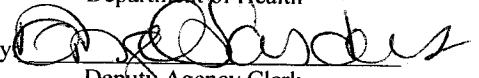


STATE OF FLORIDA  
BOARD OF NURSING

Final Order No. DOH-08-3078 FOI-MQA  
FILED DATE **DEC 24 2008**  
Department of Health

By   
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2005-69688

DOAH CASE NO.: 08-2106PL

LICENSE NO.: RN 9177327

JEAN CASSEL,

Respondent.

**FILED**  
2008 DEC 29 A 10:28  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

FINAL ORDER

THIS CAUSE came before the BOARD OF NURSING (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on December 4, 2008, in Kissimmee, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order and Exceptions to the Recommended Order, and (copies of which are attached hereto as Exhibits A and B, respectively) in the above-styled cause. Petitioner was represented by Megan Blanco, Assistant General Counsel. Respondent was not present and was not represented.

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

RULINGS ON RESPONDENT'S EXCEPTIONS

1. Respondent's exception number 1 is denied on the grounds that Respondent does not identify any finding of fact that was not supported by competent substantial evidence.
2. Respondent's exception number 2 is denied on the grounds that Respondent does not identify any finding of fact that was not supported by competent substantial evidence.

3. Respondent's exception number 3 is denied on the grounds that Respondent does not identify any finding of fact that was not supported by competent substantial evidence.

4. Respondent's exception number 4 is denied on the grounds that Respondent does not identify any finding of fact that was not supported by competent substantial evidence.

5. Respondent's exception number 5 is denied on the grounds that Respondent does not identify any finding of fact that was not supported by competent substantial evidence and states an incorrect conclusion of law.

6. Respondent's exception number 6 is denied on the grounds that Respondent states an incorrect conclusion of law.

#### FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

2. There is competent substantial evidence to support the findings of fact.

#### CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 458, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

3. Respondent has violated Sections 456.072(1)(q) and (gg), Florida Statutes.

#### DISPOSITION

Upon a complete review of the record in this case, the Board determines that the disposition recommended by the Administrative Law Judge be ACCEPTED. WHEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that the license of JEAN CASSELL is suspended until she undergoes an evaluation coordinated by the Intervention Project for Nurses (IPN), and complies with any and all terms and conditions imposed by IPN as a result of said evaluation.

The licensee must pay an administrative fine of \$500.00 within sixty (60) days from the date of entry of this Order. Partial payments shall not be accepted. Payment shall be made to the Board of Nursing and mailed to, DOH-Client Services, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Nursing Compliance Officer.

RULING ON MOTION TO ASSESS COSTS

The Board reviewed the Petitioner's Motion to Assess Costs and imposes the costs associated with this case in the amount of \$15,698.25, said costs are to be paid within 60 months from the date this Final Order is filed. Payment shall be made to the Board of Nursing and mailed to, DOH-Client Services, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Nursing Compliance Officer.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 23 day of December, 2008.

BOARD OF NURSING

William E. Spooner

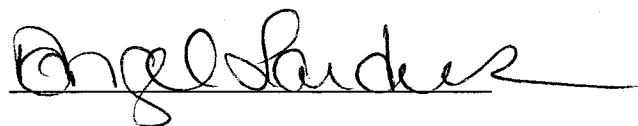
Rick García, MS, RN, CCM  
Executive Director  
for Vicky Stone-Gale, MSN, ARNP, Chair

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to JEAN CASSEL, 27625 Lincoln Place, Wesley Chapel FL 33544 and Louis Kwall, Esquire, 133 N. Fort Harrison Avenue, Clearwater FL 33755; to Susan B. Harrell, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice delivery to Megan Blanco, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3265 this 24 day of December, 2008.



**Deputy Agency Clerk**



Charlie Crist  
Governor

Ana M. Viamonte Ros, M.D., M.P.H.  
State Surgeon General

---

**INTEROFFICE MEMORANDUM**

**DATE:** December 16, 2008

**TO:** Cassandra Pasley, B.S.N., J.D., Chief  
Bureau of Health Care Practitioner Regulation

**FROM:** Rick García, MS, RN, CCM  
Executive Director  
Florida Board of Nursing

**SUBJECT:** Delegation of Authority

---

This is to advise you that while I am out of the office Monday, December 22, 2008 through Friday, December 26, 2008, the following individuals have delegated authority to serve as Acting Executive Director for the Florida Board of Nursing.

