



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Division of Health Professions Licensure
Board of Registration of Nursing Home Administrators
239 Causeway Street, Suite 500, 5th Floor, Boston, MA 02114
(617) 973-0800
(617) 973-0988 TTY

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

JUDYANN BIGBY, MD
SECRETARY

LAUREN A. SMITH, MD, MPH
INTERIM COMMISSIONER

COPY

**BY FIRST CLASS MAIL AND
BY CERTIFIED MAIL NO. 7010 2780 0001 8675 8404**

January 9, 2013

Scott Gloor
redacted

Re: In the Matter of Scott Gloor, License No. NH5029 (expired 6/30/12)
Board of Registration of Nursing Home Administrators, Docket No. NHA-2012-002

Dear Mr. Gloor:

Please find enclosed the Final Decision and Order by Default ("Decision") issued by the Board of Registration of Nursing Home Administrators in the above-referenced matter.

Your right to appeal the Final Decision and Order by Default is set forth on page 4 of the Decision.

Sincerely,

Sally Graham
Executive Director

Enclosure

cc: Tarah Provencal, Prosecuting Counsel
Vivian Bendix, Administrative Hearings Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION OF
NURSING HOME ADMINISTRATORS

IN THE MATTER OF)
SCOTT GLOOR)
LICENSE NO. NH5029)
(License Expired 6/30/12))
_____)

DOCKET NO. NHA-2012-002

FINAL DECISION AND ORDER BY DEFAULT

Pursuant to Massachusetts General Laws ("G.L.") Chapter 30A, § 10(2), 801 CMR 1.01 (6)(d)(2) and (7)(a)(1), and the failure of Scott Gloor ("Respondent"), after due notice, to defend in this matter, the Board of Registration of Nursing Home Administrators ("Board") issues this Final Decision and Order by Default.

PROCEDURAL BACKGROUND

On August 27, 2012, the Board issued and served on Respondent an Order to Show Cause ("Show Cause Order") ordering Respondent to show cause why the Board should not suspend, revoke, or otherwise take action against his license no. 5029 to practice as a Nursing Home Administrator in the Commonwealth of Massachusetts based on the allegations in the Show Cause Order. (A copy of the Show Cause Order, served on Respondent at his address of record with the Board *via* first class and certified mail, is attached hereto as Exhibit 1). Among other things, the Show Cause Order advised Respondent that failure to submit an Answer to the Show Cause Order ("Answer") within twenty-one (21) days, to respond to notices, or failure to appear for any scheduled conference or hearing, or failure to otherwise defend in this action would result in entry of default. The Show Cause Order specified the consequences of an entry of default, noting that the Board may enter a Final Decision and Order that assumes the truth of the allegations set forth in the Order and that may result in revocation, suspension, or other appropriate disciplinary action against Respondent's Nursing Home Administrator's license.

On or about September 27, 2012, Respondent filed an Answer to the Show Cause Order. A request for hearing was filed on October 2, 2012. (Exhibits 2, 3)

By letter dated October 19, 2012, Administrative Hearings Counsel Vivian Bendix ("Ms. Bendix" or "AHC") advised the parties that she was the Administrative Hearings Counsel assigned to the instant matter. The letter included Ms. Bendix's address, telephone number, fax number, and e-mail address. (Exhibit 4)

Also on October 19, 2012, the Board issued a Notice of Status Conference for November 5, 2012, served on Respondent *via* first class and certified mail at his address of record with the Board. (Exhibit 5) The Notice of Status Conference explicitly advised Respondent that the Status Conference would not be continued except upon written motion for good cause shown. The Notice of Status Conference further stated that failure to appear at the Status Conference, notwithstanding the earlier filing of an Answer and/or request for hearing, may result in the entry of default and a Final Decision and Order assuming the truth of the allegations in the Show Cause Order and ordering the revocation, suspension, or other appropriate disciplinary action against Respondent's license.

Respondent failed to appear at the Status Conference on November 5, 2012. Prior to the Status Conference, Respondent did not request a continuance and made no attempt to contact Administrative Hearings Counsel and/or Prosecuting Counsel regarding his failure to appear at the Status Conference. Based on Respondent's failure to appear at the Status Conference, Prosecuting Counsel made a verbal motion for the entry of default.

