

Case # 2016-000562

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY, SOUTH CAROLINA
COURT OF COMMON PLEAS

HON R. SCOTT SPROUSE, CIRCUIT JUDGE

Case # 2014-CP-04-01780

NANCY C. PEREZ

Petitioner

Vs

SOUTH CAROLINA
DEPARMENT OF LABOR, LICENSING AND REGULATION –
BOARD OF NURSING

Respondent

RECORD ON APPEAL

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August 10th, 2015 Order Of Dismissal

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

DOCKET NO. 2014-CP-04-01780

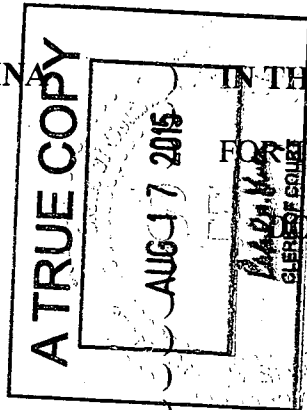
Nancy C. Perez,

Petitioner,

vs.

South Carolina Department of Labor,
Licensing and Regulation, Board of
Nursing

Respondent.



ORDER OF DISMISSAL

FILED-CLERK'S OFFICE
ANDERSON SC
2015 AUG 10 A 11:25
COMMON PLEAS AND
GENERAL SESSIONS

This matter came before this Court pursuant to Respondent's Motion to Dismiss Nancy Perez's *pro se* Amended Petition for a Writ of Mandamus and Declaratory Judgment, or in the Alternative, Inverse Condemnation Proceedings ("Complaint"). This Court grants Respondent's Motion to Dismiss because this Court does not have subject matter jurisdiction to judicially review Respondent's occupational licensing decisions regarding Ms. Perez. Furthermore, even if this Court had subject matter jurisdiction to hear the case, it could not grant the relief Ms. Perez seeks in the Complaint.

1. Rule 12(h) (3), SCRCP, states "[w]henver it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court *shall* dismiss the case." (Emphasis added). Subject matter jurisdiction may not be waived by the parties, and may be raised by the court itself. *Ex Parte Cannon*, 385 S. C. 643, 685 S. E. 2d 814 (Ct. App. 2009). Denial of occupational licensure is a contested case under the South Carolina Administrative Procedures Act (APA). S. C. Code §1-23-310 (3)-(4) (Supp. 2014). A party who has exhausted all administrative remedies with a licensing board administered by the South Carolina Department of Labor, Licensing and Regulation must appeal the board's decision to the Administrative Law Court, not to this Court. S. C. Code §§1-23-600(D)-(E) (Supp. 2014), 40-1-160, and 40-33-160 (2011).

2. Even if this Court had jurisdiction, it would not issue the requested writ of mandamus because the licensure denial alleged in the Complaint is not ministerial in nature.

255

ROA 1

To obtain a writ of mandamus requiring the performance of an act, the applicant must show 1) a duty of respondent to perform the act, 2) the ministerial nature of the act, 3) the applicant's specific legal right for which discharge of the duty is necessary, and 4) a lack of any other legal remedy. *Willimon v. City of Greenville*, 243 S. C. 82, 132 S. E. 2d 169 (1963). Reinstatement of Ms. Perez's license in this instance is discretionary rather than ministerial. A duty is ministerial "when it is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts. *Wilson v. Preston*, 378 S. C. 348, 354, 662 S. E. 2d 580, 583 (2008). It is ministerial if it is defined by law with such precision as to leave nothing to the exercise of discretion. *Id.*

Under S.C. Code §40-1-130 (2011), the Board of Nursing (Board) may deny an authorization to practice to an applicant who has committed an act that would be grounds for disciplinary action. The Board required Ms. Perez to appear before it for a reinstatement hearing because of Ms. Perez's failure to disclose a criminal matter to the Board both on her initial South Carolina application in 1996, as well as on her reinstatement application in May, 2014. Under S.C. Code §40-33-110(A)(19)(2011), obtaining or attempting to obtain a license to practice nursing through fraud, deceit or misrepresentation or any other dishonesty in any phase of the licensing process is grounds for discipline. Additionally, pursuant to S.C. Code §40-33-41(2011), the Board has the discretion to deny reinstatement based on evidence of unlawful acts, incompetence, unprofessional conduct, or other misconduct. See also *Trimmier v. South Carolina Dept. of Labor, Licensing and Regulation*, 405 S.C. 239, 245 746 S.E.2d 491, 494 (Ct. App. 2013), cert. denied, July 25, 2014 (finding the Board of Dentistry is permitted discretion in determining whether to reinstate a lapsed license).

