

IN THE MATTER OF * BEFORE THE STATE BOARD
RICHARD F. FUSCO, N.H.A. * OF EXAMINERS OF NURSING
License No. R0858 * HOME ADMINISTRATORS
Respondent. *

* * * * *

**FINAL DECISION AND ORDER ON PETITION FOR
TERMINATION OF SUSPENDED LICENSE**

I. INTRODUCTION

The Board of Examiners of Nursing Home Administrators (the "Board") issued a Final Decision and Order on March 14, 2007¹ suspending the license of Richard F. Fusco, to practice as a nursing home administrator in the State of Maryland based on the Board's findings that Mr. Fusco committed multiple violations of the Maryland Nursing Home Administrators Licensing Act (the "Act"). Specifically, the Board found that Mr. Fusco provided professional services while using cocaine, improperly disposed of patient/resident narcotic medication at nursing homes and failed to file reports of that discarded narcotic medication as required by law, and otherwise failed to meet the standards of practice for a nursing home administrator. The formal part of that Order suspended Mr. Fusco's license until at least January 1, 2008 and ordered as follows:

ORDERED that the license of Richard F. Fusco, NHA, License No. R0858 remain **SUSPENDED** until at least January 1, 2008; and it is further

ORDERED that Mr. Fusco may submit a written petition to the Board requesting that the suspension of his license be lifted and terminated, however Mr. Fusco must submit, along with the petition, documentary evidence that demonstrates to the satisfaction of the Board successful rehabilitation and long-term recovery from his alcohol and drug dependency and addiction, which shall include evidence of a long, continuous period of sobriety and abstinence from alcohol, Controlled Dangerous

¹The Board's March 14, 2007 Final Decision and Order is incorporated by reference into this Order and is appended as Attachment A.

Substances ("CDS"), narcotics, and cocaine, or other mood-altering substances during the entire period of suspension; and it is further

ORDERED that before making a decision on Mr. Fusco's petition for termination of the suspension of his license, the Board, in its discretion, may require that Mr. Fusco personally appear before the Board, or a panel of the Board, for the purpose of determining whether the suspension of his license shall be terminated. . .

(Attachment A: Board's Final Decision and Order, p. 17.)

On December 7, 2007, Mr. Fusco submitted to the Board a petition to lift and terminate the suspension of his license imposed in the Board's March 14, 2007 Final Decision and Order along with supporting documents. On December 18, 2007, the Board informed Mr. Fusco in writing of additional documentary information it needed from him before it could further consider and make a decision on his petition and, that after receiving the additional requested information, the Board would schedule a date and time for Mr. Fusco to personally appear before the Board as provided for in the Board's Order.

On January 10, 2008, Mr. Fusco submitted additional documentary information in response to the Board's request. The Board also requested a response from the State regarding Mr. Fusco's petition and an Administrative Prosecutor submitted a written response to the Board on February 14, 2008. On April 9, 2008, Mr. Fusco, and the Administrative Prosecutor, appeared before the full Board and gave oral presentations to the Board and answered Board member questions.

The full Board has considered all the written materials submitted by Mr. Fusco in support of his petition and the Administrative Prosecutor's response to his petition, Mr. Fusco's and the Administrative Prosecutor's oral arguments and responses to questions from Board members during their personal appearance before the Board on April 9,

2008, and the history of this case. This Final Decision and Order on Petition for Termination of Suspended License constitutes the Board's final decision on Mr. Fusco's petition to terminate the suspension of his license.

II. PRIOR DISCIPLINARY HISTORY WITH THE BOARD

A. 2002-2005: Nonpublic Disposition Agreement for Admitted Drug Addiction

In January 2002, while Mr. Fusco was the nursing home administrator of Lorien Nursing and Rehabilitation Center in Baltimore, Maryland ("Lorien Nursing Home"), the Assistant Administrator was asked to research the date that the facility received a certain letter. In an effort to find that letter, the Assistant Administrator went into Mr. Fusco's office to retrieve that letter's envelope from the trash can. While inspecting the letter's envelope, the Assistant Administrator noted papers in an inter-office brown envelope that were controlled dangerous substance log sheets that had been torn in half. The log sheets listed the prescription drugs that were controlled dangerous substances, *i.e.* Roxicodone, Oxycodone, and Roxicet.

When confronted with the torn log sheets by a Lorien Nursing Home management team, Mr. Fusco admitted to the team that he took the drugs listed on the log sheets for his own personal use. Also on that day, Mr. Fusco signed a written statement admitting "to using opiates since the summer of 2001" and agreeing to take an immediate leave of absence to seek therapeutic drug intervention and rehabilitation voluntarily. Mr. Fusco never returned to work at Lorien and was given the opportunity to resign. Mr. Fusco resigned as the Administrator at Lorien, effective February 8, 2002. In a written report submitted to the Federal Drug Enforcement Administration, Lorien

Nursing Home reported Mr. Fusco's taking of patient-resident controlled drugs as a theft and loss of controlled substances.

Before his resignation, Lorien Nursing Home told Mr. Fusco that they would report him to the Board if he did not self-report himself to the Board. On January 11, 2002, Mr. Fusco self-reported to the Board that he had become addicted to prescription narcotics, including Percocet and Oxycontin. The Board agreed to allow Mr. Fusco to enter into a non-public Disposition Agreement in lieu of further investigation and possible disciplinary action. The Disposition Agreement provided that if Mr. Fusco complied with the terms of the Disposition Agreement for three years, he could petition the Board for termination of the Agreement. The Board received no evidence during the three-year period from 2002-2005 of Mr. Fusco's noncompliance with any of the terms and conditions of the Disposition Agreement. The Board terminated the Disposition Agreement and released Mr. Fusco from the Disposition Agreement, effective March 27, 2005.

B. 2006: Summary Suspension of License

In February 2006, approximately one-year after the Board terminated the Disposition Agreement with Mr. Fusco, the Board received an anonymous letter of complaint about Mr. Fusco, who was then working as the Nursing Home Administrator at Franklin Square Nursing Home.² The letter was signed by a "Concerned Son" whose mother had been a resident at Franklin Square Nursing Home for over a year. The complainant alleged Mr. Fusco's behavior had been "very strange" during the past

² On March 10, 2006, Mr. Fusco resigned as the Administrator of Franklin Square and began as the nursing home administrator at Ravenwood Nursing and Rehabilitation Center in Baltimore, Maryland. Mr. Fusco remained at Ravenwood until June 14, 2006, when the Board summarily suspended his license.

several months. The complainant further alleged that on one occasion Mr. Fusco "seemed to be in a fog and was slurring his speech" in his office and that he had seen Mr. Fusco "walking through the hallways, and practically bouncing off the walls."