Administrative Hearings Counsel informed Respondent *via* letter dated November 5, 2012 ("AHC letter") that based on Prosecuting Counsel's motion, the Board had entered default against him. The letter further stated that the Board would proceed to enter a Final Decision and Order by Default against Respondent unless within seven (7) days, he filed a written response to the AHC's letter demonstrating good cause for his failure to appear at the Status Conference. The letter reiterated that a Final Decision and Order by Default would assume the truth of the allegations in the Show Cause Order and could result in the revocation, suspension, or other appropriate discipline against Respondent's license to practice as a Nursing Home Administrator in the Commonwealth of Massachusetts. The AHC letter was mailed to Respondent *via* first class and certified mail at his address of record with the Board.¹ (Exhibit 6)

Respondent failed to file a timely response to AHC's November 5, 2012 letter and has not responded at any time subsequent thereto.

EXHIBITS

The Board takes administrative notice of the following exhibits that are a part of the administrative record. The Show Cause Order is incorporated herein by reference and attached hereto:

1. August 27, 2012 Cover Letter, Show Cause Order, and Certificate of Service, served *via* first class and certified mail

¹ The certified mailing was returned to AHC as "unclaimed" and "unable to forward". The first class mailing was not returned. Respondent has not changed his address of record with the Board and made no mention of a change of address at a September 13, 2010 Status Conference.

2. Answer to Show Cause Order and request for hearing, filed September 27, 2012
3. Request for Hearing, October 2, 2012
4. Letter: Bendix to Gloor and Provencal, October 19, 2012
5. Notice of Status Conference, issued October 19, 2012
6. Letter: Bendix to Respondent, November 5, 2012

DISCUSSION

By reason of Respondent's failure to appear and defend as required by the Board, the Board enters default against Respondent and issues this Final Decision and Order. Productora e Importadora de Papel S. A. de C.V. v. Fleming, 376 Mass. 826, 833-835 (1978); University Hospital v. MCAD, 396 Mass. 533, 539 (1986); Wang v. Board of Registration in Medicine, 405 Mass. 15, 19-20 (1989) (where professional lacked current license to practice in the Commonwealth, board had jurisdiction based on professional's inchoate right to renew license). The Board finds that the allegations in the Amended Show Cause Order and the violations of statutes and regulations stated therein are deemed admitted and established. Respondent was afforded an opportunity for a full and fair hearing as required by G.L. c. 30A, §§ 10 and 11 (1), G.L. c. 112, § 62 and 801 CMR 1.01 (4)(c). Wherefore, in accordance with the Board's authority and statutory mandate, the Board orders as follows:²

ORDER

Based on the foregoing, the Board imposes a REPRIMAND on Respondent's license to practice as a Nursing Home Administrator, License No. NH5029 (expired June 30, 2012).

The Board voted to adopt the within Final Decision by Default at its meeting held on November 29, 2012, by the following vote: In favor: David Becker, NHA; William Graves, NHA; Roxanne Webster, RN; Nancy Lordan, NHA; Janet Cutter, RN, MassHealth; Mary McKenna, EOEA; Michael Baldassarre, NHA; and James Divver, NHA. Opposed: None. Abstained: Sherman Lohnes, DPH.

The Board voted to adopt the within Order by Default at its meeting held on November 29, 2012, by the following vote: In favor: David Becker, NHA; William Graves, NHA; Roxanne Webster, RN; Nancy Lordan, NHA; Janet Cutter, RN, MassHealth; Mary McKenna, EOEA; Michael Baldassarre, NHA; and James Divver, NHA. Opposed: None. Abstained: Sherman Lohnes, DPH.

² In that the evidence in this default proceeding, consisting of the above referenced exhibits, was before the Board, no tentative decision is required. 801 CMR 1.01 (11).

EFFECTIVE DATE OF ORDER

This Final Decision and Order by Default becomes effective upon the tenth (10th) day from the date it is issued (see "Date Issued" below).

RIGHT TO APPEAL

Respondent is hereby notified of his right to appeal this Final Decision and Order by Default pursuant to G.L. c. 30A, §§14 and 15, within thirty (30) days of receipt of this Final Decision and Order by Default.

