 E
Marquette MI 49855-9522

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SANDRA EVANS, MAEd, RN
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FILED

NOV 1 2011

BEFORE THE IDAHO STATE BOARD OF NURSING

In the Matter of the License of:)
)
KAREN DAMBERG, RN,)
a/k/a KAREN GARCIA,)
License No. N-20253,)
License No. CNM-55A,)
)
Respondent.)

Case Nos. BON 10-083
BON 11-054

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND FINAL ORDER**

The Idaho State Board of Nursing (“Board”) enters the following Findings of Fact, Conclusions of Law, and Final Order:

FINDINGS OF FACT

1. The Board regulates the practice of nursing in Idaho pursuant to Idaho Code § 54-1401, *et seq.*
2. Karen Damberg, aka Karen Garcia, (“Respondent”) is licensed by the Board under License Nos. N-20253 and CNM-55A to practice nursing in the State of Idaho.
3. Respondent’s continued right to licensure is subject to her compliance with the laws of the Board codified at title 54, chapter 14, Idaho Code, and the rules of the Board, promulgated at IDAPA 23.01.01, *et seq.*
4. At all times relevant to these proceedings Respondent was employed as a nurse in the State of Idaho.
5. On or about July 29, 2011, the Board filed a formal Administrative Complaint against Respondent. The allegations set forth in the Administrative Complaint included the following:

Count I –

- a. On March 17, 2010, the United States Attorney’s Office, District of Idaho, filed a Criminal Complaint alleging that Respondent and Jorge Garcia embezzled and

aided and abetted one another in embezzling more than five-thousand dollars (\$5,000) from the Idaho Department of Environmental Quality between January 2008 and December 2009.

b. On April 13, 2010, a federal grand jury returned a two-count Indictment against Respondent and Garcia charging them with one (1) count of conspiracy to commit mail fraud and one (1) count of mail fraud.

c. On October 13, 2010, Respondent and Garcia pled guilty to count one of the indictment, conspiracy to commit mail fraud.

d. On June 20, 2011, Respondent was sentenced to five (5) years of probation with the first ten (10) months to be served on home detention with location monitoring.

Count II –

e. On October 13, 2010, Respondent and Garcia pled guilty to count one of the Indictment, conspiracy to commit mail fraud.

f. On June 20, 2011, Respondent was sentenced to five (5) years of probation with the first ten (10) months to be served on home detention with location monitoring.

g. On June 20, 2011, Respondent submitted a Professional Nurse (R.N.) License Renewal Application to the Board. On the renewal application, Respondent represented that she had not “been convicted of, received a withheld judgment for, or entered a plea of *nolo contendere* to any felony”.

The Administrative Complaint is expressly incorporated herein by reference and made a part hereof.

6. Copies of the Administrative Complaint, along with the Notification of Procedural Rights, were sent to Respondent on July 29, 2011, by United States Mail, postage prepaid, both by certified mail, return receipt requested, and by regular mail. The mailings were addressed to Respondent at her last known mailing address on file with the Board, as follows:

Karen K. Garcia
6202 River Pointe Drive, Apt. #1305
Boise, ID 83714-1870

7. On or about August 1, 2011, the Board received back from the post office the certified mail return receipt for the Administrative Complaint sent by certified mail indicating that Respondent had signed for the certified mailing on July 30, 2011.

8. The Notification of Procedural Rights informed Respondent that, under statutes and rules applicable to such proceedings before the Board, Respondent needed to file a formal Answer to the Administrative Complaint within twenty-one (21) days of service of the Administrative Complaint and that failure to timely file an Answer to the Administrative Complaint or otherwise defend against the action would constitute a default and would be sufficient grounds for proceeding administratively against Respondent's license without the necessity of conducting a hearing.

9. On September 28, 2011, a Notice of Proposed Default and Default Order were sent to Respondent by United States Mail, postage prepaid, both by certified mail, return receipt requested, and by regular mail, to Respondent at her last known address on file with the Board, as follows:

Karen K. Garcia
6202 River Pointe Drive, Apt. #1-305
Boise, ID 83714-1870

///

10. Respondent failed to contest entry of the proposed Default Order within seven (7) days of service of the Notice of Proposed Default Order.

