

1 ARIZONA STATE BOARD OF NURSING
2 4747 North 7th Street Ste 200
3 Phoenix AZ 85014-3655
4 602-771-7800

5 IN THE MATTER OF REGISTERED NURSE
6 LICENSE NO. RN129204
7 ISSUED TO:

8 MICHELLE MARIE MARTINEZ

9 RESPONDENT

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER NO. 15A-1405022-NUR

10 A hearing was held before Brian B. Tully, Administrative Law Judge (“ALJ”), at 1400 West
11 Washington Suite 101, Phoenix Arizona, on September 15, 2014. Elizabeth Campbell, Assistant
12 Attorney General, appeared on behalf of the State. Michelle Marie Martinez (“Respondent”) was not
13 present and was not represented by counsel.
14

15 On November 3, 2014, the ALJ issued Findings of Fact, Conclusions of Law and
16 Recommendations. On November 21, 2014, the Arizona State Board of Nursing met to consider the
17 ALJ’s recommendations. Based upon the ALJ’s recommendations and the administrative record in this
18 matter, the Board makes the following Findings of Fact and Conclusions of Law.
19

20 FINDINGS OF FACT

21 **BACKGROUND AND PROCEDURE**

22 1. The Board has the authority to regulate and control the practice of nursing in the State of
23 Arizona pursuant to A.R.S. §§ 32-1606, 32-1663, and 32-1664. The Board also has the authority to
24 impose disciplinary sanctions against the holders of nursing licenses for violations of the Nurse Practice
25 Act, A.R.S. §§ 32-1601 through 32-1667.
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27 2. Ms. Martinez holds registered nurse license number RN129204 (hereinafter “the license”).
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1 Hunter stated that she became a registered nurse in 1999 and a family nurse practitioner in 2008.
2 Investigator Hunter testified that she has been a nurse investigator for the Board for two years.

3 7. Investigator Hunter testified that she subpoenaed Ms. Martinez's medical providers.³
4 Investigator Hunter stated that a urine drug screen for Ms. Martinez contained in the records was
5 positive for morphine. Investigator Hunter testified that morphine was not a drug that was prescribed
6 for Ms. Martinez.
7

8 8. Investigator Hunter testified that she also obtained Ms. Martinez's Prescription Monitoring
9 Program Report. Investigator Hunter stated that the Prescription Monitoring Program Report indicated
10 that morphine was not a drug that was prescribed for Ms. Martinez.⁴ Investigator Hunter testified that
11 Ms. Martinez had an in-office urine screen and tested positive for Marijuana.
12

13 9. Investigator Hunter testified that she also obtained Ms. Martinez's medical records with
14 Family Nurse Practitioner Pia Klamper (hereinafter "FNP Klamper").⁵ Investigator Hunter stated that
15 Ms. Martinez established herself as a new patient with FNP Klamper on January 17, 2014, at
16 approximately 9:45 a.m. Investigator Hunter testified that Ms. Martinez asked FNP Klamper for a refill
17 of Lortab, which is the same thing as Norco.⁶ Investigator Hunter stated that FNP Klamper refilled Ms.
18 Martinez's prescriptions for Benzodiazepine, Xanax, and Norco.
19

20 10. Investigator Hunter testified that Ms. Martinez presented herself as a new patient to Family
21 Nurse Practitioner Cindy Brown (hereinafter FNP Brown) on the same day, January 17, 2014, and
22 requested prescriptions for Norco and Xanax. Ms. Martinez obtained the requested prescriptions from
23 FNP Brown and filled them on January 17, 2014.
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28 ³ See Exhibit 1 (PainStop Clinic Records).

29 ⁴ See Exhibit 2 (Prescription Monitoring Program Report).

⁵ See Exhibit 4 (Medical Record from Pia Klamper, FNP).

⁶ Hydrocodone/APAP.