3. Ms. Perez stated on the record that she is also seeking damages from Respondent because her LPN license has not been reinstated. Even if this Court has jurisdiction in this matter, the Complaint does not state viable grounds for monetary compensation from the Respondent. Inverse condemnation is the only cause of action pled in the Complaint that requests monetary relief. The elements of an action for inverse condemnation are: (1) affirmative conduct of a government entity; (2) the conduct effects a taking; and (3) the taking is for a public use. *S. C. State Highway Dep't v. Wilson*, 254 S. C. 360, 365, 175 S. E. 2d 391, 394 (1970). The inverse condemnation action is not viable because even if a compensable property interest in a lapsed occupational license exists which

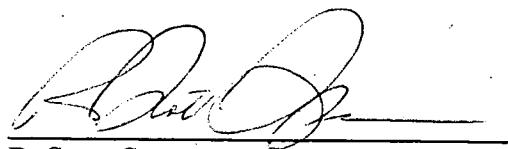
could be taken by denial of a reinstatement request, the requirement of taking that interest for public use is not alleged or met. LCB

THEREFORE, IT IS ORDERED that Respondent's motion to dismiss the Complaint is GRANTED.

Date: 8-4-15

Anderson, South Carolina

W. H. H.



R. Scott Sprouse
Presiding Circuit Judge

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2015 AUG 10 A 11:25
COMMON PLEAS AND
GENERAL SESSIONS

Pages 4-13

First Amended /Supplemented Petition For A Writ of Mandamus and
declaratory judgment or, in the alternative, inverse condemnation
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IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT
ANDERSON COUNTY, SOUTH CAROLINA

NANCY C. PEREZ

Petitioner

Vs

SOUTH CAROLINA
DEPARTMENT OF LABOR, LICENSING AND REGULATION –
BOARD OF NURSING

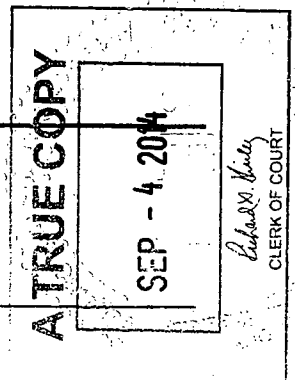
Respondent

**FIRST AMENDED/SUPPLEMENTED
PETITION FOR A WRIT OF MANDAMUS AND
DECLARATORY JUDGMENT OR, IN THE ALTERNATIVE ,
INVERSE CONDEMNATION PROCEEDINGS**

AND

BRIEF IN SUPPORT

JURY TRIAL REQUESTED IN RE
THE INVERSE CONDEMNATION PROCEEDING



Now Comes Plaintiff Nancy C. Perez, submits her First Amended/Supplemented¹ Complaint and avers as follows:

I

FACTUAL BACKGROUND

- 1- She is a 66 year old Practical Nurse
- 2- She attended Clarendon Community College, Clarendon Texas and graduated in 1996.
- 3- The State of Texas issued Compact License Number 160059 on October 9th, 1996. She has been practicing in Texas for the past eighteen (18) years. Her Licensed is FREE AND CLEAR. Her License expired on July 31, 2014.
- 4- On January 1st, 1997 the State of South Carolina issued her License number PR27857. Her Licensed is FREE AND CLEAR;
- 5- In May 2014 Ms. Perez returned to her native South Carolina and made the same her primary state. She has submitted the following documentation to the South Carolina Board of Nursing (SCBON) : (a) an application to reinstate her License; (b) the \$60.00 reinstatement fees ; (c) the application

¹Rule 15, SCRCP, provides that: "A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.", Health Promotion Specialists, LLC v. South Carolina Board of Dentistry, 27263 (S.C. 06/12/2013)

for a Criminal Background Check; (d) evidence of completing 30 Continuing Education Units (CEU's) and evidence of completing the "Professional Accountability & Legal Liability for Nurses" Course.

- 6- Ms Perez has advised the SCBON that her employer would not allow her to work without a South Carolina License.
- 7- **Ms. Perez ' employer has demanded that Ms. Perez produce a South Carolina License by September 2nd , 2014.** The SCBON is fully aware of this fact.
- 8- Ms Kate Nedovic, Licensure Supervisor with the Board of Nursing informed Ms. Perez that the SCBON will not permit Ms Perez to earn a living until such time as Ms Perez travels down to Columbia and testifies before the SCBON. Ms. Perez has objected.