Board of Registration of Nursing Home
Administrators:

Date Issued: 1/9/12 Sally Graham
Sally Graham, Executive Director

Notified:

VIA FIRST CLASS AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED NO. 7010 2780 0001 8675 8404

Scott Gloor
redacted 

BY HAND DELIVERY

Tarah Provencal, Esq.
Office of Prosecutions
Division of Health Professions Licensure
Department of Public Health
239 Causeway Street, Suite 500
Boston, MA 02114



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Division of Health Professions Licensure

239 Causeway Street, Suite 500, 5th Floor, Boston, MA 02114

(617) 973-0800

(617) 973-0988 TTY

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

JUDYANN BIGBY, MD
SECRETARY

JOHN AUERBACH
COMMISSIONER

Office of General Counsel

(617) 973-0865

(617) 973-0988 TTY

BY FIRST CLASS AND CERTIFIED
MAIL NO. 7010 2780 0001 8675 9609

August 27, 2012

Scott Gloor
redacted

RE: In the Matter of Scott Gloor, NHA License No. 5029
Board of Registration of Nursing Home Administration, Docket No. NHA-2012-002

Dear Mr. Gloor:

The Massachusetts Board of Registration of Nursing Home Administration within the Department of Public Health, Division of Health Professions Licensure (Division), has completed its investigation of the above-listed complaint against your license to practice as a Nursing Home Administrator. For the reasons set forth in the attached Order to Show Cause, the Board is proposing to suspend, revoke or impose other discipline against your license as a Nursing Home Administrator (NHA License No. 5029).

The Order to Show Cause and any subsequent hearing are governed by Massachusetts General Laws Chapter 30A, the State Administrative Procedure Act, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 et. seq. You must submit an Answer to the Order to Show Cause and you have a right to request a hearing by filing a written request for a hearing, as specified in the Order to Show Cause.

Your failure to submit an Answer to the Order to Show Cause within twenty-one (21) days of receipt of the Order to Show Cause *shall result in the entry of default* in the above-referenced matter. Your failure to submit a written request for a hearing within twenty-one (21) days of receipt of this Order to Show Cause *shall constitute a waiver of the right to a hearing* on the allegations therein and on any Board disciplinary action. Notwithstanding the earlier filing of an Answer and/or request for a hearing, your failure to respond to notices or correspondence,

failure to appear for any scheduled status conference, pre-hearing conference or hearing dates, or failure to otherwise defend this action shall result in the entry of default.

If you are defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations in this Order to Show Cause, and may revoke, suspend, or take other disciplinary action against your license to practice as a Nursing Home Administrator in Massachusetts, including any right to renew your license.

The request for a hearing and your Answer must be filed with Tarah Provencal, Prosecuting Counsel at the following address:

Tarah Provencal
Prosecuting Counsel
Department of Public Health
Office of the General Counsel
239 Causeway Street, Suite 500, 5th Floor
Boston, Massachusetts 02114

If you are represented by an attorney in this matter, all communications should be made through your attorney.

You may contact me at (617) 973-0923 if you have any questions regarding this matter.

Sincerely,



Tarah Provencal
Prosecuting Counsel

7010 2780 0001 8675 9609

Encl: Order to Show Cause
Certificate of Service

This is an important notice. Please have it translated.
Este é um aviso importante. Queira mandá-lo traduzir.
Este es un aviso importante. Sirvase mandarlo traducir.
ĐÂY LÀ MỘT BẢN THÔNG CÁO QUAN TRỌNG
XIN VUI LÒNG CHO DỊCH LẠI THÔNG CÁO ẤY
Ceci est important. Veuillez faire traduire.
本通知很重要。請將其譯成中文。
ᨆᩣ᩠ᨦᩣ᩠ᨦᩣ᩠ᨦᩣ᩠ᨦ ᨆᩣ᩠ᨦᩣ᩠ᨦᩣ᩠ᨦᩣ᩠ᨦ
ΠΡΟΣΟΧΗ, ΑΥΤΟ ΕΙΝΑΙ ΕΙΜΑΝΤΙΚΟ. ΠΑΡΑΚΑΛΩ ΜΕΤΑΦΡΑΣΤΕ
Questo è un 'avviso importante. Si pregadi farlo tradurre.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION OF
NURSING HOME ADMINISTRATORS

In the Matter of)
SCOTT GLOOR)
License No. NHA 5029)
License Expiration Date 06/30/2012)

Docket No. NHA-2012-002

ORDER TO SHOW CAUSE

SCOTT GLOOR, you are hereby ordered to appear and show cause why the Massachusetts Board of Registration of Nursing Home Administrators ("Board") should not suspend, revoke or otherwise take action against your license to practice as a Nursing Home Administrator in the Commonwealth of Massachusetts, License No. 5029, or your right to renew such license, pursuant to Massachusetts General Laws (G. L.) Chapter 112, § 61 and Board regulation 245 CMR 2.15, based upon the following facts and allegations.

