

Certified True Copy

By Stamp EK  
Virginia Board of Nursing



COMMONWEALTH of VIRGINIA

David E. Brown, D.C.  
Director

Department of Health Professions

Perimeter Center  
9960 Mayland Drive, Suite 300  
Henrico, Virginia 23233-1463

www.dhp.virginia.gov  
TEL (804) 367- 4400  
FAX (804) 527- 4475

November 13, 2015

Michelle Martin Kuhni  
123 Mulberry Lane  
Monaca, PA 15061

CERTIFIED MAIL

DUPLICATE COPY  
VIA FIRST CLASS MAIL

RE: License No.: 0001-099727

DATE 11/13/15

Dear Ms. Kuhni:

Pursuant to Section 54.1-2409 of the Code of Virginia (1950), as amended, ("Code"), you are hereby given notice that your license to practice nursing in the Commonwealth of Virginia has been mandatorily suspended by the enclosed Order entered November 13, 2015. You are hereby advised that, pursuant to Section 54.1-2409.1 of the Code, any person who practices a profession or occupation after having their license or certificate to do so suspended shall be guilty of a felony. Please return your license to Jay P. Douglas, Executive Director of the Virginia Board of Nursing, at the above address, immediately upon receipt of this letter.

Section 54.1-2409 of the Code further provides that you may apply to the Board of Nursing ("Board") for reinstatement of your license, and shall be entitled to a hearing not later than the next regular meeting of the Board after the expiration of sixty days from the receipt of such reinstatement application. You have the following rights, among others: to be represented by legal counsel, to have witnesses subpoenaed on your behalf, to present documentary evidence and to cross-examine adverse witnesses. The reinstatement of your license shall require the affirmative vote of three-fourths of the members present of the Board of Nursing.

Should you wish to petition the Board of Nursing for reinstatement of your license, contact Jay P. Douglas, Executive Director, at the above address or (804) 367-4599.

RECEIVED

Sincerely,

NOV 16 2015

VA BD OF NURSING

David E. Brown, D.C., Director  
Department of Health Professions

Enclosures  
Case # 170334

**VIRGINIA**

**BEFORE THE DEPARTMENT OF HEALTH PROFESSIONS**

**IN RE: MICHELLE MARTIN KUHNI, R.N.**  
**License No.: 0001-099727**

**ORDER**

In accordance with Section 54.1-2409 of the Code of Virginia (1950), as amended, ("Code"), I, David E. Brown, D.C., Director, of the Virginia Department of Health Professions, received and acted upon evidence that the license of Michelle Martin Kuhni, R.N., to practice nursing in the Commonwealth of Pennsylvania was suspended by a Consent Agreement and Order (with attachment) dated May 12, 2015, said license has not been reinstated. A certified copy of the Consent Agreement and Order (with attachment) is attached to this Order and is marked as Commonwealth's Exhibit No. 1.

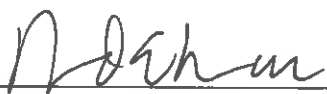
WHEREFORE, by the authority vested in the Director of the Department of Health Professions pursuant to Section 54.1-2409 of the Code, it is hereby ORDERED that the privilege of Michelle Martin Kuhni, R.N., to renew her license to practice nursing in the Commonwealth of Virginia be, and hereby is, SUSPENDED.

Upon entry of this Order, the license of Michelle Martin Kuhni, R.N., will be recorded as suspended and no longer current. Should Ms. Kuhni seek reinstatement of her license pursuant to Section 54.1-2409 of the Code, she shall be responsible for any fees that may be required for the reinstatement and renewal of her license prior to issuance of her license to resume practice.

Pursuant to Sections 2.2-4023 and 54.1-2400.2 of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as a public record and shall be made available for public inspection and copying upon request.

RECEIVED

NOV 16 2015

  
\_\_\_\_\_  
David E. Brown, D.C., Director  
Department of Health Professions

VA BD OF NURSING

ENTERED: 11/13/15



# COMMONWEALTH of VIRGINIA

David E. Brown, D.C.  
Director


## Department of Health Professions

Perimeter Center  
9960 Mayland Drive, Suite 300  
Henrico, Virginia 23233-1463

www.dhp.virginia.gov  
TEL (804) 367-4400  
FAX (804) 527-4475

### CERTIFICATION OF DUPLICATE RECORDS

I, David E. Brown, D.C., Director of the Department of Health Professions, hereby certify that the attached Consent Agreement and Order (with attachment) dated May 12, 2015, regarding Michelle Martin Kuhni, R.N., is a true copy of the records received from the Commonwealth of Pennsylvania, State Board of Nursing.

  
\_\_\_\_\_  
David E. Brown, D.C.

Date: 11/13/15

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BEFORE THE STATE BOARD OF NURSING

Commonwealth of Pennsylvania,  
Bureau of Professional and Occupational  
Affairs

vs.

Michelle Martin Kuhni, R.N.,  
Respondent.

