

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
HEALTH REGULATION AND LICENSING ADMINISTRATION
BOARD OF NURSING**

IN RE: :
 :
ROBERT FABISZEWSKI, RN :
 :
License No. RN1044157 :
 :
Respondent :

DECISION AND ORDER

Jurisdiction

This matter comes before the District of Columbia Board of Nursing (Board) pursuant to D.C. Official Code § 3-1201.01 *et seq.* (2021 Repl.), otherwise known as the Health Occupations Revision Act (HORA). Section 204(b)(1) of the HORA authorizes the Board to regulate the practice of registered nursing. D.C. Official Code § 3-1202.04(b)(1). Pursuant to section 408(8), the Board is authorized to conduct hearings necessary to carry out its function. D.C. Official Code § 3-1204.08(8).

Background

Respondent was licensed as a registered nurse in the District from June 20, 2017 to June 30, 2018. He was also licensed in Pennsylvania and Virginia. The Board subsequently learned that the Pennsylvania Board of Nursing entered an order accepting the voluntary surrender of his license on or about January 29, 2020. Additionally, his Virginia license was subject to a mandatory suspension on or about February 24, 2020. Based on these disciplinary actions, the

District Department of Health (DC Health) summarily suspended his District license on or about January 21, 2021.

On January 13, 2022, the Board issued a Notice of Intent to Take Disciplinary Action (NOI) against the license. The NOI charged Respondent with the following:

- I You were disciplined by a licensing authority or peer review body for conduct that would be grounds for disciplinary action under the Health Occupations revision Act in violation of D.C. Code § 3-1205.14(a)(3), for which the Board may take disciplinary action under D.C. Code § 3-1205.14(c).**

- II You failed to conform to the standards of acceptable conduct and prevailing practice within the nursing profession in violation of D.C. Code § 3-1205.14(a)(26), for which the Board may take disciplinary action under D.C. Code § 3-1205.14(c).**

The NOI was sent by certified mail to Respondent's last known address in the Board's record and was delivered on February 18, 2022. Section 4102.2(b)(1) of Title 17 of the DCMR provides that Respondent had twenty (20) days following the service of the NOI to request a hearing. 17 DCMR § 4102.2(b)(1).

To date the Respondent has not requested a hearing in this matter. Section 4103.1 of the regulation authorizes the Board to take the proposed action if the Respondent does not request the hearing within the allotted time. 17 DCMR § 4103.1.

Accordingly, the Board makes the findings of facts and reaches conclusions of law as stated below.

Findings of Fact

Based on the evidence in its record, the Board enters the following findings of fact:

1. Respondent was initially licensed as a registered nurse in the District on June 20, 2017. The license expired on June 30, 2018 and has not been renewed.

2. On November 5, 2019, Respondent was convicted in the Court of Common Pleas of Allegheny County, PA for first degree felony sexual contact with a minor, who was under 13, and the contact occurred over a period of several years.
3. On January 29, 2020, the Pennsylvania Board of Nursing entered an order accepting his voluntary surrender of the Pennsylvania nursing license.
4. On February 24, 2020, the Virginia Board of Nursing entered an order of mandatory suspension against Respondent's Virginia nursing license. The suspension remains in effect to date.

Analysis and Conclusions of Law

The nursing profession is entrusted with the care of and services for patients' health and safety. Accordingly, they are expected to conform to a set of professional standards deemed conducive to the accomplishment of their trust. The American Nurses Association (ANA) promulgates Code of Ethics for Nurses, which sets as the first Provision: "The nurse practices with compassion and respect for the inherent dignity, worth and unique attributes of every person." The Code of Ethics, which has a history going back to 1893, has been adopted by state boards of nursing through the U.S., including the District. Section 5416.1 of Title 17 of the District of Columbia Municipal Regulations (DCMR) specifically requires that a District registered nurse adhere to the standards of the ANA Code of Ethics. Provision 1.5 of the Code of Ethics provides further that:

The nurse creates an ethical environment and culture of civility and kindness, treating colleagues, coworkers, employees, students, and others with dignity and respect. This standard of conduct includes an affirmative duty to act to prevent harm. Disregard for the effects of one's actions on others, bullying, harassment, intimidation, manipulation, threats, or violence are always morally unacceptable behavior.