After receiving this letter, the Board began an investigation of Mr. Fusco, which included an interview under oath with Mr. Fusco. During that interview on April 26, 2006, Mr. Fusco was asked twice and denied twice to the Board's investigator that he was using drugs; and he also denied that he had a current drug dependency problem. During that interview, however, and again at the hearing, Mr. Fusco admitted that he personally disposed of narcotic drugs while he was the Nursing Home Administrator at Franklin Square Nursing Home for about two months during April and May 2003. He further admitted during the interview, and again at the hearing, that at no time while he was disposing of those drugs, did he complete, sign, and file the "Controlled Dangerous Substance Disposition" form (Form # AS-MDCS103) with the State of Maryland, Division of Drug Control within 10 days of the destruction as required by state law, specifically, COMAR 10.19.03.10D. Mr. Fusco stopped personally destroying drugs himself only after the Director of Quality Assurance at Franklin Square confronted him and told him it did not look good for him to be personally destroying drugs in light of his drug and alcohol addiction and his history of previously taking drugs at Lorien for his personal use. Mr. Fusco's signature does not appear on any of the Controlled Dangerous Substance Disposition forms dated 2004-2006 that the Board obtained from Franklin Square. Franklin Square provided no forms that were dated in 2003 when Mr. Fusco said he was personally disposing of drugs himself.

Also during the April 26, interview with the Board's investigator, the investigator asked Mr. Fusco to voluntarily submit to a urine drug test. Mr. Fusco agreed to this. A urine specimen was collected from Mr. Fusco that same day, Wednesday, April 26, 2006 at 3:16 p.m. The result of that test was positive for cocaine. The Board investigator then asked Mr. Fusco, and he agreed, to undergo a second test on a hair sample at a different laboratory. The hair sample was collected from Mr. Fusco two weeks later, on Thursday, May 11, 2006 at 9:30 a.m. The hair sample also tested positive for cocaine. Four days later, on May 15, 2006, Mr. Fusco's attorney sent an email to the Board's investigator in which his attorney stated that "Mr. Fusco acknowledges that he had a reoccurrence of this dependency problem"

On June 14, 2006 the Board issued a public Order for Summary Suspension, which summarily suspended Mr. Fusco's license to practice nursing home administration in the State of Maryland under Md. State Gov't Code Ann. § 10-226(c)(2) (2004 Repl. Vol.). The Board summarily suspended Mr. Fusco's license because the Board believed that the public health, safety or welfare imperatively required emergency action because of Mr. Fusco tested positive for cocaine in April and May 2006 and admitted his recent relapse of drug addiction and dependency problems. A post-deprivation Show Cause Hearing was held before the Board on July 12, 2006. After that Show Cause Hearing, the Board affirmed and continued its June 14, 2006 Order for Summary Suspension. Mr. Fusco requested a full evidentiary hearing, which was held before the Board on August 17, 2006. The Board issued a Final Decision and Order on September 22, 2006, affirming the June 14, 2006 summary suspension of Mr. Fusco's license and ordering that Mr. Fusco's license remain suspended until at least January 1,

2008 and until he demonstrates to the satisfaction of the Board successful rehabilitation and long-term recovery from his alcohol and drug dependency and addiction.³

C. Formal Disciplinary Charges and March 14, 2007 Final Decision and Order

In addition to the summary suspension proceedings against Mr. Fusco, the Board issued disciplinary charges against Mr. Fusco on September 13, 2006. In those charges, the Board alleged multiple violations of the Nursing Home Administrator's Licensing Act (the Board's governing Practice Act), and of its regulations. Those disciplinary charges proceeded to an evidentiary hearing before the full Board on January 10, 2007. The Board issued a Final Decision and Order on March 14, 2007, in which it concluded that Mr. Fusco provided professional services while using narcotics or controlled dangerous substances, willfully failed to file or record a report as required under law, willfully impeded or obstructed the filing or recording of a legally-required report, induced another to fail to file or record a legally-required report; and in general committed an act of unprofessional conduct in the practice of nursing home administration and failed to meet substantially the standards of practice adopted by the Board by regulation in violation of Md. Code Ann., Health Occupations Article ("HO") §§ 9-314(b)(3), 9-314(b)(5)(ii), 9-314(9), 9-314(11).

In that Order, the Board found that Mr. Fusco participated in the Partners in Recovery Program until November 17, 2006 and during his participation in that Program, he submitted to only eight random urine drug screens, which were all on Tuesday, Wednesday, and Thursday as follows: (1) Thursday, July 20, 2006, (2)

³ Mr. Fusco filed a petition for judicial review of the Board's September 22, 2006 Final Decision and Order in the Circuit Court for Baltimore City and that Court affirmed the Board's Final Decision and Order on March 26, 2007. Mr. Fusco did not appeal the Circuit Court's Order to the Court of Special Appeals.

Wednesday, July 26, 2006, (3) Thursday, August 10, 2006, (4) Thursday, August 31, 2006; (5) Tuesday, September 5, 2006; (6) Tuesday, September 19, 2006, (7) Thursday, October 5, 2006, and (8) Thursday, October 19, 2006. The Board further found that Mr. Fusco had not undergone a drug screening test since October 19, 2006. Thus, for the three-month period preceding the January 10, 2007 hearing on the disciplinary charges, *i.e.* from October 19, 2006 until January 10, 2007 which included the holiday period, Mr. Fusco had not undergone a drug screening test. The Board also found that the Mr. Fusco had not participated in any type of inpatient or outpatient rehabilitation or recovery program, nor had he been under the care of any individual health care provider that could monitor him by ordering and performing random drug tests. (A copy of the Board's March 14, 2007 Final Decision and Order is attached as Attachment A. For all of the Board's findings and conclusions, see pages 10-17.)

As a sanction, the Board suspended Mr. Fusco's license until at least January 1, 2008 and allowed him to submit a written petition to the Board requesting termination of the suspension, but placed the burden on Mr. Fusco to submit adequate documentation that demonstrates to the satisfaction of the Board successful rehabilitation and long-term recovery from his alcohol and drug dependency and addiction and evidence of a long, continuous period of sobriety and abstinence from alcohol and drugs.

III. MR. FUSCO'S CURRENT PETITION FOR TERMINATION OF SUSPENSION

On December 7, 2007, Mr. Fusco submitted a petition letter requesting that the suspension of his license be lifted and terminated. In support, Mr. Fusco submitted the following documentation:

- (1) Reports of 8 negative drug/alcohol tests performed on September 27, 2007 (Thursday); October 24, 2007 (Wednesday); November 2, 2007

(Friday); November 23, 2007 (Thursday); December 12, 2007 (Wednesday); December 26, 2007 (Wednesday); February 27, 2008 (Wednesday); and March 28, 2008 (Friday).

