

IN THE MATTER OF	*	BEFORE THE
MATTHEW W. NEISWANGER, N.H.A.	*	MARYLAND STATE
License Number: R1220	*	BOARD OF EXAMINERS OF
Respondent	*	NURSING HOME ADMINISTRATORS
	*	Case Number: 2009-003

* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

On November 11, 2009, the State Board of Examiners of Nursing Home Administrators (the "Board") charged **MATTHEW W. NEISWANGER, N.H.A.** (the "Respondent") (D.O.B.: 05/23/1964), License Number R1220, with violating provisions of the Maryland Nursing Home Administrators Licensing Act ("the Act"), codified at Md. Health Occ. ("H.O.") Code Ann. §§ 9-101 *et seq.* (2000, 2005 and 2009 Repl. Vols.)

Specifically, the Board charged the Respondent with violating the following provisions of § 9-314(b) of the Act:

Subject to the hearing provisions of § 9-315 of this subtitle, the Board may deny a license or limited license to any applicant, reprimand any licensee or holder of a limited license, place any licensee or holder of a limited license on probation, suspend or revoke a license or limited license, or impose a civil fine if the applicant, holder, or licensee:

- (2) Fraudulently or deceptively uses a license;
- (3) Otherwise fails to meet substantially the standards of practice adopted by the Board under § 9-205 of this title;
- (8) Willfully makes or files a false report or record in the practice of nursing home administration;
- (10) Submits a false statement to collect a fee; [and/or]

- (11) Commits an act of unprofessional conduct in the licensee's practice as a nursing home administrator[.]

The Board also charged the Respondent with violating the following regulations:

Code of Maryland Regulations ("COMAR") tit. 10 § 33.01.15, "Suspension and Revocation of Licenses."

A. Pursuant to Health Occupations Article, § 9-314(b)(3), Annotated Code of Maryland, the Board may ... suspend or revoke a license of a nursing home administrator, or reprimand or otherwise discipline ... a licensee after due notice and an opportunity to be heard at a formal hearing, upon evidence that the ... licensee:

- (1) Has violated any of the provisions of the law pertaining to the licensing of nursing home administrators or the regulations of the Board pertaining to it;
- (2) Has violated any of the provisions of the law or regulations of the licensing or supervising authority or agency of the State or political subdivision of it having jurisdiction of the operation and licensing of nursing homes; [and/or]
* * * *
- (4) Has practiced fraud, deceit, or misrepresentation in the licensee's capacity as a nursing home administrator[.]

On December 9, 2009, a Case Resolution Conference was convened in this matter. Based on negotiations occurring as a result of this Case Resolution Conference, the Respondent agreed to enter into this Consent Order, consisting of Procedural Background, Findings of Fact, Conclusions of Law, Order, and Consent.

FINDINGS OF FACT

The Board finds the following:

BACKGROUND FINDINGS

1. At all times relevant to these charges, the Respondent was and is licensed to practice as a nursing home administrator in the State of Maryland. The Respondent was originally licensed by the Board on October 30, 1995, under License Number R1220.

2. At all times relevant to these charges, the Respondent was employed as the nursing home administrator for the Heartland Health Care Center--Hyattsville ("Heartland"), a nursing and rehabilitation center located at 6500 Riggs Road, Hyattsville, Maryland 20783. At all times relevant to these charges, Heartland was affiliated with HCR--Manor Care, Inc. ("Manor Care").

3. By correspondence to the Board dated June 24, 2002, legal counsel for Manor Care reported that Manor Care had terminated the Respondent's employment as nursing home administrator at Heartland, effective May 29, 2002, for a number of improprieties, including fraudulently employing a "phantom" employee ("Employee A").¹ The complaint stated that Employee A was the "wife of a physician formerly used at the facility ... [and] ... was admittedly fraudulently hired only to secure medical insurance benefits for herself and her then unborn child. She was placed on the payroll as a cook by the [Respondent], yet she never worked in that role in the facility despite being paid as a full time employee from 6/15/01 to 1/22/02."

¹ To ensure confidentiality, the identity of all individuals other than the Respondent will not be disclosed in this document. The Respondent may obtain the identity of all individuals referenced herein by contacting the assigned administrative prosecutor.

4. On or about March 20, 2006, the Board received an anonymous complaint about the Respondent. According to the complaint, the Respondent was then employed as the nursing home administrator at Annapolis Nursing and Rehabilitation. The complaint states as follows: "The gentleman was fired by Manor Care for hiring the wife of an admitting physician onto the payroll without ever assigning her any job duties. The physician was encouraged to admit more patients in exchange for this favor. [Name deleted] was his immediate supervisor at the time. The gentleman also fiddled with the Medicaid and Medicare reimbursements to generate increased reimbursements. He may be continuing these same activities in his current position."