File No.: 15-51-01464

Docket No.: 0312-51-15

Department of State

2015 MAY 19 AM 9:07

PROTHONOTARY

CONSENT AGREEMENT AND ORDER

PARTIES

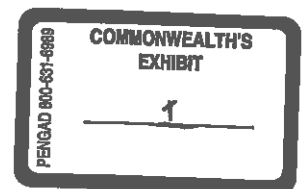
The Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs ("Commonwealth") and Michelle Martin Kuhni, R.N. ("Respondent") stipulate as follows in settlement of the above-captioned case.

APPLICABLE LAW

1. This matter is before the State Board of Nursing ("Board") pursuant to This matter is before the State Board of Nursing ("Board") pursuant to the Professional Nursing Law, Act of May 22, 1951, P.L. 317, ("Act"), *as amended*, 63 P.S. §§ 211-226; the Criminal History Record Information Act, Act of July 16, 1979, P.L. 116, No. 47, *as amended* ("CHRIA"), 18 Pa. C.S. §§ 9101 - 9183; and/or the Act of July 2, 1993, P.L. 345, No. 48 ("ACT 48"), *as amended*, 63 P.S. §§ 2201-2207.

LICENSURE STATUS

2. At all relevant and material times, Respondent held the following license to practice as a registered nurse in the Commonwealth of Pennsylvania: license no. RN235568L, which was originally issued on April 2, 1980, is currently suspended, and which was to expire on April 30, 2015 prior to the suspension.



**STIPULATED FACTS**

3. Respondent admits that the following allegations are true:
  - a. Respondent's license may be continually renewed, reactivated, or reinstated upon the filing of the appropriate documentation and payment of the necessary fees.
  - b. Respondent's address on file with the Board is 123 Mulberry Lane, Monaca, PA 15061.
  - c. Respondent last practiced in Beaver County, Pennsylvania.
  - d. Respondent has suffered from chemical dependency (the "impairment"), specifically, marijuana, alcohol, and opioids.
  - e. On March 7, 2013, at *In the Matter of the Petition for Reinstatement of the Professional Nursing License of Michelle Martin Kuhni*, file number 12-51-06966, docket number 1475-51-12, the Board issued Final Order Adopting Hearing Examiner's Proposed Adjudication and Order (Final Order), which reinstated Respondent's license to practice as a registered nurse in Pennsylvania.
  - f. The Final Order reinstated Respondent's license to PROBATION subject to terms and conditions as long as Respondent complied with and adhered to all terms and conditions set forth in the Final Order including being monitored by the Professional Health Monitoring Program.
  - g. Respondent violated the terms of the Final Order in that Respondent submitted to a urine drug test on or about December 30, 2014 that was positive for morphine, a schedule (II) controlled substance, and Phenobarbital, a schedule (IV) controlled substance, mood altering drugs or drugs of abuse.

h. Respondent ingested medications that metabolize to morphine and phenobarbital in violation of the Final Order, and as a result, her nursing license was suspended by Preliminary Order on February 23, 2015 issued by the Probable Cause Screening Committee of the State Board of Nursing<sup>1</sup>.

i. Respondent's PHMP and PNAP case managers recommend that Respondent remain suspended for six months retroactive to February 23, 2015, and upon reinstatement, be monitored in the Disciplinary Monitoring Unit (DMU) for no less than five (5) years.

#### ALLEGED VIOLATION OF ACT

4. Based upon the foregoing Factual Allegations, the Board is authorized to impose a civil penalty under §13(b) of the Act, 63 P.S. § 223(b), and §5(b)(4) of Act 48, 63 P.S. §2205(b)(4); impose the costs of investigation under §5(b)(5) of Act 48, 63 P.S. §2205(b)(5); and suspend, revoke or otherwise restrict Respondent's license under §14(a)(2) of the Act, 63 P.S. §224(a)(2), because Respondent is unable to practice nursing with reasonable skill and safety to patients by reason of physical or mental illness or condition or physiological or psychological dependence upon drugs or alcohol and under 63 P.S. §2205(b)(1), because Respondent has violated a lawful disciplinary order of the Board.

#### PROPOSED ORDER

5. The parties, intending to be legally bound, consent to the issuance of the following Order in settlement of this matter:

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<sup>1</sup> Suzanne Hendricks, B.S.B.H., R.N., L.P.N., Joanne Sorensen, D.N.P., R.N., and Robert E. Ames participated in issuing the Preliminary Order.

a. The Board finds that it is authorized to impose a civil penalty under §13(b) of the Act, 63 P.S. § 223(b), and §5(b)(4) of Act 48, 63 P.S. §2205(b)(4); impose the costs of investigation under §5(b)(5) of Act 48, 63 P.S. §2205(b)(5); and suspend, revoke or otherwise restrict Respondent's license under §14(a)(2) of the Act, 63 P.S. §224(a)(2), because Respondent is unable to practice nursing with reasonable skill and safety to patients by reason of physical or mental illness or condition or physiological or psychological dependence upon drugs or alcohol and under 63 P.S. §2205(b)(1), because Respondent has violated a lawful disciplinary order of the Board.