- (2) Reports of 8 negative drug/alcohol test results that were performed in 2006, specifically on July 21, July 27, August 11, September 1, September 6, September 21, October 10, and October 23, 2006. [Note: All of these test results occurred had been previously considered by the Board as evidence at the January 10, 2007 evidentiary hearing prior to the Board's decision to suspend his license on March 14, 2007). (See Attachment A: Board's Final Decision and Order, page 5.)]
- (3) A December 3, 2007, letter of support from David L. Jahn, PhD, a clinical psychologist, who Mr. Fusco has seen on a regular basis.
- (4) Four letters of support: Letters, dated December 6, 7, and 8, from fellow participants in Alcohol Anonymous meetings and a December 7, 2007, letter of support from a fellow participant in the Partners in Recovery intensive outpatient program at Sheppard Pratt.
- (5) December 6, 2007 letter from Carolyn Finch CSC-AD, Sheppard Pratt Partners in Recovery Program, to Howard White, Executive Director of the Board, stating that Mr. Fusco completed the Intensive Outpatient Program on October 20, 2006.
- (6) Partners in Recovery Intensive Outpatient Program, Certificate of Completion, dated September 7, 2006.
- (7) Partners in Recovery Relapse Prevention Intensive Outpatient Program, dated November 17, 2006.
- (8) Written Responses to the following questions that the Board asked Mr. Fusco to answer:
 - a.) What is your understanding of the nature and circumstances of your conduct that resulted in the Board's issuance of disciplinary charges against you and a public disciplinary order suspending your license?
 - b.) What is your understanding of the Board's concerns with respect to the conduct that resulted in the Board's disciplinary action against you and the suspension of your license?
 - c.) Have you accepted responsibility for the actions resulting in the suspension of your license? What action and plans have you taken to lessen the likelihood of recurrence of the misconduct that led to the suspension of your license?

d.) What are your plans for returning to the practice of nursing home administration in the State of Maryland, and what are the circumstances of any planned or proposed future practice setting?

e.) What efforts have you made to maintain your competency to practice as a nursing home administrator (e.g. continuing education credits)?

f.) Have you undergone alcohol/drug testing since November 23, 2007 (the date of the latest drug test results submitted with your December 7, 2007 letter)? If yes, please attach copies of any and all written reports of drug/alcohol tests performed after November 23, 2007 to date. If no, please explain your reasons for not undergoing any alcohol/drug tests after November 23, 2007.

g.) Beginning with the March 14, 2007, the date of the Board's Final Decision and Order, and continuing to the present, list chronologically by month your activities, including, but not limited to, the names and addresses of any and all places of employment, a description of each job you have held (regardless of whether it was related to nursing home administration), a description of any volunteer activities, the names and addresses of any inpatient and outpatient health care providers or health care institutions from, or at, which you have received inpatient and/or outpatient treatment, counseling, and/or drug testing.

- (9) Certificates of Completion for 40 hours of continuing education credits during the period March 14 –December 3, 2007.
- (10) January 4, 2008 letter from Michael Smith, Rock Glen Healthcare, Inc., offering Mr. Fusco a consultant position as Director of Ancillary Services.

At the Board's request, the Administrative Prosecutor submitted written comment on Mr. Fusco's petition on behalf of the State. Both Mr. Fusco and the Administrative Prosecutor personally appeared before the Board on April 9, 2008, and made oral presentations to the Board and answered Board member questions.

IV. CONSIDERATION OF MR. FUSCO'S PETITION

The Board suspended Mr. Fusco's license in its March 14, 2007 Final Decision and Order. In that suspension order, the Board required that:

Mr. Fusco must submit, along with the petition, documentary evidence that demonstrates to the satisfaction of the Board successful rehabilitation and long-term recovery from his alcohol and drug dependency and addiction, which shall include evidence of a long, continuous period of sobriety and abstinence from alcohol, Controlled Dangerous Substances ("CDS"), narcotics, cocaine, alcohol, or other mood-altering substances during the entire period of suspension. . . .

(Attachment A: Final Decision and Order, page 17.)

The Board recognizes that Mr. Fusco did undergo 8 drug/alcohol screening tests that had negative results after the suspension of his license on March 14, 2007;⁴ however, it was not until 6½ months after the suspension of his license, on September 27, 2007, that he underwent the first of those 8 drug tests. Thereafter, Mr. Fusco underwent a second test about one month later on October 24, 2007; a third test nine days later on November 2, 2007; a fourth test three weeks later on November 23, 2007; a fifth test about three weeks later on December 12, 2007; a sixth test two weeks later on December 26, 2007, a seventh test one month later on February 27, 2008; and a eighth test one month later on March 28, 2008. Mr. Fusco was tested twice per month during the months of November and December 2007, and once per month during the months of September and October 2007 and February and March 2008. The Board

⁴ The Board also notes that Mr. Fusco had not been tested for drugs or alcohol for five months prior to the Board's March 14, 2007 suspension order. Prior to March 14, 2007, Mr. Fusco was last tested on October 19, 2006. Therefore, Mr. Fusco was not tested for drugs or alcohol for a total of eleven consecutive months, from October 19, 2006 until September 27, 2007.

notes that all of these 8 tests were on weekdays, specifically, 4 tests on Wednesdays, 2 tests on Thursdays, and 2 tests on Fridays.

Mr. Fusco has provided evidence of a sporadic, infrequent, and interrupted drug testing schedule. There was no testing at all during the 6 1/2 month-period immediately following the Board's suspension order, from March 14, 2007 until September 27, 2007. Furthermore, none of the tests were performed on Saturdays or Sundays. Based on the evidence that Mr. Fusco has presented, the Board cannot know whether Mr. Fusco has remained continuously drug and alcohol free since the Board suspended his license on March 14, 2007. Unfortunately, Mr. Fusco has not satisfied the clear and express mandate of the Board's suspension order to submit documentary evidence of "a long, continuous period of complete abstinence from alcohol, drugs, and mood-altering substances" and evidence that "a successful rehabilitation and long-term recovery has occurred." Such evidence was a threshold requirement to the lifting of the suspension of his license that Mr. Fusco has not satisfied.

The Board also continues to have serious concerns about Mr. Fusco's continuing pattern of dishonesty with the Board. In April 2006, Mr. Fusco lied twice under oath during the course of interviews with the Board's investigator by denying that he was currently using drugs in the face of two drug test results that were positive for cocaine. In his January 2008 written responses to the Board's questions, Mr. Fusco acknowledged that he had been "dishonest" with the Board's investigator and was in "denial" about his relapse into drug addiction:

I relapsed and was using. My previous history at Lorien in 2002, the anonymous letter received by the Board while at Franklin Square, my denial of relapse, and the fact that I was dishonest with the Board's investigator, and did not self-report to the

Board I believe were contributing factors that resulted in the Board's issuance of the disciplinary charges and suspension of my license.

I relapsed and didn't seek immediate help. The fact that I had a history of addiction going back to 2001, my self-denial, the fact that I was dishonest with the investigator and the Board, my failure to report to the Board that I had relapsed certainly gave credence for Board's concerns with respect to my conduct and future conduct thus resulting in disciplinary action and the suspension of my license. I understand fully that the Board acted in order to ensure that the public health, safety or welfare was not at risk.

Despite acknowledging and admitting to the Board his past dishonesty and denial, and despite being told by the Board in the March 14, 2007 suspension order that the Board found that he "had not been forthcoming and honest with the Board about his drug addiction and most recent relapse" (Attachment A: Board's Final Decision and Order, p. 15.), Mr. Fusco's troublesome pattern of dishonesty with the Board continues. For example, in his December 7, 2007 letter petitioning the Board for the termination of the suspension of his license, Mr. Fusco wrote that one of the consequences of the suspension of his license had been the "loss of my home." During Mr. Fusco's personal appearance before the Board on April 9, 2008 when a Board member questioned Mr. Fusco about the "loss of his home," Mr. Fusco admitted that his prior statement to the Board in that December 7 letter was untrue, and he had neither lost his home nor had foreclosure proceedings been initiated against him or his home. Mr. Fusco's continuing inability or unwillingness to be completely truthful and honest with the Board is extremely worrisome because acceptable standards of practice for a nursing home administrator include honesty and integrity.