5. The Board then initiated an investigation of these complaints.

BOARD INVESTIGATIVE FINDINGS

6. Board investigation determined that the Respondent, in his capacity as nursing home administrator at Heartland, hired Employee A to work at Heartland for the period from June 15, 2001 to January 22, 2002, as a cook, and as part of her employment, provided her with pre-natal and medical insurance coverage and medical insurance coverage for her family. Board investigation determined that during this time period, the Respondent continued to pay salary and provide health benefits to Employee A, despite the fact that she did not work at Heartland and otherwise did not provide any services for Heartland in return for her salary and benefits. Board investigation determined that the Respondent fraudulently hired Employee A in order for her to receive these insurance benefits. Heartland terminated the Respondent's employment, effective May 29, 2002, after conducting an investigation of his actions.

7. The Respondent was interviewed under oath by a Board investigator on May 28, 2009. The Respondent admitted that in his capacity as nursing home administrator at Heartland, he purposefully hired Employee A to work as a cook at Heartland for about seven months because she was pregnant and did not have health insurance.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent: fraudulently or deceptively used a license, in violation of H.O. § 9-314(b)(2); failed to meet substantially the standards of practice adopted by the Board under § 9-205 of this title, in violation of H.O. § 9-314(b)(3); willfully makes or files a false report in the practice of nursing home administration, in violation of H.O. § 9-314(b)(8); and commits an act of unprofessional conduct in the licensee's practice as a nursing home administrator, in violation of H.O. § 9-314(b)(11).

In addition, the Board concludes as a matter of law that the Respondent violated the following COMAR regulations: Has violated any of the provisions of the law pertaining to the licensing of nursing home administrators or the regulations of the Board pertaining to it, in violation of COMAR 10.33.01.15A(1); and, Has practiced fraud, deceit, or misrepresentation in the licensee's capacity as a nursing home administrator, in violation of COMAR 10.33.01.15A(4).

The Board hereby dismisses charges under H.O. § 9-314(b)(10) and COMAR 10.33.01.15A(2).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 22nd day of February, 2010, by a quorum of the Board considering this case:

ORDERED that the Respondent shall be placed on **PROBATION** for a minimum of **three (3) years**, commencing on the date the Board executes this Consent Order, and continuing until he satisfactorily complies with the following terms and conditions:

1. The Respondent's certification as a preceptor for the administrator-in-training program is revoked. The Respondent may reapply for certification as a preceptor after the Respondent's probation is terminated.

2. Within **thirty (30) days** of the date the Board executes this Consent Order, the Respondent shall pay a civil fine to the Board by certified check or money order in the amount of one thousand (\$1000.00) dollars. If the Respondent fails to pay the fine according to the terms set forth herein, such failure shall constitute a violation of this Consent Order and immediate grounds for revocation of licensure.

3. Within **nine (9) months** of the date the Board executes this Consent Order, the Respondent shall successfully complete a course in professional ethics. The Respondent shall enroll in this course within **three (3) months** of the date the Board executes this Consent Order. The Respondent shall submit the course description and course curriculum to the Board for its approval prior to enrolling in the course. The Board reserves the right to reject the course the Respondent proposes and may, in its discretion, require additional information about any course the Respondent offers to fulfill this condition. The Respondent shall be solely responsible for furnishing the Board with adequate written verification that he has successfully completed the course

according to the terms set forth herein. The Respondent may not use any continuing medical education credits earned through taking such coursework to fulfill any continuing medical education requirements that are mandated for licensure renewal in this State. If The Respondent fails to successfully complete the course according to the terms set forth herein, such failure shall constitute a violation of this Consent Order and immediate grounds for revocation of licensure.

4. In the event that the Respondent is employed as a nursing home administrator in the State of Maryland at any time during the probationary period, his practice shall be supervised, at his own expense, by a Board-approved supervisor (the "Supervisor") who is licensed to practice as a nursing home administrator in the State of Maryland, subject to the following terms:

- (a) The Respondent shall submit the name of a proposed Supervisor to the Board for its approval prior to beginning the supervisory arrangement. The proposed Supervisor shall have no past or present personal, professional, or financial relationship with the Respondent. The Board reserves the right to reject the Supervisor the Respondent proposes and may in its discretion require additional information about any Supervisor the Respondent proposes to fulfill this condition.
- (b) The Respondent authorizes the Board to provide the Supervisor with a copy of the charges, this Consent Order and any other documents that it deems relevant to this case. The Respondent shall be responsible for assuring that the Supervisor notifies the Board in writing of his/her acceptance of his/her supervisory role.