b. For purposes of this Agreement and Order, the terms "*practice*," "*practice of the profession*," and "*practice the profession*" shall include any and all activities requiring a license, registration, certificate, approval, authorization, or permit from the Board to perform. It also includes attendance at any educational program/course that includes a clinical practice component with patients and/or requires a current license to practice the profession.

c. Respondent's license, No.: RN235568L, along with any other licenses, registrations, certificates, approvals, authorizations, or permits (hereinafter referred to collectively as "authorizations") issued by the Board to Respondent, are **INDEFINITELY SUSPENDED**. Upon adoption of this Consent Agreement and Order, Respondent shall immediately cease and desist from practice the profession and shall not represent herself as a board licensee in any manner whatsoever. If she has not done so already, within 10 days of adoption of this Consent Agreement and Order, Respondent shall surrender her wall certificate,

registration certificate and wallet card by mailing them or delivering them in person to:

Margaret A. Sheaffer  
Department of State  
Office of Chief Counsel  
P.O. Box 69521  
Harrisburg, PA 17106-9521

**REINSTATEMENT AFTER ACTIVE SUSPENSION**

d. After **six (6) months** of active suspension from February 23, 2015, Respondent may seek a **STAY** of the **ACTIVE SUSPENSION** of Respondent's nursing license:

(1) By submitting the following to

Board Counsel  
State Board of Nursing  
P.O. Box 69523  
Harrisburg, PA 17106-9523

(i) A written Petition seeking a stay of the active suspension in favor of probationary status;

(ii) An Affidavit of Non-Practice stating that Respondent has not practiced nursing in Pennsylvania while Respondent's license was actively suspended; and

(iii) A report from her Pennsylvania Nurse Peer Assistance (PNAP) case manager or a drug and alcohol treatment provider approved by PHMP stating that Respondent is able to return to the practice of nursing with reasonable skill and safety to patients



subject to monitoring by the Professional Health  
Monitoring Programs;

(2) By meeting the continued competency requirements set forth at  
49 Pa. Code §21.156a if the suspension lasts five years or longer or if the  
Respondent does not have an active license for five years or longer.

(3) Submitting documentation demonstrating completion of  
the required continuing education hours within the two year period  
immediately preceding the petition for reinstatement in accordance  
with 49 Pa. Code §21.131.

e. If Respondent meets the requirements set forth in paragraph 5.d above  
and with the concurrence of the prosecuting attorney and Respondent's paying  
any fees required under 49 Pa. Code §21.5, Respondent's license may be  
reinstated by the Board subject the terms and conditions set forth in paragraph 5.i  
below without a hearing.

f. If the prosecuting attorney opposes the reinstatement of Respondent's  
nursing license without a hearing, a hearing will be scheduled at which the  
Respondent may present evidence to show that Respondent has met the  
requirements for reinstatement as set forth above in paragraph 5.d; and the Board  
will make a final determination in the matter.

g. If a hearing is held, it will be conducted in accordance with 1 Pa.  
Code §31.1 et. seq.

h. Respondent understands that if the Board reinstates Respondent's  
license after considering the evidence, Respondent must pay any fees required  
under 49 Pa. Code §21.5 before Respondent's license will be reinstated.

i. After meeting the requirements for reinstatement set forth above in paragraph 5.d and with the concurrence of the prosecuting attorney and the final approval of the Board, the **INDEFINITE ACTIVE SUSPENSION** of Respondent's license will be stayed in favor of no less than **FIVE (5) YEARS** of **PROBATION**, said probation shall be subject to the following terms and conditions:

**GENERAL**

(1) Within ten (10) days of the approval of this Agreement by the Board, Respondent shall contact the Bureau of Professional and Occupational Affairs, Professional Health Monitoring Programs ("PHMP"), Disciplinary Monitoring Unit ("DMU") to begin monitoring. PHMP's DMU contact information is:

Professional Health Monitoring Programs Disciplinary Monitoring Unit P.O. Box 10569 Harrisburg, PA 17105-0569 Tele (717)783-4857 or in PA (800)554-3428
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(2) Respondent shall fully and completely comply and cooperate with the PHMP and its agents and employees in their monitoring of Respondent's impairment under this Agreement.

(3) Respondent shall abide by and obey all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions and all rules and regulations and laws pertaining to the practice of the profession in this Commonwealth or any other state or jurisdiction in which Respondent holds an authorization to practice the profession. Summary traffic violations shall not

constitute a violation of this Agreement; however, a violation of any conditions of a criminal probation and/or parole is a violation of this Agreement.

(4) Respondent shall at all times cooperate and comply with the PHMP and its agents and employees in the monitoring, supervision and investigation of Respondent's compliance with the terms and conditions of this Agreement. Respondent shall cooperate and comply with any requests for written reports, records or verifications of actions that may be required by the PHMP; the requested shall be obtained and submitted at Respondent's expense.

(5) Respondent's failure to fully cooperate and comply with the PHMP shall be deemed a violation of this Agreement.