1 11. Investigator Hunter testified that in a laboratory report for a specimen collected from Ms.
2 Martinez on February 13, 2014, Ms. Martinez tested positive for Valium, Temazepam, Oxazepam
3 (benzodiazepines), and morphine, for all of which Ms. Martinez did not have a prescription.
4 Investigator Hunter testified that Ms. Martinez also tested positive for a second opioid,
5 Dihydrocodeine.⁷
6

7 12. Investigator Hunter testified that on May 9, 2014, Ms. Martinez displayed signs of ataxia,
8 which is a discoordination in gait, slurred speech, extreme sleepiness, and impaired ability for fine-
9 motor movement. Investigator Hunter stated that the drugs that Ms. Martinez had obtained from
10 multiple physicians and/or the diversion of drugs from Yavapai Medical Center would cause ataxia.
11 Investigator Hunter testified that Ms. Martinez was under the influence of substances and not
12 competent to take care of patients. Investigator Hunter testified as follows:⁸
13

14 You can take the medication that you're prescribed, but you
15 cannot take the medication to the extent that it makes you
16 uncoordinated and unable to make rational decisions and unable
17 to care for your patient. It makes you a danger to your patient.

18 13. Investigator Hunter testified that she also reviewed Ms. Martinez's records with Yavapai
19 Regional Medical Center and the Complaint filed by Yavapai Regional Medical Center against Ms.
20 Martinez.⁹ Investigator Hunter stated that as part of her investigation, she sent an Investigative
21 Questionnaire to Ms. Martinez.¹⁰ Investigator Hunter testified that Ms. Martinez failed to respond to the
22 Investigative Questionnaire.
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26 ⁷ Valium, Temazepam, Oxazepam, and Morphine are all controlled substances. It is a violation of
27 Arizona criminal law to possess or use Valium, Temazepam, Oxazepam, and Morphine without a valid
28 prescription.

⁸ See Hearing Transcript (page 26, LL 10-14).

⁹ See Exhibit 6 (Complaint from Yavapai Regional Medical Center) and Exhibit 7 (Documentation related
29 to Yavapai Regional Medical Center Investigation).

¹⁰ See Exhibit 8 (6/11/14 Letter with Investigative Questionnaire).

1 14. Investigator Hunter testified that she completed an Investigative Report after she
2 completed her investigation of the Complaint against Ms. Martinez.¹¹ Investigator Hunter stated that
3 the Investigative Report truly and accurately reflected the results of her investigation of Ms. Martinez.
4

5 15. Investigator Hunter's testimony is found to be credible.

6 **Testimony of Erika Newcomb, RN**

7 16. Ericka Newcomb, RN (hereinafter "Ms. Newcomb") testified that she is presently
8 employed as a charge nurse at Yavapai Regional Medical Center's West Campus in Prescott, Arizona.
9 Ms. Newcomb stated that on the morning of May 9, 2014, she was working in the emergency room of
10 Yavapai Regional Medical Center as a regular nurse.
11

12 17. Ms. Newcomb testified as follows:

13 I was getting [a] report from a nurse that was opposite of her. We
14 work kind of side-by-side each other. And I - - while I was talking
15 to my nurse, getting a report, I observed [Ms. Martinez] digging
16 through the Sharps container in a room and then walking back to
17 her nurse to give a report. And when she was doing that, she
18 was falling asleep and then waking back up and giving the report
19 all over again.¹²

20 18. Ms. Newcomb testified that she walked over to ask Ms. Martinez what was wrong with her.
21 Ms. Newcomb stated that Ms. Martinez said that she was really sleepy. Ms. Newcomb testified that Ms.
22 Martinez was slurring her words and was fairly incoherent.

23 19. Ms. Newcomb opined that Ms. Martinez was impaired. Ms. Newcomb testified that she and
24 the other nurses that were present contacted Ms. Martinez's supervisor. Ms. Newcomb stated that she
25 and the other nurses attempted to keep Ms. Martinez at the hospital. Ms. Newcomb testified that Ms.
26 Martinez walked out of the emergency room.

27 20. Ms. Newcomb's testimony is found to be credible.

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29 ¹¹ See Exhibit 9 (Investigative Report).

¹² Hearing Record, at page 8, ll 7-14).