December 22, 2008

Will Spooner, BS, Regulatory Supervisor, who has delegated authority as Acting Executive Director for the Florida Board of Nursing.

December 23, 2008

Will Spooner, BS, Regulatory Supervisor, who has delegated authority as Acting Executive Director for the Florida Board of Nursing.

December 24, 2008

Tammy Collins, CPM, Regulatory Supervisor, who has delegated authority as Acting Executive Director for the Florida Board of Nursing.

December 25, 2008

BOARD OFFICE CLOSED – IN OBSERVANCE OF CHRISTMAS DAY

December 26, 2008

Anthony Jusevitch, BA, CPM, FRE, Program Operations Administrator, who has delegated authority as Acting Executive Director for the Florida Board of Nursing.

STATE OF FLORIDA  
DEPARTMENT OF HEALTH

**FILED**  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK *Reginald C. Cobb*  
DATE *10/7/08*

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOAH Case NO. 08-2106PL  
DOH CASE NO. 2005-69688

JEAN CASSEL, R.N.,

Respondent.

**MOTION FOR FINAL ORDER AFTER RECOMMENDED ORDER**

COMES NOW, the Petitioner, by and through its undersigned counsel, and moves the Board of NURSING for entry of a Final Order in the above-styled cause. As grounds therefore, the Petitioner would state the following:

1. Petitioner previously filed an Administrative Complaint against Respondent alleging that Respondent had violated the provisions of Florida Statutes, as set forth therein.

2. Respondent requested a formal hearing before the Division of Administrative Hearings. The hearing was held July 9, 2008.

3. On September 2, 2008, the Administrative Law Judge filed the Recommended Order recommending discipline against Respondent.

4. Respondent submitted an Unopposed Motion To Continue Final Hearing on September 24, 2008. Consequently, this matter was pulled from the agenda of the October 2008 meeting of the Florida Board of Nursing.

WHEREFORE the Department respectfully requests the Board of Nursing to consider the recommended order, and the relevant documents filed in the proceeding before the Division of Administrative Hearings, and enter a final order imposing discipline against Respondent.

Respectfully submitted,



Megan M. Blanco  
Assistant General Counsel  
Department of Health  
Prosecution Services Unit  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, FL 32399-3265  
(850) 245-4640 Telephone  
(850)245-4683 Telefax  
FBN 0860921

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Assess Costs has been provided, to: Louis Kwall, Esq., 133 North Fort Harrison Avenue, Clearwater, Florida 33755, by regular mail, this 8<sup>th</sup> day of October, 2008.



Megan M. Blanco

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF )  
NURSING )  
Petitioner, )  
vs )  
JEAN CASSEL, R. N. )  
Respondent. )  
\_\_\_\_\_ )

Case No.: 08-2106PL  
2005-69688

**PROPOSED RECOMMENDED ORDER**

Pursuant to notice, a final hearing was held in this case on July 9, 2008 in Clearwater, Florida before the Honorable Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

**APPEARANCES**

For Petitioner Megan Blanco, Esq.  
William Miller, Esq.  
Department of Health  
4052 Bald Cypress Way, Bin c-65  
Tallahassee, florida 32399-3265

For Respondent Louis Kwall, Esq.  
Kwall, Showers & Barack, PA  
133 North Fort Harrison Avenue  
Clearwater, Florida 33755  
Tel 727 441-4947  
Fax 727 447-3158

**STATEMENT OF ISSUES**

1. Whether Respondent violated section 456.072(1)(gg)(2005) Fla Statutes, as alleged in the (second) Amended Administrative Complaint by being terminated from I.P.N., which is a treatment program for impaired practitioners as described by section 456.076 Fla Statutes, for failure to comply without good cause.



- a. Whether the Department of Health had any interest in the said contract for the purpose of using non-compliance as grounds to impose discipline.
2. Whether Respondent violated Section 456.072(1)(q)(2005 ) Fla Statutes as alleged in the (second) Amended Administrative Complaint.
  - a. Was there any agreement between Counsel for Petitioner and Counsel for Respondent to have a physician other than an I.P.N. physician examine the Respondent.
  - b. Was the failure to enforce the Order to Compel Examination through court Order as provided in the statute a waiver.

### PRELIMINARY STATEMENT

Petitioner, the Department of Health, Board of Nursing filed an (second) Amended Administrative Complaint against the Respondent Jean Cassel alleging violation of Florida Statute 456.072(1)(gg)(2005) and 456.072(1)(q)(2005) on March 24, 2008.