(6) Upon request of the PHMP case manager, Respondent shall enroll in a peer assistance program, when available, including, but not limited to, Physician's Health Program ("PHP"), Secundum Artem Reaching Pharmacists with Help ("SARPH"), and Pennsylvania Nurse Peer Assistance Program ("PNAP"), and shall fully and completely comply with all of the terms and conditions of Respondent's agreement with the peer assistance program. Respondent's failure to fully and completely comply with Respondent's agreement with the peer assistance program shall constitute a violation of this Agreement.

(7) Respondent shall not falsify, misrepresent or make material omission of any information submitted pursuant to this Agreement.

(8) Respondent may not be absent from the Commonwealth of Pennsylvania for any period exceeding twenty (20) days unless Respondent seeks and receives prior written permission from the PHMP subject to any additional terms and conditions required by the PHMP.

(9) Respondent may not engage in the practice of the profession in any other state or jurisdiction without first obtaining written permission from the PHMP. Once written permission is granted by the PHMP, Respondent shall notify the licensing board of the other state or jurisdiction that Respondent suffers from an impairment and is enrolled in the DMU prior to engaging in the practice of the profession in the other state or jurisdiction.

(10) In the event Respondent relocates to another jurisdiction, within five (5) days of relocating, Respondent shall either enroll in the other jurisdiction's impaired professional program and have the reports required under this Agreement sent to the Pennsylvania PHMP, or if the other jurisdiction has no impaired professional program, notify the licensing board of the other jurisdiction that Respondent is impaired and enrolled in this Program. In the event Respondent fails to do so, in addition to being in violation of this Agreement, the periods of suspension and

probation herein shall be tolled. It is a violation of this Agreement if Respondent violates and/or fails to fully and completely comply with the impaired professional program in another jurisdiction.

(11) Respondent shall notify the PHMP by telephone within forty-eight (48) hours and in writing within five (5) days of the filing of any criminal charges against Respondent; the final disposition of any criminal charges against Respondent; the violation of any terms and conditions of a criminal probation or parole; the initiation of any legal action pertaining to Respondent's practice of the profession; the initiation of charges, action, restriction or limitation related to Respondent's practice of the profession by a professional licensing authority of any state or jurisdiction or the Drug Enforcement Agency of the United States Department of Justice; or any investigation, action, restriction or limitation related to Respondent's privileges to practice the profession at any health care facility.

(12) Respondent shall notify the PHMP by telephone within forty-eight (48) hours and in writing within five (5) days of any change of Respondent's home address, phone number, employment status, employer and/or change in practice at a health care facility. Failure to timely advise the PHMP under this subsection due to the PHMP office being closed is not an excuse for not leaving a voice mail message with this information.

(13) Respondent shall cease or limit Respondent's practice of the profession if the PHMP case manager directs that Respondent do so.

EVALUATION - TREATMENT

(14) As requested by the PHMP, Respondent shall have forwarded to the PHMP, a written mental and/or physical evaluation by a provider approved by the PHMP (hereinafter "treatment provider") assessing Respondent's fitness to actively practice the profession. Unless otherwise directed by PHMP, the evaluation shall be forwarded to:

PHMP -DMU P.O. Box 10569 Harrisburg, PA 17105-0569 Tele: 717-783-4857 In PA: 800-554-3428
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If the treatment provider determines that Respondent is not fit to practice, Respondent shall immediately cease practicing the profession and not practice until the treatment provider and the PHMP case manager determine that Respondent is fit to resume practice with reasonable skill and safety to patients.

(15) The evaluation described in the previous paragraph is in addition to any other evaluation already provided.

(16) Respondent shall provide copies of any prior evaluations and counseling records and a copy of this agreement to the treatment provider.

(17) Respondent shall authorize, in writing, the PHMP to receive and maintain copies of the written evaluation reports of the treatment provider(s).

(18) If a treatment provider recommends that Respondent obtain treatment, Respondent must fully comply with those recommendations as part of these probationary requirements.

(19) Respondent shall arrange and ensure that written treatment reports from all treatment providers approved by the PHMP are submitted to the PHMP upon request or at least every ninety (90) days after the effective date of this Agreement. The reports shall contain at least the following information:

- (i) Verification that the treatment provider has received a copy of this Agreement and understands the conditions of this probation;
- (ii) A treatment plan, if developed;
- (iii) Progress reports, including information regarding compliance with the treatment plan;
- (iv) Physical evaluations, if applicable;
- (v) The results of any testing including any testing for therapeutic levels of prescribed medications when deemed appropriate by the treatment provider;
- (vi) Modifications in treatment plan, if applicable;

(vii) Administration or prescription of any drugs to Respondent; and

(viii) Discharge summary and continuing care plan at discharge.

(ix) Any change in the treatment provider's assessment of the Respondent's fitness to actively practice the profession.

(20) Respondent shall identify a primary care physician who shall send written notification to the Respondent's PHMP case manager certifying Respondent's health status as requested.