II

MINISTERIAL ACTS OWED BY THE SCBON TO PLAINTIFF NANCY C. PEREZ

- 9- The right of a person to engage in a lawful profession, trade, or occupation of choice is clearly protected by both the Constitution of the United States and the Constitution of the State of South Carolina². The State cannot

² SECTION 40-1-10. ; see also Hawker v. People of State of New York, 170 US 189 (1898); Dent v. State of West Virginia, 129 US 114 , (1889) ; Sloan v. South Carolina Board of Physical

abridge this right except as a reasonable exercise of its police powers when it is clearly found that abridgement is necessary for the preservation of the health, safety, and welfare of the public³. The SCBON has failed or refused to identify the basis for preventing Ms. Perez to exercise the right to practice her vocation in order to earn a living. Nursing as a profession existed at common law⁴. Specifically, it was not created by a statute⁵.

10- Once the right to practice nursing is lawfully acquired, it is a **property**⁶ right protected by the due process clauses of the state and federal constitutions⁷. At common law, only the Judicial Department could revoke

Therapy Examiners, 636 S.E.2d 598, 370 S.C. 452 (S.C. 09/25/2006) citing US Constitution Fourteenth Amendment

³ id

⁴ <http://www.scribd.com/doc/63816424/The-History-of-Nursing-in-North-Carolina>

⁵ id

⁶ The right to hold specific employment and the right to follow a chosen profession free from unreasonable governmental interference come within the liberty and property interests protected by the Due Process Clause [of the Fourteenth Amendment]. The liberty interest at stake is the individual's freedom to practice his or her chosen profession; the property interest is the specific employment." Brown v. S.C. State Bd. of Educ., 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990) (citing Greene v. McElroy, 360 U.S. 474, 79 S.Ct. 1400, 3 L.Ed. 2d 1377 (1959)); Baird v. Charleston County, 333 S.C. 519, 537, 511 S.E.2d 69, 79 (1999) (recognizing same principle); Ezell v. Ritholz, 188 S.C. 39, 46-49, 198 S.E. 419, 422-23 (1938) (discussing same principle). "It cannot be doubted that a man's trade or profession is his property." Byrne's Adminstrs. v. Stewart's Adminstrs., 3 S.C. Eq. (3 Des. Eq.) 466, 479 (1812). Likewise, the practices of medicine and physical therapy by properly licensed individuals undoubtedly are cognizable property interests rooted in state law. Dantzler v. Callison, 230 S.C. 75, 92, 94 S.E.2d 177, 186 (1956) (stating "[t]here is no reasonable doubt that the rights of those who have been duly licensed to practice medicine or other professions are property rights of value which are entitled to protection"). Sloan v. South Carolina Board of Physical Therapy Examiners, 636 S.E.2d 598, 370 S.C. 452 (S.C. 09/25/2006) Liberty or property interests protected under the Due Process Clause "attain this constitutional status by virtue of the fact that they have been initially recognized and protected by state law" Paul v. Davis, 424 US 693, 710-11 (1976).

⁷ id

the right to practice a profession.⁸ Mrs. Perez hereby objects to any attempt by the SCBON to impose any sanction or penalty which could adversely affect Ms. Perez' ability to be gainfully employed.

- 11- The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws⁹.
- 12- All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained¹⁰.
- 13- No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due

⁸ Scott v. Texas State Board of Medical Examiners, 384 S.W.2d 686, 690 (Tex. Sup. 1964)(It is seen from the legislative history of the Medical Practice Act that from the beginning the revocation of a medical license has been committed to the district courts as a judicial function. **It has been traditionally so....**There is a difference, legislatively recognized through the years, between an exercise of the power to examine and issue a medical license, and an exercise of the power to revoke a medical license for cause. Texas Vending Comm. v. Headquarters Corp., 505 SW 2d 402 (Tex. Civ. App. 1974, writ ref'd n.r.e.). (Appellants rely on Scott v. Texas State Board of Medical Examiners, 384 S.W.2d 686 (Tex. 1964)... In Scott, the court was concerned with the provision of Tex.Civ.Stat.Ann.Art. 4506 providing a de novo review of the orders of the State Board of Medical Examiners. There the Board had revoked and canceled Scott's license to practice medicine. **The Supreme Court observed that traditionally the revocation of a medical license has been committed to the district courts as a judicial function. The court also recognized, at least in the regulation of the practice of medicine, that a difference existed between an exercise of the power to examine and issue a license, and an exercise of the power to revoke a license.**