11. On or about October 5, 2011, the Board was informed by Respondent's federal probation officer, Mike Lee, that Respondent had moved to Michigan at the following address:

Karen K. Garcia
1411 State Highway M20 E
Marquette MI 49855-9522

12. On October 6, 2011, a Default Order was issued by Roger Gabel, the appointed Hearing Officer in this matter. Therefore, the allegations contained in the Administrative Complaint on file in this matter, and incorporated herein, are admitted as true without the necessity of conducting a hearing.

CONCLUSIONS OF LAW

1. As a licensed nurse in the state of Idaho, Respondent is subject to the jurisdiction of the Board and to the provisions of title 54, chapter 14, Idaho Code.

2. The Administrative Complaint was sent to Respondent at her last known mailing address on file with the Board, and Respondent signed for the certified mailing of the Administrative Complaint. Respondent was duly and lawfully given notice of proceedings against her license pursuant to the provisions of IDAPA 04.11.01.055 and IDAPA 23.01.01.008.03.

3. Respondent's failure to plead or otherwise defend in this action authorized the Board, pursuant to Idaho Code § 67-5242(4), to enter an Order of Default, which is as if all the allegations in the Administrative Complaint were proved or admitted at a hearing.

4. Respondent's acts as detailed in the incorporated Administrative Complaint constitute violations of the laws and rules governing Idaho nursing practice, as follows:

Count I –

a. Idaho Code § 54-1413(1)(a) and Board Rule 100.01 (a nurse shall not make a false, fraudulent, or forged statement or representation in procuring or attempting to procure a license to practice nursing); and

b. Idaho Code § 54-1413(1)(g) and Board Rule 100.08 (a nurse shall not violate the Board’s laws, rules or standards of conduct and practice).

Count II –

a. Board Rule 101.04.a (a nurse shall have knowledge of the statutes and rules governing nursing and shall function within the defined legal scope of nursing practice. The nurse shall not assume any duty or responsibility within the practice of nursing without adequate training or where competency has not been maintained);

b. Board Rule 101.04.d (a nurse shall act to safeguard the patient from the incompetent practice, verbal or physical abusive acts or illegal practice of any person);

c. Board Rule 316.03 (an advanced practice nurse shall not prescribe or dispense any controlled substance outside the scope of the advanced practice professional nurse’s practice); and

d. Idaho Code § 54-1413(1)(g), Board Rule 100.08, and Board Rule 316.05 (a nurse shall not violate the Board’s laws, rules or standards of conduct and practice).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, and good cause being shown, it is hereby ordered that:

1. Pursuant to Idaho Code § 67-5242(4), Respondent is in default.

2. License Nos. N-20253 and CNM-55A issued to Karen Damberg, aka Karen Garcia are hereby:

Revoked.

Suspended. _____ days _____ year(s) _____ indefinitely. Respondent's licenses shall be a single-state license during the term of suspension and Respondent shall not be eligible to practice on the Compact privilege in any other state participating in the Nurse Licensure Compact with the State of Idaho.

3. Respondent may not apply for reinstatement for a two (2) year period after entry of this Order or a _____ year period after entry of this Order, whichever period is greater. At such time as Respondent requests reinstatement of licensure, she shall comply with the requirements of Idaho Code § 54-1411(3) and IDAPA 23.01.01.062. In addition, upon any request for reinstatement, Respondent shall specifically provide the following:

- a. Evidence of abstinence from the use of non-medically prescribed drugs and alcohol;
- b. Documentation of activities engaged in to address sobriety and active recovery;
- c. A comprehensive drug/alcohol evaluation completed within 3-6 months of application by Board-approved health care provider;
- d. Documentation that Respondent has complied with and completed all court ordered legal obligations, specifically including her term of probation;
- e. A detailed summary of employment since licensure revocation or suspension;
- f. A written list of her attending health care providers (including without limitation any therapists, counselors, or other mental health care providers) ("providers"). Such providers must submit to the Board the provider's evaluation describing Respondent's current medical

condition(s) and listing her prescriptions, including the dose/frequency and rationale for the medications prescribed. This evaluation shall be submitted on a form provided by the Board. The provider shall also identify any concerns that he/she may have about Respondent's ability to safely practice nursing and what restrictions, if any, should be placed upon Respondent's practice. When requesting such evaluations, Respondent shall provide the provider with, and request that the provider review, the Idaho Board of Nursing Position on Safety to Practice. A copy of the Idaho Board of Nursing Position on Safety to Practice is attached as Exhibit A.; and

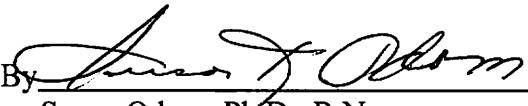
h. Respondent must prepare and submit a written self-evaluation on a form provided by the Board. Respondent's self-evaluation must address her ability to practice nursing safely as provided in the Idaho Board of Nursing Position on Safety to Practice.