#### **SUPPORT GROUP ATTENDANCE**

(21) Respondent shall attend and actively participate in any support group programs recommended by the treatment provider or the PHMP case manager at the frequency recommended by the treatment provider; however, Respondents with a chemical dependency or abuse diagnosis shall attend no less than twice a week.

(22) Respondent shall provide written verification of any and all support group attendance to the PHMP on at least a monthly basis or as otherwise directed by the PHMP.

#### **ABSTENTION**

(23) Respondent shall completely abstain from the use of controlled substances, caution legend (prescription) drugs, mood



altering drugs or drugs of abuse including alcohol in any form, except under the following conditions:

(i) Respondent is a bona fide patient of a licensed health care practitioner who is aware of Respondent's impairment and participation in the PHMP;

(ii) Such medications are lawfully prescribed by Respondent's treating practitioner and approved by the PHMP case manager;

(iii) Upon receiving the medication, Respondent must provide to the PHMP, within forty-eight (48) hours by telephone and within five (5) days in writing, the name of the practitioner prescribing the drug, the illness or medical condition diagnosed, the type, strength, amount and dosage of the medication and a signed statement consenting to the release of medical information from the prescribing practitioner to the PHMP or its designated representative for the purpose of verification; and

(iv) Upon refilling a medication, Respondent must provide to the PHMP, within forty-eight (48) hours by telephone and within five (5) days in writing, the name of the practitioner prescribing the drug, the illness or medical condition diagnosed, the type, strength, amount and dosage of the medication and a signed statement

consenting to the release of medical information from the prescribing practitioner to the PHMP or its designated representative for the purpose of verification.

#### DRUG TESTING

(24) Respondent shall submit to random unannounced and observed drug and alcohol tests (drug testing), inclusive of bodily fluid, breath analysis, hair analysis, or another procedure as selected by the PHMP, for the detection of substances prohibited under this Agreement as recommended by the treatment provider and as directed by the PHMP. A positive, adulterated or substituted result on a drug test shall constitute an irrefutable violation of this Agreement unless Respondent has complied with the provisions of this Agreement pertaining to the use of drugs. Failure to provide a specimen or a specimen of sufficient quantity for testing when requested will be considered a violation of this Agreement.

(25) Respondent shall avoid all foods that contain poppy seeds. Ingestion of poppy seeds will not be accepted as a valid explanation for a positive screen.

(26) Respondent shall avoid all substances containing alcohol, including alcohol in food or beverages, medications, chemical solutions, cleaning solutions, gasoline, hand sanitizers, or other skin preparations. Incidental use of alcohol will not be accepted as a valid explanation for a positive drug test unless

Respondent has complied with the provisions of this Agreement pertaining to the use of drugs as set forth in the Abstention Section above.

**MONITORED PRACTICE**

(27) Respondent shall not practice the profession unless a provider approved by the PHMP approves the practice in writing and the PHMP Case Manager gives written permission to practice.

(28) When permitted to return to practice, Respondent shall not do any of the following unless Respondent first obtains specific written approval from the PHMP Case Manager:

(i) practice in any capacity that involves the administration of controlled substances;

(ii) function as a supervisor;

(iii) practice in a private practice setting;

(iv) practice in an emergency room, operating room, intensive care unit, cardiac catheterization laboratory, or coronary care unit; or

(v) practice as an agency nurse.

(29) Respondent may not work in any practice setting, including attendance at any educational program/course that includes a clinical practice component with patients and/or requires a current license to practice nursing without direct supervision.

(30) Direct supervision is the physical presence of the supervisor on the premises so that the supervisor is immediately available to the Respondent being supervised when needed.

(31) If Respondent is practicing or attending any educational program/course that includes a clinical practice component with patients and/or requires a current license to practice nursing, Respondent shall give any employer, supervisor, preceptor, or instructor (hereinafter referred to collectively as "supervisor") a copy of this Agreement within five (5) days of the effective date of this Agreement.

(32) Respondent shall give any prospective employer and supervisor a copy of this Agreement when applying for employment in the practice of the profession and to any prospective school/program when applying for any educational program/course that includes a clinical practice component with patients and/or requires a current license to practice nursing.

(33) Within five (5) days of the effective date of this Agreement, and by telephone within forty-eight (48) hours and in writing within five (5) days upon obtaining employment, or entering an educational program/course that includes a clinical practice component with patients and/or requires a current license to practice, Respondent shall provide the following to PHMP:

(i) Name and address of the supervisor responsible for Respondent's practice;

(ii) The name(s) and address(es) of the place(s) at which Respondent will practice the profession and a description of Respondent's duties and responsibilities at such places of practice; and

(iii) Any restrictions on Respondent's practice.

(34) Respondent shall ensure that Respondent's supervisor submits to the PHMP the following information in writing:

(i) Verification that the supervisor has received a copy of this Agreement and understand the conditions of this probation;

(ii) An evaluation of Respondent's work performance on a ninety (90) day or more frequent basis as requested by the PHMP; and

(iii) Immediate notification of any suspected violation of this probation by Respondent.