1. On or about August 10, 2005, the Board issued you a license to practice as a Nursing Home Administrator, License No. NH 5029. Your license expired on June 30, 2012 and has not been renewed to date.
2. You were employed with Whittier Health Network as a licensed Nursing Home Administrator from May 2006 to May 2011. During the time of this incident, you were serving as the licensed Nursing Home Administrator of Masconomet Healthcare Center, a long-term care facility located at 123 High Street, Topsfield, Massachusetts ("Masconomet").
3. As the Nursing Home Administrator of Masconomet, and in accordance with Board regulations at 245 CMR 2.15, you have a duty to exercise proper regard for the health, safety, and welfare of Masconomet residents.
4. On or about March 25, 2011, the Department of Public Health, Division of Health Care Quality ("DPH") completed a complaint investigation survey at Masconomet based on allegations of abuse of facility residents (DPH reference #11-0183 and #11-0304).
5. On or about March 25, 2011, DPH generated a Statement of Deficiencies as a result of the complaint investigation survey which contained findings of substandard quality of care at Masconomet, including but not limited to, the following:

a. A deficiency, Tag F 223 with a Scope and Severity of "H", with respect to:

- (1) 42 CFR 483.13(b): The resident has the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion; and
- (2) 42 CFR 483.13(b)(1)(i): The facility must not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion;

b. A deficiency, Tag F225 with a Scope and Severity of "H", with respect to:

- (1) 42 CFR 483.13(c)(1)(ii): The facility must not employ individuals who have been found guilty of abusing, neglecting, or mistreating residents by a court of law; or have had a finding entered into the State nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property; and the facility must report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the State nurse aide registry or licensing authorities;
- (2) 42 CFR 483.13(c)(2): The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property, are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures (including to the State survey and certification agency);
- (3) 42 CFR 483.13(c)(3): The facility must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress; and
- (4) 42 CFR 483.13(c)(4): The results of all investigations must be reported to the administrator or his designated representative and to other officials in accordance with State law (including to the State survey and certification agency) within five working days of the incident, and if the alleged violation is verified, appropriate corrective action must be taken.

c. A deficiency, Tag F 240 with a Scope and Severity of "H", with respect to: 42 CFR 483.15: A facility must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.

6. The requirements set forth in Paragraph 5(a) – (c), above, were not met based on the following:

- a. With respect to Paragraph 5(a), above, Masconomet's failure to prevent the abuse of seven of 41 sampled residents by four Certified Nurses Aides ("CNAs") from approximately November 2010 to February 2011. One resident and an unidentified resident were videotaped and pictures were disseminated on employees' cell phones. Six residents were victims of repeated taunts, humiliation, and curses which occurred in the presence of other facility staff members.
 - b. With respect to Paragraph 5(b), above, Masconomet's failure to ensure that allegations of abuse by four CNAs involving seven of 41 sampled residents, occurring between approximately November 2010 and February 2011 were reported to the Administrator or to the Department when at least seven facility staff members at different periods in time observed abuse, but failed to ensure that the Administrator was notified of such abuse.
 - c. With respect to Paragraph 5(c), above, Masconomet's failed to ensure that four of 41 sampled residents were treated by staff in a dignified manner when multiple staff members witnessed three CNAs using profane language, texting on cellular phones, and playing inappropriate music while providing personal care, talking about their sexual lives and alleged drug use in the presence of residents, mocking mentally ill residents and taunting residents to avoid providing needed care.
7. While you were Masconomet's Administrator, you failed to ensure that an effective system was developed and implemented to ensure that allegations of abuse were immediately reported and investigated, and that residents were protected while an investigation was in progress.
 8. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a Nursing Home Administrator pursuant to 245 CMR 2.15(1) for failing to exercise proper regard for the health, safety and welfare of your patients.
 9. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a Nursing Home Administrator pursuant to 245 CMR 2.15(4) for violation of local, state or federal statutes or regulations related to nursing home administration.
 10. Your conduct as alleged reflects a failure to comply with the requirements of the standards developed and administered by the Board pursuant to G. L. c. 112 § 115.
 11. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a Nursing Home Administrator pursuant to G. L. c. 112 § 61 for deceit, malpractice, and gross misconduct in the practice of the profession or for any offense against the laws of the Commonwealth relating thereto.
 12. Your conduct as alleged also constitutes unprofessional conduct and conduct which undermines public confidence in the integrity of the profession. *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338, 342 (1996); *Kvitka v. Board of Registration in Medicine*, 407 Mass. 140, cert. denied, 498 U.S. 823 (1990); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708, 713 (1982).