For the foregoing reasons, the Board concludes that Mr. Fusco has failed to comply with the mandate of the Board's March 14, 2007 suspension order to demonstrate to the satisfaction of the Board successful rehabilitation and long-term recovery by providing

evidence to the Board of "a long, continuous period of sobriety and abstinence during the entire period of the suspension. " (Attachment A—p.17.) The Board continues to believe that the public interest outweighs Mr. Fusco's interest in practicing as a licensed nursing home administrator until a long, continuous period of complete abstinence from alcohol, drugs, and mood-altering substances and a successful rehabilitation and long-term recovery has occurred and is demonstrated to the Board.

ORDER

It is hereby:

ORDERED that the license of Richard F. Fusco, NHA, License No. R0858 remain **SUSPENDED** for a minimum of **TWO YEARS** from the date of this Final Decision and Order on Petition for Termination of Suspended License; and it is further

ORDERED that Mr. Fusco may submit a written petition to the Board requesting that the suspension of his license be terminated, however Mr. Fusco must submit, along with the petition, documentary evidence that demonstrates to the satisfaction of the Board successful rehabilitation and long-term recovery from his alcohol and drug dependency and addiction, which shall include evidence of a long, continuous period of sobriety and abstinence from alcohol, Controlled Dangerous Substances ("CDS"), narcotics, cocaine, and other mood-altering substances during the entire period of suspension; and it is further

ORDERED that the Board will not consider or issue a decision on any written petition that Mr. Fusco submits to the Board unless that petition is accompanied by documentary proof that Mr. Fusco has undergone screening tests for alcohol, Controlled Dangerous Substances ("CDS"), narcotics, cocaine, and other mood-altering

substances at random periods, which shall include random (7-day a week) urine or serum toxicology monitoring tests at least 4 times per month, and a hair sample test at least 1 time per year during the entire period of suspension (*i.e.* beginning on the date of this Order and continuing until the date Mr. Fusco submits a written petition to the Board); and it is further

ORDERED that the documentary proof required in the preceding paragraph shall include, at a minimum: (1) the names, addresses, and phone numbers of any persons, companies, programs, health care providers, and/or laboratories that participated in the testing of Mr. Fusco for the presence of alcohol and drugs and the issuance of reports of any of the screening tests and hair sample tests that Mr. Fusco underwent during the entire period of suspension; (2) copies of laboratory reports showing the results of any and all drug/alcohol screening tests and hair sample tests that Mr. Fusco underwent during the entire period of suspension, regardless of whether the results of those tests were positive or negative, but in no event shall the number of laboratory reports that Mr. Fusco submits with his petition be less than 4 reports per month of random (7-day a week) urine screening tests and 1 report per year of a hair sample test; and be it further

ORDERED that after Mr. Fusco submits to the Board a written petition to terminate the suspension of his license, he shall immediately sign, *i.e.* within five working days after receiving a request from the Board to do so, any written releases necessary to authorize the Board to receive information, records, documents, and/or laboratory reports, directly from any individuals, health care providers, programs, companies, and/or laboratories who participated in the testing and screening of Mr.

Fusco for the presence of alcohol and drugs during the period of suspension and the issuance of reports of the results of those tests; and it is further

ORDERED that if the Board requests that Mr. Fusco submit signed written releases in accordance with the preceding paragraph and he fails to do so within 5 working days of the Board's request, Mr. Fusco's petition will not receive any further consideration by the Board; and

ORDERED that before making a decision on Mr. Fusco's petition for termination of the suspension of his license, the Board, in its discretion, may require that Mr. Fusco personally appear before the full Board, or a panel of the Board, for the purpose of determining whether the suspension of his license shall be terminated; and it is further

ORDERED that regardless of when Mr. Fusco submits a written petition to the Board requesting that the suspension of his license be terminated, the Board will not consider that petition any earlier than two years from the date of this Order nor shall the suspension of his license be terminated any earlier than two years from the date of this Order; and it is further

ORDERED that Mr. Fusco shall be responsible for all costs required to comply with this Final Decision and Order on Petition for Termination of Suspended License; and it is further

ORDERED that this Final Decision and Order on Petition for Termination of Suspended License is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., State Gov't

§ 10-611 *et seq.* (2004 Repl. Vol.)

6/11/2018
Date



Paul E. Joyce, Chair, State Board of Examiners
of Nursing Home Administrators

IN THE MATTER OF * BEFORE THE STATE BOARD
 RICHARD F. FUSCO, N.H.A. * OF EXAMINERS OF NURSING
 License No. R0858 * HOME ADMINISTRATORS
 Respondent. *

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FINAL DECISION AND ORDER

I. INTRODUCTION

After conducting an investigation, on September 13, 2006, the State Board of Examiners of Nursing Home Administrators (the "Board"), charged Richard F. Fusco, N.H.A., License Number R0848, under the Maryland Nursing Home Administrators Licensing Act (the "Act"), Md. Health Occ. Code Ann., § 9-101 *et. seq.* (2005 Repl. Vol.). Specifically, the Board charged Mr. Fusco with violating the following provisions of the Act:

- (b) 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, or suspend or revoke a license or limited license if the applicant, holder, or licensee:
 - (3) Otherwise fails to meet substantially the standards of practice adopted by the Board under § 9-205 of this title;
 - (5) Provides professional services while:
 - (ii) Using any narcotic or controlled dangerous substance, as defined in § 5-101 of the Criminal Law Article, or other drug that is in excess of therapeutic amounts or without valid medical indication;
 - (9) Willfully fails to file or record any report as required under law, willfully impedes or obstructs the filing or recording of the report, or induces another to fail to file or record the report; and
 - (11) Commits an act of unprofessional conduct in the licensee's practice as a nursing home administrator.

Md. Health Occ. Code Ann. §§ 9-314(b) (3), (5), (9) & (11). The Board also charged Mr. Fusco with violating the following provisions of Code of Maryland Regulations (COMAR), title

10, § 33.01.15:

.15 Suspension and Revocation of Licenses.

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

A hearing on the merits of the Board's charges was held before the Board on January 10, 2007. The Board issues this Final Decision and Order after considering the entire record in this case, including all of the testimony and exhibits admitted before the Board at the January 10, 2007 evidentiary hearing.

II. PREVIOUS SUMMARY SUSPENSION OF LICENSE

On June 14, 2006, the Board issued a public Order for Summary Suspension, which summarily suspended Mr. Fusco's license to practice nursing home administration in the State of Maryland under Md. State Gov't Code Ann. § 10-226(c)(2) (2004 Repl. Vol.). The Board summarily suspended Mr. Fusco's license because the Board believed that the public health, safety or welfare imperatively required emergency action because of Mr. Fusco's admitted recent relapse of drug addition and dependency problems and because Mr. Fusco tested positive for cocaine in April and May 2006.