A timely request for an Administrative Hearing was made and assigned to Administrative Law Judge Susan B. Harrell.

The final hearing was held pursuant to notice on July 9, 2008 in Clearwater Florida. At the final hearing the Petitioner called the Respondent, Jean Cassel, Jean D'Aprix, and Lorraine Busch to testify. The Respondent testified in her own behalf. Petitioner's Ex 1-7 and 9 were admitted. Respondent's Ex. 1-3,5-8,10-13 were admitted. Respondent's Ex 4 and 11 were also admitted as Petitioner's Exhibit 1 and 4.

The transcript was filed on July 29, 2008.

### FINDINGS OF FACT

1. Petitioner is the state department charged with regulating the practice of nursing pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 464, Florida Statutes. (*stipulated*).
2. Respondent is and has been at all times material hereto a licensed registered nurse (R.N.) In the State of Florida, having been issued license number RN 9177327. (*stipulated*).
3. Respondent's address of record is and has been at all times material hereto 27625 Lincoln Place, Wesley Chapel, Florida 33544. (*stipulated*).
4. In 2005 Respondent was hospitalized after attempting suicide by ingesting alcohol and Amitriptyline. (*stipulated*).

5. Amitriptyline is an antidepressant which Respondent received after completing an online application listing her symptoms. *(stipulated)*.
6. Following her attempted suicide, Respondent contacted I.P.N. in April of 2005. *(stipulated)*.
7. After her initial contact with I.P.N. but prior to entering a contract with I.P.N., Respondent received an evaluation by an I.P.N. approved evaluator. *(stipulated)*.
8. Following her evaluation, on or about August 2005, Respondent entered into a five year I.P.N. advocacy contract with monitoring from August 2005 through August 2010. *(stipulated)*.
9. Respondent discontinued her participation with I.P.N. prior to the end of her five year advocacy contract with I.P.N. *(stipulated)*.
10. On or about February 10, 2006, the Department, through the designee of the Secretary, issued an Order Compelling an Examination to Respondent. *(stipulated)*.
11. On or about February 24, 2006, a Department investigator hand served Respondent's attorney with a copy of the Order Compelling an Examination. *(stipulated)*.
12. The Order Compelling an Examination was scheduled for March 7, 2006, at 11:00 a.m. at the offices of Dr. David Myers, M.D. *(stipulated)*.
13. Respondent did not provide a written objection to the Department to the Order Compelling Examination prior to March 7, 2006. *(stipulated)*.
14. Respondent did not appear at Dr. Myer's office on March 7, 2006, for the scheduled examination. *(stipulated)*.
15. Respondent is presently employed as an R.N. at the emergency room of Florida Hospital in Zephyrhills, Florida. (T-140).
16. Respondent has been an RN since 1987 and prior to this proceeding had no complaints against her license. (T-141).
17. Respondent had a heart attack and open heart surgery on March 15, 2004. (T141).
18. Because of this Respondent suffered from depression and attempted suicide. Respondent sought treatment from Pius Jacob MD, a Board Certified Psychiatrist. (T-142,143).
19. Respondent contacted I.P.N. on her own for help. No one told her she had to go there although it was recommended to her. (T-14,144).

20. At the request of I.P.N. Respondent went to Trinity Oaks a Division of Baycare for intensive outpatient treatment which she successfully finished on Sept 25, 2005. She went 3 times per week. This was started voluntarily without a contract and lasted three or four months. (T-145-146)(T-73).
21. When the I.P.N. contract was offered her, Respondent felt threatened that if she didn't sign she would lose her license. (T-146).
22. The contract was signed with written objections on August 27 2005 (T-22,24). Respondent was willing to sign a 2 year contract but was required to sign a 5 year contract. (T-4,132,147, P Ex1).
23. Respondent requested a 2 year contract. (T-26).
24. Respondent's reasons for leaving the program was that the program length was objectionable and they had no treatment for depression only for drugs and alcohol. (T-147).
25. Respondent's Ex 13 shows that Respondent had left the program by her deeds prior to being dismissed by I.P.N.
26. Respondent has worked successfully and continuously since leaving the program in 2005 and there have been no other complaints against her either by the Board of Nursing or at the hospital where she has worked. (T-148,148, R Ex 1,2,3).
27. Although Lorraine Busch RN, Respondent's case worker, sought the advice of Pius Jacob MD she did not accept it. (R-Ex 12).
28. After the Order Compelling Examination for March 7, 2006 was served on Counsel for Respondent, Respondent went to his office to discuss it. (T-151).
29. As a result of that meeting Respondent believed that an agreement had been reached between her Counsel and Counsel for the Petitioner that she could be examined by someone other than an I.P.N. Doctor with the approval the Counsel for Petitioner. ((T-153,158).
30. After having trouble finding someone Respondent finally arranged for PAR to do her evaluation. Various e-mails passed between Counsel for Respondent and Counsel for Petitioner showing this including a request for the CV of the PAR person who was doing the evaluation. (T-157, R Ex 10).
31. Respondent's Ex 5,7,and 8 are the original Administrative Complaint, the amended Administrative Complaint and the (second) Amended Complaint which is the subject of this proceeding.