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Testimony of Rob Barth, RN

21. Rob Barth, RN (hereinafter "Mr. Barth") testified that he is an RN and is employed as director of emergency services at Yavapai Regional Medical Center. Mr. Barth stated that on May 9, 2014, the on-duty charge nurse contacted him about her concerns that Ms. Martinez was impaired while on duty. Mr. Barth testified that he then had a telephone conversation with Ms. Martinez and said "you need to stay there until I get there." Mr. Barth stated that Ms. Martinez insisted that she had to leave to go get her children. Mr. Barth testified that Ms. Martinez had slow slurred speech and that her thought pattern appeared to be broken during the telephone conversation.

22. Mr. Barth testified that Ms. Martinez returned to the hospital approximately two hours later. Mr. Barth stated that Ms. Martinez still had slurred speech and had a disheveled appearance. Mr. Barth opined that Ms. Martinez was impaired.

23. Mr. Barth's testimony is found to be credible.

Testimony of Laura Hamblin

24. Laura Hamblin (hereinafter "Ms. Hamblin") testified that she is the human resources manager for Yavapai Regional Medical Center. Ms. Hamblin stated that Ms. Martinez returned to the hospital on May 9, 2014, and that she was present for the meeting with Ms. Martinez.

25. Ms. Hamblin testified as follows:

Well, when she came in, she sat in my office and was kind of slumped in the chair. Her hair wasn't combed and her mascara was smeared under her eyes. And it did appear as though she would almost fall asleep. Her eyes would kind of roll up in her head and she would kind of nod and then come back to it.¹³

26. Ms. Hamblin testified that Ms. Martinez initially agreed to take a drug test but then stated that she thought it would be better if she resigned instead of taking the drug test. Ms. Hamblin stated

¹³ Hearing Record at page 19, ll 7-12.

1 that the hospital did not require Ms. Martinez to take a drug test because Ms. Martinez resigned. Ms.
2 Hamblin stated that Ms. Martinez “smelled like vomit.”

3 27. Ms. Hamblin’s testimony is found to be credible.
4

5 CONCLUSIONS OF LAW

6 1. The Board has the authority to regulate and control the practice of nursing in the State of
7 Arizona, pursuant to A.R.S. §§ 32-1606, 32-1663, 32-1664, 41-1092.11(B), and 41-1092.07(F)(5).

8 2. The Board also has the authority pursuant to A.R.S. §§ 32-1663 and 32-1664 to impose
9 disciplinary sanctions against the holders of nursing licenses for violations of the Nurse Practice Act.
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11 3. The Board bears the burden of proof and must establish cause to penalize Respondent’s
12 privilege to practice nursing in Arizona by a preponderance of the evidence. *See* A.R.S. § 41-
13 1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); *see also Vazanno v. Superior Court*, 74 ARIZ. 369,
14 372, 249 P.2d 837 (1952).
15

16 4. “A preponderance of the evidence is such proof as convinces the trier of fact that the
17 contention is more probably true than not.” MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE §
18 5 (1960).
19

20 5. The Board established that the Respondent, Michelle Marie Martinez, violated the
21 provisions of A.R.S. § 32-1663(A) as defined in A.R.S. § 32-1601(22)(d) (Any conduct or practice this
22 is or might be harmful or dangerous to the health of a patient or the public).

23 6. The Board established that the Respondent, Michelle Marie Martinez, violated the
24 provisions of A.R.S. § 32-1663(A) as defined in A.R.S. § 32-1601(22)(e) (being mentally incompetent
25 or physically unsafe to a degree that is or might be harmful or dangerous to the health of a patient or the
26 public).
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1 7. The Board established that the Respondent, Michelle Marie Martinez, violated the
2 provisions of A.R.S. § 32-1663(A) as defined in A.R.S. § 32-1601(22)(h) (committing an act that
3 deceives, defrauds or harms the public).
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5 8. The Board established that the Respondent, Michelle Marie Martinez, violated the
6 provisions of A.R.S. § 32-1663(A) as defined in A.R.S. § 32-1601(22)(j) (violating a rule that is
7 adopted by the Board).
8