- (c) While the Respondent is employed as a nursing home administrator in the State of Maryland during the probationary period, the Supervisor shall meet with the Respondent at the facility where he is employed at least **once per month** for the duration of his probation. The Supervisor shall review and discuss with the Respondent ethical issues associated with the operation of a nursing home, including, but not limited to, proper hiring practices and appropriate use of resources. The Respondent may not apply for early termination of the supervisory relationship.
- (d) The Respondent shall be responsible for assuring that the Supervisor submits **quarterly written reports** to the Board. These quarterly reports shall include, but are not limited to, the Supervisor's assessment of the Respondent's understanding of issues related to professional ethics.
- (e) The Respondent shall make no changes to the terms and conditions of the supervisory requirement set forth in paragraphs (a)-(d) above without prior Board approval. The Board has sole authority to approve a change of the Supervisor or in the terms and conditions of the supervisory arrangement.

5. The Respondent shall practice according to the Maryland Nursing Home Administrators Licensing Act and in accordance with all applicable laws, statutes, and regulations pertaining to the practice of nursing home administration.

AND IT IS FURTHER ORDERED that after the conclusion of the entire **three (3) year period of probation**, the Respondent may file a written petition for termination of his probationary status without further conditions or restrictions, but only if he has satisfactorily complied with all conditions of this Consent Order, including all terms and


conditions of probation, and including the expiration of the **three (3) year period of probation**, and if there are no outstanding complaints about him before the Board. Before making a decision on the Respondent's petition for termination of probation, the Board may, in its discretion, require that he personally appear before the full Board, or a panel of the Board, for the purpose of determining whether he has satisfactorily complied with all of the terms and conditions of the Consent Order and whether his probation should be terminated; and it is further

ORDERED that if the Respondent violates any of the terms and conditions of probation and/or of this Consent Order, the Board, in its discretion, after notice and opportunity for a hearing, may impose any sanctions the Board may impose under Md. Health Occ. Code Ann. §§ 9-314 and 9-314.5 of the Maryland Nursing Home Administrators Licensing Act, including reprimand, additional probation, suspension, revocation and/or monetary fine; and it is further

ORDERED that the Respondent shall be responsible for all costs incurred to comply with this Consent Order; and it is further

ORDERED that this Consent Order shall be a public document pursuant to Md. State Gov't Code Ann. § 10-611 *et seq.* (2009 Repl. Vol.).

alzalio
Date



J. Brian Pabst, N.H.A., Chair
State Board of Examiners of
Nursing Home Administrators

CONSENT

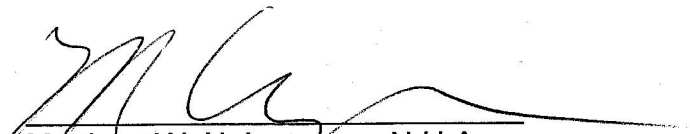
I, Matthew W. Neiswanger, N.H.A., acknowledge that I have had the opportunity

to consult with counsel before signing this document. I have reviewed the Findings of Fact and Conclusions of Law, and I agree and accept to be bound by this Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.


I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections as provided by law. I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I also affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing.

I sign this Consent Order after having had an opportunity to consult with counsel, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order. I voluntarily sign this Order, and understand its meaning and effect.

1-10-10
Date


Matthew W. Neiswanger, N.H.A.
Respondent

Read and approved:
1/12/10
Date

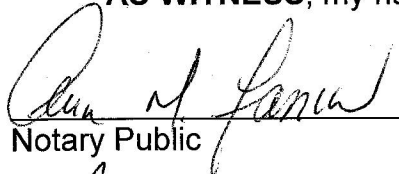

Barry R. Rosen, Esquire
Counsel for Mr. Neiswanger

NOTARY PUBLIC

**STATE OF MARYLAND
CITY/COUNTY OF:**

I HEREBY CERTIFY that on this 11 day of January, 2010,
before me, a Notary Public of the State and County aforesaid, personally appeared
Matthew Neiswanger, N.H.A., and gave oath in due form of law that the foregoing
Consent Order was his voluntary act and deed.

AS WITNESS, my hand and Notary Seal.


Notary Public

April 5, 2011
My commission expires:

1249456v1