⁹ U.S. Const. amend. XIV, § 1 ; S.C. Const. art. I, § 3 , In Re Jane Doe, SC Supreme Court, Opinion No. 27385 (April 30, 2014)

¹⁰ Article 1, Section 9 of the South Carolina Constitution which provides that every person shall have a speedy remedy in the courts for wrongs sustained;

notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review¹¹.

14- The South Carolina Constitution establishes three branches of government and requires that they be "forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other¹². South Carolina has also adopted the non-delegation doctrine¹³. That doctrine is a component of the separation of powers doctrine and prohibits the delegation of one branch's authority to another branch¹⁴.

15- While the Legislature may not delegate its power to make laws, in enacting a law complete in itself, it may authorize an administrative agency or board "to fill up the details" by prescribing rules and regulations for the

¹¹ South Carolina Coastal Conservation League v. South Carolina Dep't of Health and Environmental Control, 669 S.E.2d 899, 380 S.C. 349 (S.C.App. 10/23/2008) citing S.C. Const. art. I, § 22 and Ross v. Med. Univ. of S.C. 492 SE 2d 62, 71 (1997) (The State Supreme Court has interpreted this provision to provide "persons the right to notice and an opportunity to be heard by an administrative agency, even when a contested case under the APA is not involved.)

¹² S.C. Const. art. I, § 8; Bernadette R. Hampton, Jackie B. Hicks, and Carlton B. Washington v. the Honorable Nikki Haley, In Her Official Capacity As Governor of, No. 27244 (S.C. 04/24/2013)

¹³ id

¹⁴ id

complete operation and enforcement of the law within its expressed general purpose¹⁵. That is especially important when quasi-criminal or penal administrative rules and regulations are involved¹⁶.

16- The Fifth and 14th Amendments of the US Constitution prevent the SCBON from coercing Ms. Perez into providing testimony which may be used against her¹⁷. The protection applies to criminal, civil and administrative proceedings¹⁸. The Fifth Amendment prevents the SCBON from penalizing Ms. Perez' for her refusal to testify by preventing her from becoming gainfully employed¹⁹.

17- The US and South Carolina Constitutions require just compensation wherein private property is taken for public use. A takings clause case" or controversy exists once the SCBON has taken private property without

¹⁵ South Carolina Coastal Conservation League v. South Carolina Dep't of Health and Environmental Control, 669 S.E.2d 899, 380 S.C. 349 (S.C.App. 10/23/2008)

¹⁶ Dykeman v. Wells Fargo Home Mortgage, Inc., 673 S.E.2d 804, 381 S.C. 333 (S.C. 02/09/2009); Hinton v. South Carolina Dep't of Probation, Parole and Pardon Services, 357 S.C. 327, 592 S.E.2d 335 (S.C.App. 01/12/2004)

¹⁷ Lefkowitz v. Turley, et al, 414 US 70, 77 (U.S. 11/19/1973) (The Amendment not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings] citing McCarthy v. Arndstein, 266 US 34, 40 (1924), Jackson v. Denno, 378 S 368 (1964), Accord : State v. Hook, 348 S.C. 401, 559 S.E.2d 856 (S.C.App. 12/17/2001) citing S.C. Const. Art. I, § 12, affirmed, State v. Hook, 356 S.C. 421, 590 S.E.2d 25 (S.C. 11/24/2003)

¹⁸ id

¹⁹ Gardner v Broderick, 392 US 273, 279 (U.S. 06/10/1968) ; Accord : State v. Hook, 348 S.C. 401, 559 S.E.2d 856 (S.C.App. 12/17/2001) citing S.C. Const. Art. I, § 12, State v. Hook, 356 S.C. 421, 590 S.E.2d 25 (S.C. 11/24/2003)

paying for it²⁰. Thus, it is a taking when a state regulation deprives him of all economically beneficial use of his property²¹. It is irrelevant for 5th Amendment purposes whether the taking was effectuated by the executive, legislative or **judicial branch**²².

- 18- The provisions of the South Carolina Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory²³.