Respondent was convicted of sexual contact with a minor, who was under 13 when the contact began, and the contact continued over a period of several years. In the U.S., as in many countries, the protection of minors is a primary societal interest and has led to the adoption of legal theories regarding minors' ability to make decisions independent of parents or guardians. It is undisputed that young people develop their knowledge, self-awareness, and understanding of the world over time. While it is certainly not possible for any person to determine definitively the point at which a given child has acquired the self-awareness and understanding to make their independent decisions, it is generally accepted that until a certain age, the society at large, including the legal system, should not permit or expect a child to make independent decision or act independently. With regard to sexual intercourse, most states have determined that children under the age of sixteen are legally unable to give consent. Accordingly, any sexual contact with a minor under the age of consent is deemed rape under state laws.

The Code of Ethics expect nurses to create an ethical environment and a culture of civility and kindness. Accordingly, they are the ones the society at large expects to take active role in the protection of children. For a registered nurse to take sexual advantage of a child under 13 is clearly a renunciation of their professional ethics. Accordingly, the Board now finds that Respondent has failed to conform to the standard of acceptable conduct within the practice of registered nursing and is therefore liable for disciplinary action in accordance with Charge II of the NOI.

Further, Respondent's conduct in engaging in impermissible sexual contact with a minor, which was the basis of his conviction, is the type of conduct that would be ground for disciplinary action under D.C. Official Code § 3-1205.14(a)(26), as reasoned above.

Accordingly, Respondent is also liable for disciplinary action in accordance with Charge I of the NOI.

D.C. Official Code § 3-1205.14(c) provides, in pertinent part:

Upon determination by the board that an applicant, licensee, or person permitted by this subchapter to practice in the District has committed any of the acts described in subsection (a) of this section, the board may:

- (1) Deny a license to any applicant;
- (2) Revoke or suspend the license of any licensee;
- (3) Revoke or suspend the privilege to practice in the District of any person permitted by this subchapter to practice in the District;
- (4) Reprimand any licensee or person permitted by this subchapter to practice in the District;
- (5) Impose a civil fine not to exceed \$5,000 for each violation by any applicant, licensee, or person permitted by this subchapter to practice in the District;
- (6) Require a course of remediation, approved by the board, which may include:
 - (A) Therapy or treatment;
 - (B) Retraining; and
 - (C) Reexamination, in the discretion of and in the manner prescribed by the board, after the completion of the course of remediation;
- (7) Require a period of probation; or
- (8) Issue a cease and desist order pursuant to § 3-1205.16.

Accordingly, the Board, by a majority vote, issues the order below.

ORDER

Based upon the aforementioned it is hereby

ORDERED that **ROBERT FABISZEWSKI'S** registered nursing license, **RN1044157**,
be and is hereby **REVOKED**,¹ effective as of the date of service.

4/13/2022

Date



Meedie Bardonille, RN
Acting Chairperson
Board of Nursing

Judicial and Administrative Review
of Actions of Board

Pursuant to D.C. Official Code § 3-1205.20 (2021 Repl.):

Any person aggrieved by a final decision of a board or the Mayor may appeal the decision to the **District of Columbia Court of Appeals** pursuant to D.C. Official Code § 2-510 (2012 Repl.).

Pursuant to D.C. Court of Appeals Rule 15(a):

Review of orders and decision of an agency shall be obtained by filing with the clerk of this court a petition for review within thirty (30) days after the notice is given.

This Order is the Final Order of the Board in this disciplinary matter and a public record and, as mandated by federal law, 42 USC § 11101 and 45 CFR § 60, “the National Practitioner Data Bank – Health Integrity and Protection Data Bank,” this disciplinary action shall be reported to the U.S. Department of Health and Human Services.

Copies to:

¹ Pursuant to D.C. Official Code § 3-1201.01(12A), “revocation” means termination of the right to practice a health profession and loss of licensure for five (5) years or more.

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