A post-deprivation Show Cause Hearing was held before the Board on July 12, 2006. After that Show Cause Hearing, the Board affirmed and continued its June 14, 2006 Order for

Summary Suspension. Mr. Fusco requested a full evidentiary hearing, which was held before the Board on August 17, 2006. The Board issued a Final Decision and Order on September 22, 2006, affirming the June 14, 2006 summary suspension of Mr. Fusco's license and ordering that Mr. Fusco's license remain suspended until at least January 1, 2008 and until he demonstrates to the satisfaction of the Board successful rehabilitation and long-term recovery from his alcohol and drug dependency and addiction.

III. EVIDENCE ADMITTED AT THE JANUARY 10, 2007 EVIDENTIARY HEARING

A. Exhibits

The State submitted the following exhibits, which were admitted into evidence:

State's Exhibit 1: Computer Printout of Mr. Fusco's Licensure Information dated May 30, 2006

State's Exhibit 2: February 24, 2006 Anonymous Letter of Complaint sent to the Board of Examiners of Nursing Home Administrators regarding Mr. Fusco's behavior as an Administrator at Franklin Square Health and Rehabilitation Center in Baltimore, Maryland.

State's Exhibit 3:

- A: Mr. Fusco's Personnel File from Lorien Nursing & Rehabilitation Center, Baltimore, Maryland (2000-2002).
- B: March 27, 2002 Nonpublic Disposition Agreement.
- C: April 13, 2005 Letter from Board to Mr. Fusco

State's Exhibit 4:

- A: Transcript of April 13, 2006 Interview with Keith Minton, NHA
- B: Transcript of May 17, 2006 Interview with Barbara Content, RN
- C: Transcript of April 26, 2006 Interview with Richard Fusco, NHA

State's Exhibit 5: Mr. Fusco's Personnel File from Franklin Square Health & Rehabilitation Center (2003-2006).

State's Exhibit 6:

- A: April 26, 2006 LabCorp Drug Screen Report (Urine).
- B: May 11, 2006 Quest Diagnostics Drug Screen Report (Hair).
- C: May 15, 2006 Email from Stephen Kaufman, Mr. Fusco's Attorney to Board investigator.

State's Exhibit 7

- A: COMAR 10.19.03.10D –Drug Disposal Regulation.

- B: Maryland Division of Drug Control "Controlled Dangerous Substances Disposition" forms – Franklin Square Health & Rehabilitation Center (January 2004 –January 2006).
- C: June 8, 2006 Letter from Attorney Constance H. Baker to Ernest W. Bures, Board Investigator.

State's Exhibit 8: June 14, 2006 Investigative Report, prepared by Ernest W. Bures, Board Investigator.

State's Exhibit 9:

- 9A: June 14, 2006 Letter from Board to Mr. Fusco re: Summary Suspension Order
- 9B: June 14, 2006 Order for Summary Suspension.
- 9C: [withdrawn from evidence by State at January 10, 2007 Hearing.]
- 9D: June 15, 2006 Letter from Mr. Kaufman, Mr. Fusco's attorney, to Board requesting show cause hearing.
- 9E: July 13, 2006 Letter from Board to Mr. Kaufman continuing summary suspension.
- 9F: July 18, 2006 Letter from Mr. Kaufman to Board requesting full evidentiary hearing.
- 9G: July 25, 2006 Letter from Board to Mr. Kaufman granting and scheduling evidentiary hearing for August 17, 2006.

State's Exhibit 10:

- 10A: Transcript of July 12, 2006 Summary Suspension Post- Deprivation Show Cause Hearing.
- 10B: Transcript of August 17, 2006 Summary Suspension Evidentiary Hearing. [Submitted as Joint Exhibit by State and the Respondent.]

State's Exhibit 11: September 22, 2006 Final Decision and Order of the Board.

State's Exhibit 12:

- 12A: September 13, 2006 Letter of Procedure from Board to Mr. Fusco Regarding Disciplinary Charges Under the Maryland Nursing Home Administrators Licensing Act.
- 12B: Charges Under the Maryland Nursing Home Administrators Licensing Act.
- 12C: Summons and Notice of January 10, 2007 Evidentiary Hearing.

Mr. Fusco, the Respondent, submitted the following documents, which were admitted into evidence:

Respondent's Exhibit 1: April 13, 2005 Letter from Timothy A. Johnson, Chairman, Rehabilitation Committee to Mr. Fusco.

Respondent's Exhibit 2: List of Addiction Meetings attended by Mr. Fusco, April 29, 2006 thru June 14, 2006.

- Respondent's Exhibit 3: July 10, 2006 Letter from Michelle R. Watson to Mr. Kaufman re: Mr. Fusco.
- Respondent's Exhibit 4: Reports of Urine Toxicology Screens, dated July 21, August 9, and August 11, 2006.
- Respondent's Exhibit 5: July 10, 2006 and August 12, 2006 Letters from Dr. Jahn, Ph.D to Mr. Kaufman re: Mr. Fusco.
- Respondent's Exhibit 6: Affidavits dated July 10, 2006 of: (1) Michael Smith; (2) Asia Malik; (3) Barbara Content; (4) Sandra Sewell; and (5) Wanita Stokes. Affidavits dated July 11, 2006 of: (1) Ada Igho; (2) Lawanda Lawrence; and (3) Christina Koromah.
- Respondent's Exhibit 7: (1) January 4, 2007 Letter from David L. Jahn, Ph.D. to Mr. Kaufman; (2) Reports of Urine Toxicology Screens dated 10/23/06, 10/10/06, 9/21/06, 9/06/06, 9/01/06, 8/11/06, 8/09/06, 7/21/06; (3) Letter from Michelle R. Watson, CSC-AD, Partners in Recovery, to Mr. Kaufman; and (4) Mr. Fusco's Certificate of Completion of Partners in Recovery Relapse Prevention and Intensive Outpatient Program, dated November 17, 2006.

B. Testimony

The following witnesses testified on behalf of the State:

1. Barbara Content, R.N.
2. Ernest W. Bures, Board Investigator

The following witnesses testified on behalf of the Respondent, Mr. Fusco:

1. Paulette Hargrave, Nursing Unit Manager at Franklin Square Nursing and Rehabilitation Center
2. Richard F. Fusco, NHA, the Respondent

IV. FINDINGS OF FACT

A. 2002-2005: Lorien Nursing Home & Disposition Agreement

In 2002, Mr. Fusco entered into a non-public Disposition Agreement with the Board in lieu of the Board's further investigation of Mr. Fusco's drug addiction. In January 2002, while Mr. Fusco was the nursing home administrator of Lorien Nursing and Rehabilitation Center in Baltimore, Maryland ("Lorien Nursing Home"), the Assistant Administrator was asked to

research the date that the facility received a certain letter. In an effort to find that letter, the Assistant Administrator went into Mr. Fusco's office to retrieve that letter's envelope from the trashcan. While inspecting the letter's envelope, he noted papers in an inter-office brown envelope that were controlled dangerous substance log sheets that had been torn in half. The log sheets listed the following prescription drugs that were intended for patient/residents that had been discharged:

#C3527792	Roxicodone	5 mg/ml	120 ml
#C4159236	Oxycodone	5 mg/ml	120 ml
#C4162948	Roxicet	5/325	25 tabs

On January 7, 2002, a Lorien Nursing Home management team confronted Mr. Fusco with the torn log sheets. Mr. Fusco admitted to the team that he took the drugs listed on the log sheets for his own personal use. Also on that day, Mr. Fusco signed a written statement admitting "to using opiates since the summer of 2001" and agreeing to take an immediate leave of absence for the time determined by Lorien to seek therapeutic drug intervention and rehabilitation voluntarily. Mr. Fusco never returned to work at Lorien and was given the opportunity to resign. Mr. Fusco resigned as the Administrator at Lorien, effective February 8, 2002. In a written report submitted to the Federal Drug Enforcement Administration, Lorien reported Mr. Fusco's taking of patient-resident controlled drugs as a theft and loss of controlled substances.