9 9. The Board established that Respondent, Michelle Marie Martinez, violated the provisions
10 of A.A.C. R4-19-403(18) (obtaining, possessing, administering, or using any narcotic, controlled
11 substance, or illegal drug in violation of any federal or state criminal law, or in violation of the policy
12 of any health care facility, school, institution, or other work location at which the nurse practices).
13

14 10. The Board established that Respondent, Michelle Marie Martinez, violated the provisions
15 of A.A.C. R4-19-403(25)(a) (Failing to furnish in writing a full and complete explanation of a matter
16 reported pursuant to A.R.S. § 32-1664).
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18 11. The Board established that Respondent, Michelle Marie Martinez, violated the provisions
19 of A.A.C. R4-19-403(31) (Practicing in any manner that gives the Board reasonable cause to believe
20 the health of a patient or the public may be harmed).
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22 12. The Board established that Respondent, Michelle Marie Martinez, violated the provisions
23 of A.R.S. § 32-1601(22)(j) (Violating a rule that is adopted by the Board pursuant to this chapter).
24

25 13. In light of the risk of the harm to which Respondent Michelle Marie Martinez's violations
26 of the Nurse Practice Act exposed her patients and the public, the Board has established cause to revoke
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1 Michelle Maries Martinez's privilege to practice nursing in the State of Arizona under A.R.S. §§ 32-
2 1663(D)¹⁴ and 1664(N).¹⁵

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4 **ORDER**

5 In view of the Findings of Fact and Conclusions of Law, the Board issues the following Order:

6 Pursuant to A.R.S. § 32-1664(N), the Board **REVOKES** registered nurse license number
7
8 RN129204 issued to Michelle Marie Martinez.

9 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

10 Pursuant to A.R.S. § 41-1092.09, Respondent may file, in writing, a motion for rehearing
11 or review within 30 days after service of this decision with the Arizona State Board of Nursing.
12 The motion for rehearing or review shall be made to the attention of Trina Smith, Arizona State
13 Board of Nursing, 4747 North 7th Street Ste 200, Phoenix AZ 85014-3655, and must set forth
14 legally sufficient reasons for granting a rehearing. A.A.C. R4-19-608.

15 For answers to questions regarding a rehearing, contact Trina Smith at (602) 771-7844.
16 Pursuant to A.R.S. § 41-1092.09(B), if Respondent fails to file a motion for rehearing or review
17 within 30 days after service of this decision, Respondent shall be prohibited from seeking judicial
18 review of this decision.
19

20 This decision is effective upon expiration of the time for filing a request for rehearing or
21 review, or upon denial of such request, whichever is later, as mandated in A.A.C. R4-19-609.
22

23 Respondent may apply for reinstatement of the said license pursuant to A.A.C. R4-19-404 after
24 a period of five years.
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28 ¹⁴ A.R.S. § 32-1663(D) provides that if the Board determines a licensee has committed an act of unprofessional conduct, the Board may revoke or suspend the license, impose a civil penalty, censure the license, place the licensee on probation, or accept the voluntary surrender of the license.

29 ¹⁵ A.R.S. § 32-1664(N) provides that if the Board finds that the licensee has committed an act of unprofessional conduct, the Board may revoke or suspend the license.

1 DATED this 21st day of November, 2014.

2 ARIZONA STATE BOARD OF NURSING

3 SEAL

4 *Joey Ridenour R.N. M.N. F.A.A.N.*

5 Joey Ridenour, R.N., M.N., F.A.A.N.
6 Executive Director

7 COPIES mailed this 21st day of November, 2014, by Certified Mail No. 7011 3500 0001 5219 6423
8 and First Class Mail to:

9 Michelle Marie Martinez
10 11415 E Quarry Ave
11 Mesa, AZ 85212

11 COPIES of the foregoing mailed this 21st day of November, 2014, to:

12 Case Management
13 Office of Administrative Hearings
14 1400 W Washington Ste 101
15 Phoenix AZ 85007

16 Elizabeth Campbell
17 Assistant Attorney General
18 1275 W Washington LES Section
19 Phoenix AZ 85007

20 By: Trina Smith
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