INVERSE CONDEMNATION PROCEEDING

- 19- "In an inverse condemnation action, a private property owner seeks to establish that a government entity has taken his or her property." *Id.* "The governmental conduct at issue generally takes one of two forms: (1) the

²⁰ *Horne v. Department of Agriculture*, 12-123 (U.S. 06/10/2013) FN 6, *supra*, citing

²¹ *Stop the Beach Renourishment, Inc. v. Florida Dep't of Environmental Protection*, No. 08-1151 (U.S. 06/17/2010) citing *Lucas v. South Carolina Coastal Council*, 505 US 1003, 1019 (1992).

²² *Stop the Beach Renourishment, Inc. v. Florida Dep't of Environmental Protection*, No. 08-1151 (U.S. 06/17/2010) Quoting *PruneYard Shopping Center v. Robins*, 447 US 74 (1980)

²³ Article 1, **SECTION 23. Accord:** The guiding principle of construing a constitution is to ascertain and give effect to the intent of the voters who adopted it, *Republican Party of Texas v. Dietz*, 940 S.W.2d 86, 91 (Tex. 1997) (quoting *Black's Law Dictionary* 311 (6th ed. 1990)). ²³. The provisions of the Texas Constitution mean what they meant when they were promulgated and adopted, "and it does not lie within the power of the Legislature to change their meaning, or to enact laws in conflict therewith, *Jones v. Ross*, 173 S.W.2d 1022, 1024 (Tex. 1943); see also *Travelers Ins. Co. v. Marshall*, 76 S.W.2d 1007, 1011-12 (Tex. 1934) (meaning of constitution does not change with circumstances to make a different rule in a case seem desirable). As the supreme court stated more recently, "In interpreting the Texas Constitution, Texas courts rely heavily on the literal text and are to give effect to its plain language" *Republican Party*, 940 S.W.2d at 89; see also *City of Beaumont v. Bouillion*, 896 S.W.2d 143, 148 (Tex. 1995); *Satterfield v. Crown Cork & Seal Co., Inc.*, 268 S.W.3d 190 (Tex.App. Dist.3 08/29/2008

entity has physically appropriated private property or (2) the entity has imposed restrictions on the use of the property that deprive the owner of the property's 'economically viable use'²⁴.

CONCLUSION

Ms. Perez has a federal and state right to continue practicing as a practical nurse and earn a living unless the SCBON finds clear and conclusive evidence that a clear and present danger would exist to the public health, safety or welfare if the license, authorization, permit or certification were not immediately suspended or revoked.

WHEREFORE, Ms Perez respectfully request that her Constitutional , statutory and property rights identified hereinabove be declared pursuant to 42 USC 1983 within the meaning of, inter alia, S.C. Code Ann. § 15-53-20 (2005)²⁵; that an Order be issued mandating²⁶ that the Department of Labor , Licensing and Regulation cease and desist preventing Ms Perez from exercising her right to work as a nurse and earn a living. In the alternative, that a finding be made that the Department has imposed restrictions on the use of her property that deprive her of economically viable use and that as a

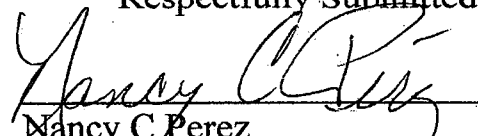
²⁴ Frampton v. South Carolina Department of Transportation, 5181 (S.C.App. 10/30/2013).

²⁵ Auto-Owners Insurance Co. v. Rhodes, 27316 (S.C. 09/25/2013)

²⁶ Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (S.C.App. 01/18/1999) (the rights granted by the South Carolina Constitution and statutes are enforceable by a writ of mandamus) SC Constitution , Article V, Section 20

consequence thereof she be permitted to recover the value of property which has been taken.

Respectfully Submitted,


Nancy C Perez
713 E. Greenville St - D220
Anderson, SC 29621
864-209-1509

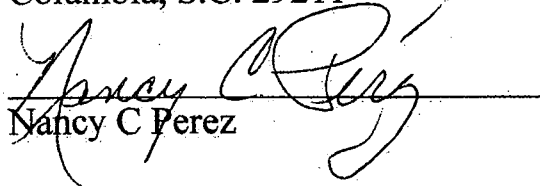
CERTIFICATE OF SERVICE

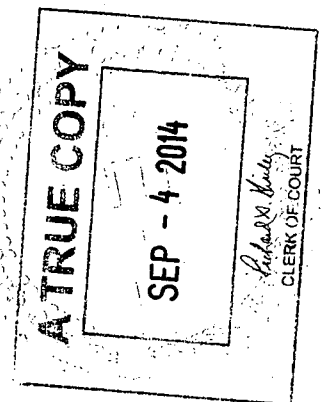
It is hereby certified that a copy of the foregoing "First Amended/Supplemented Petition For a Writ of Mandamus and Declaratory Judgment, or in the alternative, Inverse Condemnation Proceeding" was delivered by mailing a copy thereof on this 4th day of September 2014 to:

The Honorable Alan McCrory Wilson
Attorney General
P.O. Box 11549
Columbia, S.C. 29211

South Carolina Department of Labor, Licensing and Regulation
110 Centerview Dr.
Columbia, S.C. 29210

South Carolina Board of Nursing
PO Box 12367
Columbia, S.C. 29211


Nancy C Perez



Pages 14-65

Nancy C Perez Rule 59(e) SCRP Verified Motion

Case # 2014-CP-04-01780

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT
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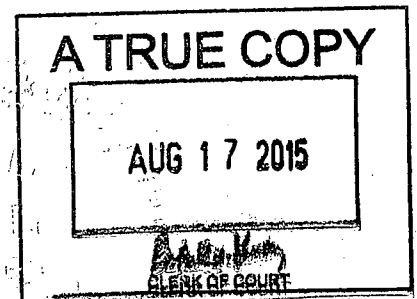
NANCY C. PEREZ

Petitioner

Vs

SOUTH CAROLINA
DEPARTMENT OF LABOR, LICENSING AND REGULATION –
BOARD OF NURSING

Respondent



NANCY C. PEREZ' RULE 59(e), SCRPC
VERIFIED MOTION FOR NEW TRIAL AND RECONSIDERATION

Nancy C. Perez respectfully moves the Court to set aside the August 10th, 2015 Order dismissing the lawsuit for lack of subject matter jurisdiction. Ms Perez objects. As grounds therefore she shows:

I

FACTUAL BACKGROUND¹

Nancy C. Perez was born in Aiken, South Carolina in July 11th, 1948. She graduated as a License Practical Nurse from Clarendon College, Texas in 1996. Clarendon College is an accredited educational institution. Nancy C. Perez obtained Texas License 160059 on October 9th, 1996. She worked in Texas until May 2014. A total of eighteen (18) Years. The Texas Board of Nursing never brought any disciplinary actions against Ms. Perez. No Texas patient ever sued Ms. Perez for malpractice.

In May 2014 Ms. Perez returned to her native South Carolina. She informed the South Carolina Board of Nursing (SCBON) and submitted an application to resume exercising her common law profession in the state. She also provided the SCBON the authority to conduct a criminal background check.

The Patrick B. Harris Psychiatric Hospital (PBHPH) offered Ms. Perez a full time position earning \$15.16 an hour, plus insurance and benefits. The PBHPH conducted a previous employment history and found no derogatory information. The Patrick B. Harris Psychiatric Hospital withdrew the offer

¹ Attachment 1

because the SCBON failed or refused to allow Ms. Perez to earn a livelihood.

Nursing as a profession existed since 1850 . The nursing profession in South Carolina was regulated by the state for the first time in 1910. The South Carolina Nursing Association requested that nurses be registered with the state in order to empower the profession and women.

The Department of Labor, Licensing and Regulation (DLLR) and Ms Holly Gillespie Pisarik have failed or refused to inform Ms Perez that they have made a finding that abridging her right to work as a nurse is necessary for the preservation of the health, safety and welfare of the public. The DLLR has informed Ms. Perez that they have the authority to prevent Ms Perez from being gainfully employed until she travels to Columbia and testifies before the SCBON.

The Defendants have never informed Ms Perez that their research shows that the marketplace and/or other common law regulations were not appropriate for regulating the nursing profession and therefore government regulation is necessary. The Defendants have failed or refused to allege that employers such as hospitals, cannot be trusted with the supervision of nurses. The defendants have failed or refuse to allege that at common law , the nursing profession was adversely affecting the health and safety of South

Carolínians. Historical evidence shows that Ms Florence Nightingale, founded the nursing profession and excelled in its practice even though she was not licensed by any government agency.

II

SUBJECT MATTER JURISDICTION MAY BE RAISED AT ANY TIME

The issue of subject matter jurisdiction may be raised at any time including when raised for the first time to an appellate court².