4. The Board reserves the right to assess costs incurred in this matter as a condition of reinstatement, and to impose such other conditions upon Respondent's reinstated license as the Board may deem appropriate in its discretion.

This order is effective immediately.

DATED this 28 day of Oct, 2011.

IDAHO STATE BOARD OF NURSING

By 
Susan Odom, Ph.D., R.N.
Chair

NOTICE OF DUE PROCESS RIGHTS

This is a final order of the Board. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the issuance of this order. The Board will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* Idaho Code § 67-5246(4).

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- a. A hearing was held,
- b. The final agency action was taken,
- c. The party seeking review of the order resides, or
- d. The real property or personal property that was the subject of the agency action is located.

An appeal must be filed within twenty-eight (28) days (a) of the issuance of this final order, (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. *See* Idaho Code § 67-5273. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1ST day of November, 2011, I caused to be served a true and correct copy of the foregoing by the following method to:

Karen K. Garcia
6202 River Pointe Drive, Apt. #I-305
Boise, ID 83714-1870

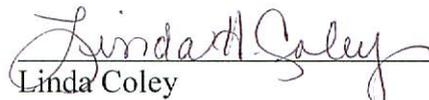
and

1411 State Highway M20 E
Marquette MI 49855-9522

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile: _____
- Statehouse Mail

Andrew J. Snook
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile: _____
- Email: andy.snook@ag.idaho.gov
leslie.gottsich@ag.idaho.gov



Linda Coley
Management Assistant
Idaho Board of Nursing



Idaho Board of Nursing

PO Box 83720 - Boise, Idaho 83720-0061
Voice: (208) 334-3110 ext. 21

In response to questions from nurses and their employers, the members of the Board of Nursing addressed the issue of 'safety to practice'. In particular, nurses wanted to know if they should continue to practice while taking prescribed medications, including pain medications; whether they should refuse assignments to work overtime or extra shifts; whether they should consider retirement from practice when they have reached a certain chronological age.

The Board's "Position on Safety to Practice" provides thoughtful direction to assist nurses and their employers in addressing these concerns.

IDAHO BOARD OF NURSING
POSITION ON SAFETY TO PRACTICE
Adopted April 29, 2005

One essential element of safe nursing practice is a nurse's functional ability: the competence and reliability with which a nurse is able to practice at any given time.

The board is aware that nurses sometimes experience situations that may compromise their ability to safely practice for either the short or long term. Some of these situations involve personal or job-related stress, sleep deprivation, the normal effects of aging, and episodic or persistent health conditions, some of which may require pain management or the use of maintenance-level prescribed medication. The list is not exclusive.

Whether a nurse should continue active nursing practice when that practice may be compromised depends upon the nurse's ability to function safely and effectively. The assessment of functional ability is an individualized process that does not lend itself to application of a set format based on select elements. On the contrary, assessment of functional ability requires active consideration of all relevant factors, such as diagnosis, prescribed treatment and situational events, as well as an evaluation of the impact of those factors on the individual being assessed.

Although constant evaluation of one's ability to safely and competently practice nursing is the responsibility of each individual nurse, the Board of Nursing remains the ultimate decision maker. In some instances, it may be necessary for the board to require objective physical and/or functional assessment, using reliable psychometric instruments and methods administered by qualified licensed professionals. For example, even though an individual nurse might perceive that he is capable of safe practice, a neuropsychiatric assessment, done at the Board's request, may indicate functional impairment.

Licensed nurses are accountable for assuring that their actions and behaviors meet all applicable standards at all times. This requires constant awareness of the demands of the job and a continual process of evaluation and assessment in order to make sure that the nurse is fit to practice and competent to safely perform those functions that fall within the defined scope of nursing practice and for which the nurse has accepted responsibility. Nurses who practice while not fit to do so may be subject to disciplinary action by the board including, among others, license suspension or revocation, remedial measures, or monitored practice.

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PS Form 3800, August 2006

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