Before his resignation, Lorien Nursing Home agreed to honor Mr. Fusco's request that he be allowed to self-report to the Board rather than being reported to the Board by Lorien. On January 11, 2002, Mr. Fusco self-reported to the Board that he had become addicted to prescription narcotics, including Percocet and Oxycontin. The Board agreed to allow Mr. Fusco to enter into a non-public Disposition Agreement in lieu of further investigation and

possible disciplinary action by the Board.

Under the terms of the Disposition Agreement, Mr. Fusco was required to: (1) completely abstain from the use of alcohol and other mood altering drugs, except those prescribed to him by a physician; (2) be monitored by the Board through a random urine screening program; (3) continue weekly participation in Alcoholics Anonymous and/or Narcotics Anonymous, attending a minimum of two meetings per week; and (3) be monitored by an individual in an employee assistance program at Mr. Fusco's place of employment. The Disposition Agreement further provided that if Mr. Fusco provided a urine specimen that tested positive, or failed to provide a specimen when requested, then the Board had the authority to summarily suspend Mr. Fusco's license. The Disposition Agreement provided that if Mr. Fusco complied with the terms of the Disposition Agreement for three years, he could petition the Board for termination of the Agreement. The Board received no evidence during the three-year period from 2002-2005 of Mr. Fusco's noncompliance with any of the terms and conditions of the Disposition Agreement. The Board terminated the Disposition Agreement and released Mr. Fusco from the Disposition Agreement, effective March 27, 2005.

B. 2003-2006: Franklin Square Nursing Home

In March 2003, Mr. Fusco began working as the Nursing Home Administrator at Franklin Square Nursing and Rehabilitation Center ("Franklin Square Nursing Home") in Baltimore, Maryland. Franklin Square Nursing Home is not a typical nursing home that serves a predominantly elderly geriatric population. While there are some geriatric residents over 65, Franklin Square serves a predominantly younger, more difficult population with an average age of 55. The younger population at Franklin Square Nursing Home includes people who have a lifelong history of alcohol, drug addiction, and mental illness, are homeless, are current

IV drug users, are under 65 but have been disabled for more than two years; and are HIV positive (AIDS). As the Administrator, Mr. Fusco was responsible for what happened or did not happen at Franklin Square Nursing Home 24 hours a day, 7 days a week, 365 days a year. Mr. Fusco testified that his position as Administrator required him to work on weekends and nights as well as during normal business hours, Monday through Friday. For instance, he testified that he went into work many weekends and also at unscheduled times during all three shifts. He also testified that, unlike the typical over-65 geriatric population, Franklin Square residents were often up late at night playing music and watching television and that some residents would leave the building to buy or sell drugs and return to Franklin Square with drugs and weapons and that he would have to go in and "make rounds in the building and check what was going on." It was not uncommon for Mr. Fusco to receive calls at home at any time of the day or night to handle these types of resident problems and dangers as well as calls for other types of emergencies, such as resident-to-resident abuse, fights, and a fire alarm.

C. 2006-2007: Investigation, Disciplinary Charges and Evidentiary Hearing

The Board received an anonymous complaint about Mr. Fusco in the form of a letter dated February 24, 2006.¹ The letter was signed by a "Concerned Son" whose mother had been a resident at Franklin Square Nursing Home for over a year. The complainant alleged that he had noticed Mr. Fusco's behavior as being "very strange" during the past several months. The complainant further alleged that on one occasion Mr. Fusco "seemed to be in a fog and was slurring his speech" in his office and that he had seen Mr. Fusco "walking through the hallways, and practically bouncing off the walls."

¹ On March 10, 2006, Mr. Fusco resigned as the Administrator of Franklin Square and began as the nursing home administrator at Ravenwood Nursing and Rehabilitation Center in Baltimore, Maryland. Ravenwood has the same type of resident population as Franklin Square. Mr. Fusco remained at Ravenwood until June 14, 2006, when the Board summarily suspended his license.

After receiving this letter, the Board began an investigation of Mr. Fusco, which included an interview under oath with Mr. Fusco. During that interview on April 26, 2006, Mr. Fusco was asked twice and denied twice to the Board's investigator that he was using drugs; and he also denied that he had a current drug dependency problem. During that interview, however, and again at the hearing, Mr. Fusco admitted that he personally disposed of narcotic drugs while he was the Nursing Home Administrator at Franklin Square Nursing Home for about two months during April and May 2003. He further admitted during the interview, and again at the hearing, that at no time while he was disposing of those drugs, did he complete, sign, and file the "Controlled Dangerous Substance Disposition" form (Form # AS-MDCS103) with the State of Maryland, Division of Drug Control within 10 days of the destruction as required by state law, specifically, COMAR 10.19.03.10D. Mr. Fusco stopped personally destroying drugs himself only after the Director of Quality Assurance at Franklin Square confronted him and told him it did not look good for him to be personally destroying drugs in light of his drug and alcohol addiction and his history of taking drugs at Lorien for his personal use. In response to a subpoena for Franklin Square's Controlled Dangerous Substance Disposition forms, Franklin Square provided only copies of forms dated 2004 -2006. Mr. Fusco's signature does not appear on any of these forms. Franklin Square provided no forms that were dated in 2003 when Mr. Fusco said he was personally disposing of drugs himself.

During the April 26, 2006 interview with the Board's investigator, the investigator asked Mr. Fusco to voluntarily submit to a urine drug test. Mr. Fusco agreed to this. A urine specimen was collected from Mr. Fusco that same day, Wednesday, April 26, 2006 at 3:16 p.m. The result of that test was positive for cocaine. The Board investigator then asked Mr. Fusco, and he agreed, to undergo a second test on a hair sample at a different laboratory. The hair sample was collected from Mr. Fusco two weeks later, on Thursday, May 11, 2006 at

9:30 a.m. The hair sample also tested positive for cocaine. Four days later, on May 15, 2006, Mr. Fusco's attorney sent an email to the Board's investigator in which his attorney stated, "Mr. Fusco acknowledges that he had a reoccurrence of this dependency problem . . ."

The Board's investigation resulted in the Board's issuance of disciplinary charges against Mr. Fusco on September 13, 2006. In those charges, the Board alleged multiple violations of the Board's governing Act, the Nursing Home Administrator's Licensing Act, and of its regulations. The charges proceeded to an evidentiary hearing before the full Board on January 10, 2007.