III

THE NURSING PROFESSION EXISTED AT COMMON LAW

Attachment 2³, consists of South Carolina documents obtained from the Clemson University Library which show that the nursing profession was regulated by the state for the first time in 1910. The documents also shows that it was the South Carolina nursing association, not the South Carolina general assembly, who requested that nurses be “registered”. Actually, the General Assembly refused to register nurses in 1909. The documents show that the health and safety of South Carolínians was not an issue.

² Linda Mc Co. v. Shore, 703 SE 499 , 506 (2010)

³ Attachment 2 is a true and correct copy , State Board of Nursing for SC, 50th Anniversary 1935-1985 pp 3-5,

IV

THE PURPOSE OF THE NURSE PRACTICE ACT WAS TO EMPOWER FEMALES AND NURSING , SPECIFICALLY IT WAS NOT ABOUT THE HEALTH AND SAFETY OF SOUTH CAROLINIANS

There is no mention in the 1910 Nurse Practice Act that the general assembly found it necessary to regulate nurses because hospitals and other employers failed to properly supervise nurses and that as a result thereof the health and safety of South Carolinians was being adversely affected.

As shown hereinbelow, according to the "Journal of Issues in Nursing "The purpose of the Nursing Practice Act was to "empower the profession and females": The "Historical Review of Nurses' Power over Nursing Practice" ⁴ , states "this paper will begin with an examination of the concept of power; move on to a historical review of nurses' power over nursing practice " . It goes on to state " a historical review of nurses' power over nursing should include social, cultural, and educational factors that influence nurses' power over their practice . Social and cultural factors that influence nursing power have their roots in the view of nursing as women's work . Initially, nursing was a domestic role women were expected to fulfill in the home. In addition, a lot of nursing work is done in private, behind drawn curtains. The persistent invisibility of a lot of nursing work decreases

⁴ Attachment 3

<http://www.nursingworld.org/MainMenuCategories/ANAMarketplace/ANAPeriodicals/OJIN/TaleofContents/Volume122007/No1Jan07/LookingBackwardtoInformtheFuture.aspx>

Rec'd 18

nursing social status and perceived value, contributing to powerlessness. "First," the article continues, "nursing has historically been taught in hospitals, perpetuating nursing low status in relation to physicians and other health care providers"

Ms. Perez hereby emphasizes that historical evidence shows that Ms Florence Nightingale, founded the nursing profession in 1850 and excelled in its practice even though she was unlicensed⁵.

VI

A STATUTE IS NOT TO BE CONSTRUED IN DEROGATION OF COMMON LAW RIGHTS

The South Carolina Supreme Court has ruled that a statute is not to be construed in derogation of common law rights⁶. Consequently, Ms Perez respectfully request that the maxim be considered when adjudicating Ms. Perez' common law rights. At common law nurses had a right to practice their profession without a license⁷ and their right to be gainfully employed could only be terminated by their

⁵ Florence Nightingale – Biography <http://www.biography.com/people/florence-nightingale-9423539>

⁶ Barton v. South Carolina Department of Probation Parole and Pardon Services, 404 S.C. 395; 745 S.E.2d 110 (SC S. Ct - July 3, 2013 citing Doe v. Marion, 361 S.C. 463, 473, 605 S.E.2d 556, 561 (Ct. App. 2004), *aff'd*, 373 S.C. 90, 645 SE 245 (2007)

⁷ FN3, *supra*

employer⁸. Any controversy pursuant to the employment contract was ventilated by the judicial branch , not by a government agency⁹.

VI

THE DEPARTMENT OF LABOR, LICENSING AND REGULATION HAS NO ADMINISTRATIVE SUBJECT MATTER JURISDICTION

(a) Right to Jury Trial

As shown hereinabove , at common law, only employers could terminate nurses employment . Disputes were settled by the judicial department not a government agency.