#### **REPORTING/RELEASES**

(35) Respondent, Respondent's treatment providers, supervisors, employers or other persons required to submit reports under this Agreement shall cause such reports, data or other information to be filed with the PHMP, unless otherwise directed, at:

PHMP-DMU  
Box 10569  
Harrisburg, PA 17105-0569

(36) Respondent consents to the release by the PHMP of any information or data produced as a result of this probation, including written treatment provider evaluations, to any treatment provider, supervisor, Commonwealth's attorney, hearing examiner and Board members in the administration and enforcement of this Agreement.

(37) Respondent shall sign any required waivers or release forms requested by the PHMP for any and all records, including medical or other health related and psychological records, pertaining to treatment and monitoring rendered to Respondent during this probation and any corresponding criminal probation, and any employment, personnel, peer review or review records pertaining to Respondent's practice of the profession during this probation to be released to the PHMP, the Commonwealth's attorney, hearing examiner and Board members in the administration and enforcement of this Agreement.

COSTS

(38) Respondent shall be responsible for all costs incurred in complying with the terms of this Agreement, including but not limited to psychiatric or psychotherapy treatments, and reproduction of treatment or other records. Respondent shall pay the costs for any drug testing and any subsequent reanalysis of

specimens required by the PHMP. Failure of Respondent to pay any of these costs in a timely manner shall constitute a violation of this Agreement.

**BUREAU/PHMP EVALUATIONS**

(39) Upon request of the PHMP, Respondent shall submit to mental or physical evaluations, examinations or interviews by a treatment provider approved by the PHMP or the PHMP. Respondent's failure to submit to such an examination, evaluation or interview when directed shall constitute a violation of this Agreement.

**VIOLATION OF THIS ORDER**

j. Notification of a violation of the terms or conditions of this Agreement shall result in the **IMMEDIATE VACATING** of the stay order, **TERMINATION** of the period of probation, and **ACTIVATION** of the suspension in paragraph 5.c above of Respondent's authorizations to practice the profession in the Commonwealth of Pennsylvania as follows:

(1) The prosecuting attorney for the Commonwealth shall present to the Board's Probable Cause Screening Committee ("Committee") a Petition that indicates Respondent has violated any terms or conditions of this Agreement.

(2) Upon a probable cause determination by the Committee that Respondent has violated any of the terms or conditions of this Agreement, the Committee shall, without holding a formal hearing, issue a preliminary order vacating the stay of the within

suspension, terminating this probation and activating the suspension of Respondent's authorization(s) to practice the profession.

(3) Respondent shall be notified of the Committee's preliminary order within three (3) business days of its issuance by certified mail and first class mail, postage prepaid, sent to the Respondent's last registered address on file with the Board, or by personal service if necessary.

(4) Within twenty (20) days of mailing of the preliminary order, Respondent may submit a written answer to the Commonwealth's Petition and request that a formal hearing be held concerning Respondent's violation of probation, in which Respondent may seek relief from the preliminary order activating the suspension. The answer shall be set forth in numbered paragraphs corresponding to the numbered paragraphs of the Petition. Respondent shall admit or deny each of the allegations set forth in the paragraphs in the Petition. Respondent shall mail the original answer and request for hearing, as well as all subsequent filings in the matter, to:

Prothonotary 2601 North Third Street P.O. Box 2649 Harrisburg, PA 17105-2649
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Respondent shall also mail a copy of all filings to the prosecuting attorney for the Commonwealth.



(5) If the Respondent submits a timely answer and request for a formal hearing, the Board or a designated hearing examiner shall convene a formal hearing within forty-five (45) days from the date of the Prothonotary's receipt of Respondent's request for a formal hearing.

(6) Respondent's submission of a timely answer and request for a hearing shall not stay the suspension of Respondent's license under the preliminary order. The suspension shall remain in effect unless the Board or the hearing examiner issues an order after the formal hearing staying the suspension again and reactivating the probation.

(7) The facts and averments in this Agreement shall be deemed admitted and uncontested at this hearing.

(8) If the Board or hearing examiner after the formal hearing makes a determination against Respondent, a final order will be issued sustaining the suspension of Respondent's license and imposing any additional disciplinary measures deemed appropriate.

(9) If Respondent fails to timely file an answer and request for a hearing, the Board, upon motion of the prosecuting attorney, shall issue a final order affirming the suspension of Respondent's license.

(10) If Respondent does not make a timely answer and request for a formal hearing and a final order affirming the

suspension is issued, or the Board or the hearing examiner makes a determination against Respondent sustaining the suspension of Respondent's license, after at least three (3) years of active suspension and any additional imposed discipline, Respondent may petition the Board for reinstatement based upon an affirmative showing that Respondent has at least thirty-six (36) months of sustained documented recovery, an evaluation by a treatment provider approved by the PHMP that Respondent is fit to safely practice the profession, and verification that Respondent has abided by and obeyed all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions, and all rules and regulations pertaining to the practice of the profession in this Commonwealth.