32. The original administrative complaint filed July 24, 2006 contained no allegation of failing to comply with the Order to Compel Examination for March 7, 2006. This Complaint was signed by Michael Lawrence for the Petitioner. (R Ex 5).
33. The first allegation of a failure to comply with Order Compelling Examination was in the Amended Complaint filed on June 18, 2007 over 1 year from the date of the Order Compelling Examination (R Ex 7). This Amended Administrative Complaint was signed by Megan Blanco as Counsel for Petitioner.
34. The Order to Compel for March 7, 2006 has the same Department of Health case number as all three (3) Administrative Complaints filed against the Respondent. (R Ex 5, 7, 8, P Ex 4).
35. Jean D'Aprix is the Executive Director of I.P.N. since 2003. She supervises the staff. We don't know what her credentials are in the medical field. (T-46).
36. D'Aprix became involved in the Respondent case because Respondent filed a grievance along with her signed contract. She didn't become involved until over 1 month after the contract and complaints were stated by the Respondent. (T-54) One of Respondent's grievances concerned the length of the contract. (T-54). D'Aprix only spoke to Respondent once. (T-72).
37. In the complaint and the grievance Respondent was requesting a 2 year contract instead of a 5 year contract. This is consistent with I.P.N.'s own guidelines for someone with Respondent's diagnosis of alcohol abuse rather than addiction. (T-55, 79-80, 84).
38. Lorraine Busch an RN was Respondent's case manager. (T-81). She was not involved in the signing of the contract with I.P.N. but became involved afterward.
39. I.P.N. was aware that Respondent had a prescription for Propoxyphine.
40. The letters in Respondent's Ex 13 all came from I.P.N. and showed Respondent's intent not to participate any longer in the program. Even if Respondent did not verbally indicate she was leaving the program, her actions did. Busch has no independent recollection as to whether or not Respondent told her she was leaving the program. She has a caseload of 200. (T-138).
41. No one from the Department of Health of the State of Florida signed her contract with I.P.N. (T-135).

### CONCLUSIONS OF LAW

1. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. Subsections 120.569 and 120.57 Florida Statutes.
2. The Department has the burden to establish by clear and convincing evidence the allegations in the (second) Amended Complaint. *Department of Banking and Finance v. Osborne Stern and Co.*, 670 So.2d 932 (Fla 1996); *Slomowitz v. Walker*, 429 So2d 797 (4<sup>th</sup> DCA 1983); In re *Davey*, 645 So 2d 398 (Fla1994).
3. The Department alleged that the Respondent violated subsection 456.072(1)(gg) Florida Statute (2005) by being terminated from I.P.N. for failure to comply, without good cause, with the terms of monitoring or treatment contract entered into by Respondent. The Department further alleged that Respondent violated subsection 456.072(1)(q), Florida Statute (2005) by violating a lawful order of the Department as set forth in 456.072(1)(y) Florida Statute (2005) for failing to appear for a compelled examination.
4. The Department failed to establish by clear and convincing evidence that Respondent violated subsection 456.072(1)(gg) in that:
  - a. Respondent voluntarily entered into the contract with I.P.N. but objected to among other things to the length of the contract and asked for relief from that term.
  - b. I.P.N. refused to alter the term of the contract even though their own guidelines called for a 2 year contract where the diagnosis was alcohol abuse as opposed to alcohol addiction.
  - c. I.P.N. was providing no treatment for depression.
  - d. The contract Respondent entered into with I.P.N. was entered into because she was in fear of losing her license.
  - e. Respondent's written statement of her objections on the contract itself and additional e-mails and letters show Respondent's continued efforts to have I.P.N. comply with their own guidelines of two years. This along with Respondent's voluntary contact with I.P.N., her attendance at outpatient treatment at Trinity Oaks Baycare for treatment even though she was not under a contract show her good faith in trying to work with I.P.N.
  - f. Respondent was willing to comply with a 2 year contract.
  - g. The contract with I.P.N. was a contract of adhesion and is void ab initio.
  - h. The Department was not a party to the contract.
5. The Department failed to prove by clear and convincing evidence that Respondent violated subsection 456.072(1)(q) Florida Statutes (2005) in that:
  - a. The Order Compelling Examination was filed in February 2006 prior to the filing of any Administrative Complaint.
  - b. The first Administrative Complaint (Respondent's Ex 5) was filed on July 24, 2006, with no allegation of failure to comply with the Order Compelling