You have a right to an adjudicatory hearing ("hearing") on the allegations contained in the Order to Show Cause before the Board determines whether to suspend, revoke, or impose other discipline against your license. G.L. c. 112, § 61. Your right to a hearing may be claimed by submitting a written request for a hearing *within twenty-one (21) days of receipt of this Order to Show Cause*. You must also submit an Answer to this Order to Show Cause in accordance with 801 CMR 1.01(6)(d) *within twenty-one (21) days of receipt of this Order to Show Cause*. The Board will give you prior written notice of the time and place of the hearing following receipt of a written request for a hearing.

Hearings shall be conducted in accordance with the State Administrative Procedure Act, G.L. c. 30A, §§ 10 and 11, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 and 1.03, under which you are granted certain rights including, but not limited to, the rights: to a hearing, to secure legal counsel or another representative to represent your interests, to call and examine witnesses, to cross-examine witnesses who testify against you, to testify on your own behalf, to introduce evidence, and to make arguments in support of your position.

The Board will make an audio recording of any hearing conducted in the captioned matter. In the event that you wish to appeal a final decision of the Board, it is incumbent on you to supply a reviewing court with a "proper record" of the proceeding, which may include a written transcript. *New Bedford Gas and Light Co. v. Board of Assessors of Dartmouth*, 368 Mass. 745, 749-750 (1975). Upon request, the Board will make available a copy of the audio recording of the proceeding at your own expense. Pursuant to 801 CMR 1.01(10)(i)(1), upon motion, you "may be allowed to provide a public stenographer to transcribe the proceedings at [your] own expense upon terms ordered by the Presiding Officer." Those terms may include a requirement that any copy of the transcript produced must be sent immediately upon completion, and on an ongoing basis, directly to the Presiding Officer by the stenographer or transcription service. The transcript will be made available to the Prosecutor representing the Board. Please note that the administrative record of the proceedings, including, but not limited to, the written transcript of the hearing, is a public record and subject to the provisions of G.L. c. 4 § 7 and G.L. c. 66, §10.

Your failure to submit a written request for a hearing within twenty-one (21) days of receipt of this Order to Show Cause *shall constitute a waiver of the right to a hearing* on the allegations herein and on any Board disciplinary action. Your failure to submit an Answer to the Order to Show Cause within twenty-one (21) days of receipt of the Order to Show Cause *shall result in the entry of default* in the captioned matter.

Notwithstanding the earlier filing of an Answer and/or request for a hearing, your failure to respond to notices or correspondence, your failure to appear for any scheduled status conference, pre-hearing conference or hearing dates, or your failure to otherwise defend this action shall result in the entry of default.

If you are defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations in this Order to Show Cause, and may revoke, suspend, or take

other disciplinary action against your license to practice as a Nursing Home Administrator in the Commonwealth of Massachusetts, including any right to renew your license.

Your Answer to the Order to Show Cause and your written request for a hearing must be filed with Tarah Provencal, Prosecuting Counsel, at the following address:

Tarah Provencal, Esq.
Prosecuting Counsel
Department of Public Health
Office of the General Counsel
239 Causeway Street, Suite 500, 5th Floor
Boston, MA 02114

You or your representative may examine Board records relative to this case prior to the date of the hearing during regular business hours at the office of the Prosecuting Counsel. If you elect to undertake such an examination, then please contact Prosecuting Counsel in advance at (617) 973-0923 to schedule a time that is mutually convenient.

BOARD OF REGISTRATION
OF NURSING HOME ADMINISTRATORS

By: Tarah Provencal
Tarah Provencal, Esq.
Prosecuting Counsel
Department of Public Health

Date: August 27, 2012

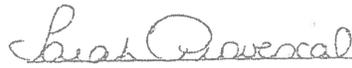
CERTIFICATE OF SERVICE

I, Tarah Provencal, hereby certify that a copy of the foregoing Cover Letter, Order to Show Cause and Certificate of Service was served upon the Respondent, Scott Gloor, at the following address:

Scott Gloor

redacted

by Certified Mail No. 7010 2780 0001 8675 9609 and by first class mail on this 27th day of August, 2012.



Tarah Provencal
Prosecuting Counsel