(11) If the Board issues a Preliminary Order terminating the stay of the suspension and actively suspending Respondent's license to practice the profession in accordance with the procedure set forth above, Respondent shall immediately cease the practice of the profession. Respondent shall continue to comply with all of the terms and conditions of probation in this Consent Agreement and Order during the active suspension until the Board issues a Final Order. Continued failure by Respondent to comply with the unaffected terms and conditions of probation while awaiting the issuance of a Final Order by the Board may result in further disciplinary action against Respondent.

k. Respondent's failure to fully comply with any terms of this Agreement may also constitute grounds for additional disciplinary action.

l. Nothing in this Agreement shall preclude the prosecuting attorney for the Commonwealth from filing charges or the Board from imposing disciplinary or corrective measures for violations or facts not contained in this Agreement.

#### COMPLETION OF PROBATION

m. After successful completion of the minimum period of probation, Respondent may petition the Board, upon a form provided by the PHMP, to reinstate Respondent's authorizations to practice the profession to unrestricted, non-probationary status upon an affirmative showing that Respondent has complied with all terms and conditions of this Agreement and that Respondent's resumption of unsupervised practice does not present a threat to the public health and safety. Respondent is required to remain in compliance with all terms and conditions of this Agreement until the Board issues the order terminating Respondent's probationary status.

n. This Order constitutes disciplinary action by the Board and shall be reported to other licensing authorities and any applicable national licensing databank as a disciplinary action by the Board.

o. This case shall be deemed settled and discontinued upon the Board issuing an Order adopting this Consent Agreement and, if applicable, Respondent's successful completion of any ordered Probation and/or Remedial Education terms.

**ADMISSIBILITY OF CONSENT AGREEMENT IN FUTURE PROCEEDINGS**

6. Respondent agrees that if Respondent is charged with a violation of an Act enforced by the Board in the future, this Consent Agreement and Order shall be admitted into evidence without objection in that proceeding.

**ACKNOWLEDGMENT OF NOTICE AND WAIVER OF HEARING**

7. Respondent waives the filing and receipt of an Order to Show Cause in this matter. Respondent knowingly and voluntarily waives the right to an administrative hearing in this matter, and knowingly and voluntarily waives the following rights related to that hearing: to be represented by counsel at the hearing; to present witnesses and testimony in defense or in mitigation of any sanction that may be imposed for a violation; to cross-examine witnesses and to challenge evidence presented by the Commonwealth; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision.

**WAIVER OF CLAIM OF COMMINGLING AND OTHER CONSTITUTIONAL CLAIMS**

8. Respondent expressly waives any constitutional rights and issues, such as commingling of prosecutorial and adjudicative functions by the Board or its counsel, which may arise or have arisen during the negotiation, preparation and/or presentation of this Consent Agreement. Respondent specifically agrees that if the Board rejects this agreement, it may assume that the facts and averments as alleged in this Consent Agreement are true and correct for the limited purpose of recommending a sanction, based on those assumed facts that would be acceptable to the Board before hearing the case. In the event that the Board does assume the facts and averments as alleged in this Consent Agreement are true for purposes of making a recommendation as to an acceptable sanction, such action shall not constitute commingling of prosecutorial and adjudicative functions by the Board or its counsel, and the Respondent expressly waives any constitutional rights and issues related to alleged commingling, bias, or

violation of due process rights to have an unbiased and impartial adjudicator in any subsequent hearing. If a hearing is subsequently held, neither this Consent Agreement nor the proposed terms of settlement may be admitted into evidence and any facts, averments, and allegations contained in the Consent Agreement must be proven at hearing unless otherwise separately stipulated. This paragraph is binding on the participants even if the Board does not approve this Consent Agreement.

**NO MODIFICATION OF ORDER**

9. Respondent agrees, as a condition of entering into this Agreement, not to seek modification of it at a later date without first obtaining the express written concurrence of the Prosecution Division of the Department of State.

**AGREEMENT NOT BINDING ON OTHER PARTIES**

10. The Office of General Counsel has approved this Consent Agreement as to form and legality; however, this Consent Agreement shall have no legal effect unless and until the Board issues the stipulated Order.

**EFFECT OF BOARD'S REJECTION OF CONSENT AGREEMENT**

11. Should the Board not approve this Agreement, presentation to and consideration of it by the Board shall not prejudice the Board or any of its members from further participation in the adjudication of this matter. This paragraph is binding on the participants even if the Board does not approve this Agreement.

**ACKNOWLEDGMENT OF RIGHT TO ATTORNEY**

12. Respondent acknowledges that she has the right to consult with, and/or be represented by, private legal counsel of Respondent's choosing and at Respondent's expense when reviewing, considering and accepting the terms of this Consent Agreement. Respondent is represented by Ansley S. Westbrook, II, Esquire in the negotiation and settlement of this matter by this Agreement.

ENTIRE AGREEMENT

13. This agreement contains the whole agreement between the participants; provided however, that the captions printed in the various provisions of this agreement are for ease of reading only and are not to be interpreted as forming any part of this agreement. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever concerning this agreement.