- Examination even though the exam was scheduled for March 7, 2006 and the Respondent had not complied and appeared as scheduled.
- c. The first allegation of failure to comply was in the (first) Amended Complaint filed on June 18, 2007. Some 16 months after the scheduled examination pursuant to the Order to Compel Examination.
  - d. The Order Compelling Examination contained the same Department case numbers as the original and amended administrative complaints (P Ex 4 , R Ex 5,7-8) filed against Respondent.
  - e. Florida Statute 456.072(1)(y) (2005) is the statute under which the Department filed its Order Compelling Examination. This statute provides that if there is a failure to comply the remedy for the Department to file a Petition in Circuit Court to enforce the Order. The statute provides that the Department would be entitled to a Summary Procedure as set forth in Florida statute 51.011(2005). Such Petition for enforcement was not filed and has not been ever filed.
  - f. The failure to follow the statute in over 2 years precludes the Department from complaining about non compliance.
  - g. Respondent contends that there was an agreement between her counsel and counsel for Petitioner for her to be examined by someone other than I.P.N. to comply with the Order to Compel. The following evidence supports that claim:
    - 1). There was no allegation of failure to comply with the Order Compelling Examination in the original Administrative Complaint (R-5) filed July 24, 2006 some 5 months after the scheduled appointment.
    - 2). The actions taken by Respondent to find an independent evaluator which were difficult until she finally was able to get PAR to do the evaluation.
    - 3). E-mails and correspondence between counsel for Respondent and counsel for Petitioner, especially the request for the CV of the PAR person who would do the examination before the examination was done. (R Ex 10).
    - 4). Failure of the Department to pursue summary proceeding under Florida Statute 456.072(1)(y) (2005) and Florida Statute 51.011(2005).
    - 5). Michael Lawrence, Assistant General Counsel from the Department of Health signed the first Administrative Complaint (R Ex 5) in July of 2006. Although he states in his affidavit that he does not recall any agreement or speaking with counsel for Respondent before that time this is inconsistent with fact that the Order Compelling Examination was not served on Respondent but was served on her Counsel. (See Stipulation of Facts number 17).
    - 6). As soon as the independent report from PAR was prepared it was forwarded to counsel for Petitioner even though it had some negative information about Respondent. Had there not been an agreement there would have been no reason to forward the report.
    - 7). Respondent has worked continuously since the filing of the original Administrative Complaint in July of 2006 without the Department entering or attempting to enter an Order precluding her from working while these Administrative Complaints have been pending.

- 6. Respondent's Motion to Dismiss the Second Amended Administrative Complaint which was filed at the hearing is denied for those reasons stated on the record:

**RECOMMENDATION**

Based on the foregoing Findings of Facts and Conclusions of Law it is:

Recommended that a final order be entered dismissing the (second) Administrative Complaint.

Respectfully submitted,





---

LOUIS KWALL

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished by Facsimile *Only* to the Department of Health, Board of Nursing, Megan M. Blanche, Assistant General Counsel, at (850) 245-4683 on this 07 day of August 2008.




---

LOUIS KWALL  
 COUNSEL FOR RESPONDENT  
 KWALL, SHOWERS & BARACK, P.A.  
 133 N. Ft. Harrison Ave.  
 Clearwater, FL 33755  
 (727) 441-4947/FAX 447-3158  
 FBN: 106690 SPN 00010887

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,**

**PETITIONER,**

**v.**

**CASE NO. 2005-69688**

**JEAN CASSEL, R.N.,**

**RESPONDENT.**

JUN 21 2007

**AMENDED ADMINISTRATIVE COMPLAINT**

COMES NOW, Petitioner, Department of Health (Department), by and through its undersigned counsel, and files this Amended Administrative Complaint before the Board of Nursing against Respondent, Jean Cassel, R.N., and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of nursing pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 464, Florida Statutes.

