

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE STATE BOARD OF NURSING FOR SOUTH CAROLINA**

IN THE MATTER OF:

PENELOPE L. VACHON,
License No. APN.4436

Case No. 2021-187

Respondent.

FINAL ORDER

This matter came before the State Board of Nursing for South Carolina ("Board") for hearing on July 28, 2022 to consider the Memorandum of Agreement and Stipulations signed by the above-named Respondent on May 20, 2022 ("MOA"). In the MOA, Respondent waived the authorization and filing of a Formal Complaint as well as formal hearing procedures and elected to dispose of the matter pursuant to South Carolina Code § 1-23-320(f).

A quorum of the Board was present. The hearing was held pursuant to South Carolina Code §§ 40-1-90, 40-33-10, and the provisions of the Administrative Procedures Act, South Carolina Code § 1-23-10 *et seq.*, to determine what sanctions, if any, were appropriate.

Shanika Moore, Assistant Disciplinary Counsel, represented the State. Respondent appeared and was represented by Derek M. Newberry, Esquire. After consideration of the evidence presented, the Board voted to accept the MOA, with the sanctions specified in this Order.

FINDINGS OF FACT

In the MOA, Respondent admitted the following facts:

1. Respondent became licensed by the Board on January 21, 2011 as an Advanced Practice Registered Nurse and was so licensed at all times relevant to the matters asserted. Subject matter and personal jurisdiction are proper before the Board.
2. Respondent does not have previous disciplinary history with the Board.
3. At all times relevant to the matters asserted herein, Respondent was employed with Lowcountry Wellness Center (hereinafter "LWC") in Charleston, South Carolina. Respondent is also the owner of LWC.
4. At the time of the commencement of the investigation in April 2021, LWC's offered services included the following: joint injections (knee and hip), trigger finger, and ozone therapy. These services were provided despite Respondent's collaborating physician at that time purporting to have very little to no experience in the areas. Additionally, the practice agreements do not reference ozone therapy.

5. Respondent's recent and current collaborating physicians include the following individuals:

- a. Dr. D., who specializes in Internal Medicine and Endocrinology, collaborated with Respondent from June 16, 2017 to May 6, 2021. Dr. D. agreed to supervise Respondent for trigger point, knee, hip, and shoulder injections; she did not supervise for trigger finger treatments. The physician was available by phone and advises she reviewed Respondent's patient charts on a few occasions.
- b. Dr. B., who specializes in Obstetrics and Gynecology, collaborated with Respondent from June 2019 through July 2020.
- c. Dr. C., a family medicine practitioner and hospitalist, collaborated with Respondent from May 10, 2021 to present.

6. At LWC, Ozone insufflation was self-administered by patients, IV ozone therapy was performed by Respondent or the Registered Nurse, and Ozone Injections were performed by Respondent.

7. Medical records for Patient S.S., amongst additional patients, were provided during the investigation. The records demonstrate treatments received, including Ozone therapy at LWC, and that S.S.'s records reflect a documented history of anxiety for which Respondent prescribed Alprazolam on multiple occasions.

8. LWC's patient schedule, ranging from November 2020 through April 2021 was provided during the investigation. The patient schedule demonstrates the types of services provided and the frequency of said services.

9. Respondent avers that LWC began offering Oxidative/Ozone therapy in approximately Spring 2020. Effective June 21, 2021, LWC no longer offers those services.

CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this matter, the Board finds and concludes as a matter of law that:

1. The Board has jurisdiction in this matter and, upon finding that a licensee has violated any of the provisions of South Carolina Code §§ 40-1-110 and 40-33-110, has the authority to order the cancellation, revocation or suspension of a license to practice as a registered nurse or a licensed practical nurse or to publicly or privately reprimand the registered nurse or licensed practical nurse or take other reasonable action short of revocation or suspension, such as requiring the licensee to undertake additional professional training subject to the direction and supervision of the Board. The Board may also impose other restrictions upon the nursing practice of the licensee as circumstances warrant until the licensee demonstrates to the Board adequate professional competence. In addition to any other sanction imposed by the Board upon the

licensee, the Board may require the licensee to pay a civil penalty up to Two Thousand Dollars (\$2,000.00) to the Board for each violation of the provisions of the Nurse Practice Act, South Carolina Code § 40-33-5 *et seq.*, or of the regulations promulgated by the Board, for a total penalty or fine not to exceed Ten Thousand Dollars (\$10,000.00). The Board may also require individuals found to have violated the Nurse Practice Act or regulations promulgated by the Board to pay costs associated with the investigation and prosecution of the case.

2. In the MOA, Respondent admitted that the acts set forth in the Findings of Fact above present grounds that constitute misconduct in violation of South Carolina law. More specifically, Respondent's conduct is in violation of the following statutes:

- a. S.C. Code Ann. §§ 40-33-110(A)(27) (1976, as amended) in that she engaged in practice as an NP, CNS, or CNM without a compliant practice agreement as defined in Section 40-33-20(45), in that Respondent's practice agreement did not list Ozone Therapy or list trigger finger injections as treatments that may be initiated, continued, or modified.

Section 40-33-20(45) provides that "practice agreement" means a written agreement developed by an NP, CNM, or CNS and a physician or medical staff who agrees to work with and to support the NP, CNM, or CNS. The practice agreement must establish the medical aspects of care to be provided by the NP, CNM, or CNS, including the prescribing of medications. The practice agreement must contain mechanisms that allow the physician to ensure that quality of clinical care and patient safety is maintained in accordance with state and federal laws, as well as all applicable Board of Nursing and Board of Medical Examiners rules and regulations. The practice agreement must comply with Section 40-33-34. A CNM also may practice pursuant to written policies and procedures for practice developed and agreed to with a physician who is board certified or board eligible by the American College of Obstetricians and Gynecologists. Written policies and procedures constitute a practice agreement for purposes of compliance with Section 40-33-34 and must address medical aspects of care including prescriptive authority and must contain transfer policies and details of the on-call agreement with the physician with whom the policies and procedures were developed and agreed. The on-call physician has the authority to designate another qualified physician to be the on-call physician if necessary. The on-call physician must be available to the CNM to provide medical assistance in person, by telecommunications, or by other electronic means.

3. Based upon the Respondent's conduct, the Board finds that sanctions are warranted in this matter. The sanctions imposed are designed not to punish Respondent, but to protect the life, health, and welfare of the public at large. The Board has weighed public interest and the need for the continued services of qualified nurses against the countervailing concern that society be protected from professional ineptitude.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Memorandum of Agreement and Stipulations is ACCEPTED.
2. Respondent is assessed a civil penalty of One Thousand Dollars (\$1,000.00), to be paid in full within six (6) months of the date of this Order.
3. Respondent is assessed the reasonable costs of Five Hundred Forty-Three and 92/100 Dollars (\$543.92) incurred in the investigation of this matter, to be paid in full within six (6) months of the date of this Order.
4. Respondent shall take and successfully complete Board-approved courses in the following subjects within six (6) months of the date of this Order:
 - a. Complete Professional Ethics (E01)
 - b. Legal Aspects of Nursing
5. If Respondent fails to meet the conditions set forth in this Order, Respondent's license may be immediately administratively suspended pending compliance with the Board's Order. Non-compliance may also result in further discipline. Also, any future license law violations by Respondent shall constitute a failure to meet the conditions of this Order.

AND IT IS SO ORDERED.

**STATE BOARD OF NURSING
FOR SOUTH CAROLINA**


SALLIE BETH TODD, MSN/Ed., RN
Board Chair

August 4, 2022