Mr. Fusco testified that in September 2005, approximately five months after being terminated from the non-public Disposition Agreement with the Board, he stopped taking his antidepressants and slowed down his attendance at AA (Alcoholics Anonymous) and NA (Narcotics Anonymous) meetings. Mr. Fusco attended individual psychotherapy sessions with a clinical psychologist on a regular basis from January 2002 through November 19, 2005.

However, Mr. Fusco stopped seeing his psychotherapist in November 2005 and did not see the psychotherapist again until March 11, 2006. Thereafter, Mr. Fusco had psychotherapy sessions with the same psychotherapist on August 12, 2006, and December 20, 2006.² At the hearing, Mr. Fusco testified that he continuing to see his psychotherapist usually every other week but did not testify as to certain dates.

Since April 29, 2006, Mr. Fusco has regularly attended AA (Alcoholics Anonymous) and NA (Narcotic Anonymous) group meetings at Sheppard Pratt from April 29 to July 7, 2006. Random drug testing is not part of the AA and NA programs or meetings.

On June 29, 2006, Mr. Fusco voluntarily underwent an evaluation at Partners in Recovery at the Addiction Center of Greater Baltimore Medical Center (GBMC) and Sheppard

² In various letters written by Mr. Fusco's psychotherapist, the psychotherapist wrote that Mr. Fusco had appointments scheduled for July 15, 2006, August 19, 2006, and January 13, 2007; however, no evidence was introduced at the hearing confirming whether or not those scheduled appointments actually took place.

Pratt where he was diagnosed with "Alcohol Dependency" and "Cocaine Dependence." Mr. Fusco participated in the Partners in Recovery Intensive Outpatient Treatment Program and completed that program on September 7, 2006. Thereafter, he participated in the Partners in Recovery Relapse Prevention Program until November 17, 2006. While in those programs, he attended intensive outpatient sessions four times per week until November when he reduced his attendance to three times per week. The Partners in Recovery programs included random drug screens. While in the Partners in Recovery programs, Mr. Fusco submitted to a total of eight random urine toxicology screens on the following dates: (1) Thursday, July 20, 2006, (2) Wednesday, July 26, 2006, (3) Thursday, August 10, 2006, (4) Thursday, August 31, 2006; (5) Tuesday, September 5, 2006; (6) Tuesday, September 19, 2006, (7) Thursday, October 5, 2006, and (8) Thursday, October 19, 2006. All of these tests were negative. For the three-month period preceding the Board hearing from October 19, 2006 until January 10, 2007, Mr. Fusco had not undergone a drug test.

Mr. Fusco completed the Partners in Recovery Programs on November 17, 2006. Since November 17, 2006, Mr. Fusco has not participated in any type of group program, such as an inpatient or outpatient rehabilitation or recovery program, nor has he been under the care of any individual health care provider that could monitor him by ordering and performing random drug tests. Mr. Fusco testified that he continues to see his psychotherapist for individual psychotherapy but that his psychotherapist is a clinical psychologist, not a medical doctor, and therefore cannot order drug screen tests for him. The last random urinalysis drug test that Mr. Fusco underwent was on October 19, 2006.

V. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and consideration of the entire record in this case, the Board concludes that Mr. Fusco violated Md. Code Ann., Health Occupations Article

("HO") § 9-314(b)(3) by failing to meet substantially the standards of practice adopted by the Board by regulation; HO § 9-314(b)(5)(ii) by providing professional services while using any narcotic or controlled dangerous substance, as defined in § 5-101 of the Criminal Law Article, or other drug that is in excess of therapeutic amounts without valid medical indication; HO § 9-314(9) by willfully failing to file or record any report as required under law, willfully impeding or obstructing the filing or recording of the report, or inducing another to fail to file or record the report; and HO § 9-314(11) by committing an act of unprofessional conduct in the licensee's practice as a nursing home administrator.

The Board further concludes as a matter of law that Mr. Fusco failed to substantially meet the following standards of practice set forth in its regulations:

1. COMAR 10.33.01.15A(1) by violating provisions of the law pertaining to the licensing of nursing home administrators or the regulations of the Board pertaining to it.
2. COMAR 10.33.01.15A(2) by violating 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.

VI. DISCUSSION

Mr. Fusco has committed multiple violations of the Nursing Home Administrators Licensing Act. As a sanction for those violations of the Act, the Board will suspend Mr. Fusco's license until at least January 1, 2008. The Board's sanction is based on two categories of misconduct: (1) Mr. Fusco's improper disposal of patient/resident narcotic medication at nursing homes and the failure to file the reports of that discarded narcotic medication as required by law; and (2) Mr. Fusco's drug use while practicing as a nursing home administrator. The first category of misconduct reflects unfavorably on Mr. Fusco's honesty and integrity and falls far below acceptable standards of practice for a nursing home administrator. The second category of misconduct seriously endangers the health, safety,

and welfare of the patient/residents in the nursing homes that he manages. The Board finds that each of these two categories of misconduct alone warrants a suspension of licensure.

In early 2002, at Lorien Nursing Home, Mr. Fusco stole inpatient narcotic medication for his own use. He willfully obstructed the filing of the report that Lorien was required by law to file by tearing up the form and discarding it in a trashcan. This incident led to his immediate resignation from Lorien, his being required to self-report his drug addiction to the Board, and his entering into a non-public Disposition Agreement with the Board in March 2002. About a year later, during April and May 2003, while Mr. Fusco was the Nursing Home Administrator at Franklin Square and while he was still under the Board's monitoring program, Mr. Fusco again personally destroyed patient/resident narcotic medication and did not file the required reports of that discarded medication as required by Maryland law. Mr. Fusco testified that he only stopped personally discarding drugs at Franklin Square when confronted by the Director of Quality Assurance. Mr. Fusco's acts of taking narcotic medication for his own use at Lorien and a year later personally disposing of narcotic medication at Franklin Square and failing to file the reports required by law exhibits either a remarkable lack or lapse of sound judgment or a willful disregard for the standards of practice of the profession that the Board granted him a license to practice. Regardless, Mr. Fusco's actions constitute egregious violations of the standards of practice of the profession of nursing home administration and acts of unprofessional conduct in the practice of nursing home administration.

The Board believes that Mr. Fusco's license should be suspended to protect the public. His addiction to and use of drugs while being the chief nursing home administrator at Lorien, Franklin Square, and Ravenwood nursing homes endangered the health, safety, and welfare of the patient/residents and their families. The Board gave Mr. Fusco an opportunity to rehabilitate himself from his drug addiction, under the guidance, supervision, and strict

monitoring of the Board's Nursing Home Administrator Rehabilitation Committee for three years, from March 2002 until March 2005. However, by Mr. Fusco's own admission, only several months after being terminated from the Board's monitoring program, he relapsed in late 2005 on cocaine. Despite being previously monitored by the Board for his drug dependency and addiction problem, Mr. Fusco did not self-report to the Board when he relapsed. Instead, he continued to practice as the nursing home administrator at both Franklin Square until March 2006 and at Ravenwood from March to June 2006 while using cocaine. On April 26, 2006, Mr. Fusco lied twice under oath during the course of the interview with the Board's investigator by denying that he was currently using drugs or that he had a drug dependency problem. It was not until after the Board received the results of two random tests, one performed on a urine sample on Wednesday, April 26, 2006 and the other on a hair sample on Thursday, May 11, 2006, both of which were positive for cocaine, that Mr. Fusco admitted to the Board, through his attorney, that he had relapsed and his drug dependency problem had recurred. When asked why he did not disclose his relapse to the Board, Mr. Fusco answered:

"I was in denial, and fear of what was going to happen [with the Board]"; and
"I couldn't admit to myself. How could I admit to anybody else that I had relapsed."