2. At all times material to this Amended Administrative Complaint, Respondent was a licensed registered nurse (R.N.) within the state of Florida, having been issued license number RN 9177327.



3. Respondent's address of record is 27625 Lincoln Place, Wesley Chapel, Florida 33544.

4. On or about August 15, 2005, Respondent entered into a five year Intervention Project for Nurses (IPN) advocacy contract.

5. IPN is the impaired practitioner program for the Board of Nursing, pursuant to Section 456.076, Florida Statutes. IPN is an independent program that monitors the evaluation, care and treatment of impaired nurses. IPN oversees random drug screens and provides for the exchange of information between treatment providers, evaluators and the Department for the protection of the public.

6. On or about November 23, 2005, IPN terminated Respondent for failure to comply with the terms of her IPN advocacy contract.

7. Section 456.072(1)(y), Florida Statutes (2005), states, in pertinent part, that "[t]he department shall have, upon a finding of the secretary or the secretary's designee that probable cause exists to believe that the licensee is unable to practice because of the reasons stated in this paragraph, the authority to issue an order to compel a licensee to submit to a mental or physical examination by physicians designated by the department."

8. On or about February 10, 2006, the Department, through the designee of the Secretary, issued an Order Compelling An Examination to Respondent.

9. The Order Compelling An Examination the Department issued to Respondent is a lawful order of the Department.

10. On or about February 24, 2006, a Department investigator hand served Respondent's attorney with a copy of the Order Compelling An Examination.

11. The Order Compelling an Examination was scheduled for March 7, 2006, at 11:00 a.m.

12. Respondent failed to comply with the Order Compelling An Examination and did not submit to the scheduled examination.

13. By failing to comply with the terms of the Order Compelling An Examination the Department issued to Respondent, Respondent violated a lawful order of the Department.

### **COUNT ONE**

14. Petitioner realleges and incorporates paragraphs one (1) through thirteen (13), as if fully set forth herein.

15. Section 456.072(1)(gg), Florida Statutes (2005), provides that being terminated from a treatment program for impaired practitioners, which is overseen by an impaired practitioner consultant as described in Section 456.076, Florida Statutes, for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee, or for not successfully completing any drug treatment or alcohol treatment program, constitutes grounds for disciplinary action.

16. Respondent is licensed pursuant to Chapter 464, Florida Statutes, and is a health care practitioner as defined in Section 456.001(4), Florida Statutes (2005).

17. As set forth above, Respondent violated Section 456.072(1)(gg), Florida Statutes (2005), by being terminated from IPN, which is a treatment program for impaired practitioners as described by Section 456.076, Florida Statutes, for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by Respondent.

18. Based on the foregoing, Respondent violated Section 456.072(1)(gg), Florida Statutes (2005), by being terminated from a treatment program for impaired practitioners, which is overseen by an

impaired practitioner consultant as described in Section 456.076, Florida Statutes, for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee, or for not successfully completing any drug treatment or alcohol treatment program.

### **COUNT TWO**

19. Petitioner realleges and incorporates paragraphs one (1) through thirteen (13), as if fully set forth herein.

20. Section 456.072(1)(q), Florida Statutes (2005), provides that violating a lawful order of the department or the board, or failing to comply with a lawfully issued subpoena of the department, constitutes grounds for disciplinary action.

21. Respondent is licensed pursuant to Chapter 464, Florida Statutes, and is a health care practitioner as defined in Section 456.001(4), Florida Statutes (2005).

22. As set forth above, Respondent violated a lawful order of the department or the board by failing to comply with the Order Compelling An Examination issued by the Department to Respondent.

23. Based on the foregoing, Respondent has violated Section 456.072(1)(q), Florida Statutes (2005), by violating a lawful order of the

department or the board, or failing to comply with a lawfully issued subpoena of the department.

WHEREFORE, the Petitioner respectfully requests that the Board of Nursing enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 18<sup>th</sup> day of June, 2007.

Ana M. Viamonte Rose, M.D., M.P.H.  
Secretary, Department of Health

Michael G. Lawrence, Jr.  
Michael G. Lawrence, Jr.

Assistant General Counsel  
DOH Prosecution Services Unit  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, Florida 32399-3265  
Florida Bar Number 0011265  
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(850) 245 - 4683 Facsimile

**FILED**  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK: Rachel [Signature]  
DATE: 6-21-07

/MGL

Reviewed and approved by: \_\_\_\_\_(initials) \_\_\_\_\_(date)

PCP: 6/12/07

PCP Members: Breen + Herrera