AGREEMENT DOES NOT PRECLUDE DISCIPLINE FOR OTHER VIOLATIONS

14. Nothing in this Order shall preclude the Prosecution Division for the Commonwealth from filing charges or the Board from imposing disciplinary or corrective measures for violations or facts not contained in this Consent Agreement;

EFFECTIVE UPON BOARD APPROVAL

15. This Agreement shall take effect immediately upon its approval and adoption by the Board.

VERIFICATION OF FACTS AND STATEMENTS

16. Respondent verifies that the facts and statements set forth in this Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent understands that statements in this Consent Agreement are made subject to the criminal penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Margaret A. Sheaffer  
Margaret A. Sheaffer  
Senior Prosecutor in Charge

DATED: 04-20-2015

Michelle Martin Kuhn  
Michelle Martin Kuhn  
Respondent

DATED: 4/1/15

Ansley S. Westbrook, II  
Ansley S. Westbrook, II  
Attorney for Respondent

DATED: 4/1/15

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BEFORE THE STATE BOARD OF NURSING

Commonwealth of Pennsylvania,  
Bureau of Professional and Occupational  
Affairs

vs.

Michelle Martin Kuhn, R.N.,  
Respondent.

File No.: 15-51-01464

Docket No.: 0312-51-15

**ORDER**

AND NOW, this 12<sup>th</sup> day of May 2015, the State Board of Nursing approves and adopts the foregoing Consent Agreement and incorporates the terms of paragraph 5 above, which shall constitute the Board's Order and is now issued in resolution of this matter.

This Order shall take effect immediately.

BY ORDER:

BUREAU OF PROFESSIONAL AND  
OCCUPATIONAL AFFAIRS

  
Ian J. Harlow  
Acting Commissioner

STATE BOARD OF NURSING

  
Kristin Malady, B.S.N., R.N.  
Chair

For the Commonwealth:

Margaret A. Sheaffer, Esq.  
Senior Prosecutor in Charge  
Department of State  
P. O. Box 69521  
Harrisburg, PA 17106-9521

For Respondent:

Ansley S. Westbrook, II, Esquire  
DINSMORE & SHOHL  
One Oxford Centre  
301 Grant Street - Suite 2800  
Pittsburgh, PA 15219

Date of Mailing:

## NOTICE

The attached Final Order represents the final agency decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a Petition for Review with that Court within 30 days after the entry of the order in accordance with the Pennsylvania Rules of Appellate Procedure. See Chapter 15 of the Pennsylvania Rules of Appellate Procedure entitled "Judicial Review of Governmental Determinations," Pa. R.A.P 1501 – 1561. Please note: An order is entered on the date it is mailed. If you take an appeal to the Commonwealth Court, you must serve the Board with a copy of your Petition for Review. The agency contact for receiving service of such an appeal is:

Board Counsel  
P.O. Box 69523  
Harrisburg, PA 17106-9523

The name of the individual Board Counsel is identified on the Final Order.



**COPY**  
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BEFORE THE STATE BOARD OF NURSING

PROTHONOTARY  
2015 SEP 29 AM 7:30  
Department of State

In the Matter of the Reinstatement  
of the License to Practice Professional  
Nursing of Michelle Martin Kuhni, RN,  
Petitioner

:  
: Docket No. 1707-51215  
: File No. 15-51-00425  
:

**ORDER STAYING SUSPENSION AND PLACING LICENSE ON PROBATION**

AND NOW, this 29<sup>th</sup> day of September, 2015, the State Board of Nursing (Board), upon consideration of the Consent Agreement and Order filed on May 12, 2015, Petitioner's satisfaction of the requirements of Paragraph 5(d) of the Consent Agreement and with the concurrence of the prosecuting attorney as required by Paragraph 5(e) of the Consent Agreement, hereby **STAYS** the active suspension on Petitioner's license RN235568L and immediately places it on **PROBATION** for no less than **FIVE YEARS** pursuant to the terms set forth in Paragraph 5(i) of the Consent Agreement attached hereto as Exhibit A. To activate Respondent's license, Respondent shall comply with any administrative requirements necessary for reactivation.

This order shall be effective immediately.

**BUREAU OF PROFESSIONAL AND  
OCCUPATIONAL AFFAIRS**

  
IAN J. HARLOW  
COMMISSIONER

**BY ORDER:  
STATE BOARD OF NURSING**

  
KRISTIN MALADY, RN, BSN  
CHAIRPERSON

Petitioner's Address:

Michelle Martin Kuhni, RN  
123 Mulberry Lane  
Monaca, PA 15061

Prosecuting Attorney:

Margaret A. Sheaffer, Esquire

Board Counsel:

Bridget K. Guilfoyle, Esquire

Date of Mailing:

September 29, 2015

TRUE AND CORRECT COPY  
CERTIFIED FROM THE RECORD  
THIS 29 DAY OF October A.D. 2015

  
PROTHONOTARY