In addition, when asked why he denied his drug use to the Board's investigator during an interview under oath, Mr. Fusco answered: "I was still in denial" and "I was also justifying it."

Mr. Fusco's denial of his drug addiction and dependency is worrisome. Mr. Fusco testified that as the administrator of a nursing home, he was responsible for whatever occurred or failed to occur there 24 hours a day, 7 days a week, 365 days per year and that he may have to go into the nursing home any time day or night for an emergency. He also testified that he frequently went into the nursing home at times other than regular business

hours. For instance, he testified that he went in to Franklin Square for regular monthly staff meetings with all three shifts and that he would go in around midnight or 6:00- 6:30 a.m. to meet with the night shift. He also testified that he could receive calls at home at any time to come in for an emergency, such as fire or resident violence. Mr. Fusco told the Board that he could determine his own level of impairment and decide if he was too impaired to go in to the nursing home. He stated that he would not go in if he were too impaired. However, Mr. Fusco testified that he was in denial and could not admit his drug problem to himself and that he had "compare[d] himself out," and was "no longer thinking logically." The Board finds this testimony self-contradictory and is not persuaded that Mr. Fusco could, while under the influence of cocaine or some other mood-altering drug that he was in denial about even using, think logically and rationally enough to assess his own level of impairment and make a rational, reasonable decision regarding whether he was too impaired to go in to the nursing home. This was especially so because he was inclined to justify or deny his drug use.

Mr. Fusco has not been forthcoming and honest with the Board about his drug addiction and most recent relapse. The Board also notes a troublesome pattern of behavior on Mr. Fusco's part of not initiating any efforts on his own to stop prohibited professional misconduct until he is caught and confronted, *e.g.* by an employer, a fellow employee, the Board, and/or a positive drug test. For example, Mr. Fusco's addiction to narcotic drugs came to the Board's attention in 2002 only because he was caught by his employer taking residents' narcotic medications and was given the option of self-reporting to the Board instead of being reported to the Board by his employer. In 2003, he stopped personally disposing of narcotic medication, for which he was also not filing the reports required by law, only when an employee confronted him. In 2005, Mr. Fusco's relapse on cocaine came to the attention of the Board only after the Board conducted an investigation of a complaint filed against him and

Mr. Fusco underwent a drug test that came back positive for cocaine.

It is commendable that Mr. Fusco has participated in self-rehabilitative efforts after his license was summarily suspended by the Board on June 14, 2006. Also, Mr. Fusco provided evidence to that Board that he regularly attends AA (Alcoholics Anonymous) and NA (Narcotics Anonymous) group meetings, he successfully completed the Partners in Recovery Relapse Prevention and Intensive Outpatient Program on November 17, 2006, he has a sponsor, and he continues to see his psychologist for individual psychotherapy. However, the Board notes that Mr. Fusco took these initiatives to help himself only after being asked by the Board investigator to undergo two random drug tests, which came back positive. These recent efforts to address his drug dependency problem are commendable; however, in light of the fact that his drug addiction dates back at least five years, since the summer of 2001, the Board does not find these recent efforts of a sufficiently long enough duration to assuage the Board's concerns about the safety of the nursing home residents that could be under his management and care. Also worrisome is that Mr. Fusco has not undergone a random drug screening test since October 19, 2006. Even though Mr. Fusco testified that the holidays are especially difficult time for recovering addicts because of the increased temptations to use, he did not submit any evidence at the hearing of drug tests during the months of November and December and/or early January. Further worrisome is Mr. Fusco's testimony that, at the time of the hearing, he was not being monitored by any program or individual that could perform random drug screens on him.

A license to practice one's chosen or preferred profession is a privilege, not an absolute right. The Board's primary statutory responsibility and mission is to protect the health, safety, and welfare of nursing home residents and the general public. The Board must weigh the public's interest in the administration of safe nursing homes against Mr. Fusco's

individual interest in practicing as a nursing home administrator. The Board finds, that the public cannot, at this time, afford the risk posed by Mr. Fusco's demonstrated history of practicing the profession while addicted to and using drugs -- narcotic pills in 2002 while the administrator at Lorient - - and cocaine in 2005-2006 while the administrator at two nursing homes -- Franklin Square and Ravenwood. The Board believes that the public interest outweighs Mr. Fusco's interest in practicing his desired profession at this time and requires that Mr. Fusco not practice as a nursing home administrator until a long, continuous period of complete abstinence from alcohol, drugs, and mood-altering substances and a successful rehabilitation and long-term recovery has occurred and is demonstrated to the Board.

VII. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 14th day of March 2007, by the Board of Examiners of Nursing Home Administrators hereby:

ORDERED that the disciplinary charges issued against Richard F. Fusco, NHA, License No. R0858, issued on September 13, 2006 be UPHELD; and it is further

ORDERED that the license of Richard F. Fusco, NHA, License No. R0858 be **SUSPENDED** until at least January 1, 2008; and it is further

ORDERED that Mr. Fusco may submit a written petition to the Board requesting that the suspension of his license be lifted and terminated, however Mr. Fusco must submit, along with the petition, documentary evidence that demonstrates to the satisfaction of the Board successful rehabilitation and long-term recovery from his alcohol and drug dependency and addiction, which shall include evidence of a long, continuous period of sobriety and abstinence from alcohol, Controlled Dangerous Substances ("CDS"), narcotics, cocaine, alcohol, or other mood-altering substances during the entire period of suspension; and it is further


ORDERED that before making a decision on Mr. Fusco's petition for termination of the suspension of his license, the Board, in its discretion, may require that Mr. Fusco personally appear before the Board, or a panel of the Board, for the purpose of determining whether the suspension of his license shall be terminated; and it is further

ORDERED that regardless of when Mr. Fusco submits a written petition to the Board requesting that the suspension of his license be terminated, the suspension shall not be lifted any earlier than January 1, 2008; and it is further

ORDERED that Mr. Fusco shall be responsible for all costs required to comply with this Final Decision and Order; and it is further

ORDERED that this Final Order is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., State Gov't § 10-611 *et seq.*

March 14, 2007
Date


Paul E. Joyce, Chair
State Board of Examiners of
Nursing Home Administrators

NOTICE OF RIGHT TO APPEAL

Pursuant to Maryland Health Occupations Code Ann., § 9-316(b), Respondent has the right to take a direct judicial appeal. Any appeal shall be made as provided for judicial review of a final decision in the Administrative Procedure Act, State Government Article and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If the Respondent files an appeal, the Board is a party and should be served with the court's process. In addition, the Respondent should send a copy to the Board's counsel, Sarah Earlene Pendley, Assistant Attorney General, at the Office of the Attorney General, 300 West Preston Street, Suite 302, Baltimore, Maryland 21201.