Consequently, the Department Of Labor , Licensing and Regulation (DLLR) has no statutory or Constitutional authority to adjudicate Ms Perez' case¹⁰. The Jurisdiction of the DLLR does not apply where, as here, (1) Ms. Perez has the right to a jury trial before being deprived of her property. South Carolina Constitution art. I, § 14 provides " [t]he right to a trial by jury shall be preserved inviolate." This guarantee preserves the right to a jury trial in those cases where jury trials were allowed at common law¹¹. Attachment 2 shows that the nursing profession existed

⁸ Rachel Arnow-Richman, Mainstreaming Employment Contract Law: The Common Law Case for Reasonable Notice of Termination, 66 Florida Law Rev. 1513, p 1524 (2015)

⁹ id

¹⁰ State v. Gentry, 610 S.E.2d 494, 363 S.C. 93 (S.C. 03/07/2005) (defining jurisdiction)

¹¹ In the Interest of Stephen W., a Juvenile Under the Age of Seventeen, 409 S.C. 73; 761 S.E.2d 231; 2014 (SC Supreme Court SC - July 16, 2014) citing Mims Amusement Co. v. S.C. Law Enforcement Div., 366 SC 141, 149, 621 S.E.2d 344, 348 (2005)

at common law and was regulated by the state for the first time on February 23rd, 1910¹².

Ms. Perez' cause of actions pursuant to state law for the recovery of money or for specific real or personal property must be tried by a jury¹³. Her federal actions are also triable to a jury¹⁴.

(b) There is no clear evidence that abridgement is necessary for the preservation of the health, safety, and welfare of the public¹⁵

South Carolina and Federal Law provide that Ms. Perez has the right to engage in a lawful profession, trade, or occupation of choice and the same is clearly protected by both the Constitution of the United States and the Constitution of the State of South Carolina¹⁶. The State cannot abridge this right except as a reasonable exercise of its police powers when it is **clearly found that abridgement is necessary for the preservation of the health, safety, and**

¹² A true and correct copy is attached hereto

¹³ Bateman v. Rouse, 358 S.C. 667, 596 S.E.2d 386 (S.C.App. 05/03/2004) citing Rule 38 (a), SCRC

¹⁴ City of Monterey v. Del Monte Dunes at Monterey, 526 U.S. 687, 119 S.Ct. 1624, 143 L.Ed.2d 882 (U.S. 05/24/1999)

¹⁵ This issue was presented to the trial court in (1) First Amended/Supplemented Petition for a writ of mandamus and declaratory judgment, or in the alternative, inverse condemnation proceedings and brief in support, pp 3-4 filed on **September 4th, 2014**; Petitioners Reply To Respondents' Opposition to Petition For Writ Of Mandamus, pp 6-7 filed **September 19th, 2014**; Petitioners Motion To Strike – p 2 – filed on **September 19th, 2014**; Motion For Summary Judgment – pp 7-8, filed on **April 2nd, 2015**;

¹⁶ SECTION 40-1-10.; see also Hawker v. People of State of New York, 170 US 189 (1898); Dent v. State of West Virginia, 129 US 114, (1889); Sloan v. South Carolina Board of Physical Therapy Examiners, 636 S.E.2d 598, 370 S.C. 452 (S.C. 09/25/2006) citing US Constitution Fourteenth Amendment

welfare of the public¹⁷. The Defendants have not , and can not , introduce any evidence that Ms. Perez, who held a free and clear Texas state license for eighteen years, is a threat to the health and safety of South Carolinians .

(c) State Law states that “ No statute or regulation may be imposed under this article upon a profession or occupation except for the exclusive purpose of protecting the public interest when the: (1) unregulated practice of the profession or occupation can harm or endanger the health, safety, or welfare of the public and the potential for harm is recognizable and not remote or dependent upon tenuous argument¹⁸; There is no evidence that marketplace or common law regulation was ineffective thereby making government regulation necessary. Secondly, the SC Nursing Association, not the General Assembly, requested state regulation in order to empower the association and females.

¹⁷ Id, Accord 2009 South Carolina Code 40-33-1315. Recognition of multi-state licensure privilege A party state may, in accordance with that state’s due process laws, revoke, suspend, or limit the multi-state licensure privilege of any licensee to practice in its state and may take any other actions under its applicable state laws that are **necessary to protect the health and safety of its citizens**; see also **SECTION 1-23-370** Procedures regarding issuance, denial or renewal of licenses. No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. **If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action.** These proceedings shall be promptly instituted and determined.(emph. Added)

¹⁸ SC Statute 40-1-10(B)(1)

(d) Even if it is true that Ms Perez has been convicted of a crime , there is no evidence that the same has adversely affected her character or her eighteen years old nursing career.

(e) There is no evidence that Ms Perez was convicted for an act related to the practice of nursing

South Carolina Law, Section 40-1-140, Effect of prior criminal convictions – states that a person may not be refused an authorization to practice, pursue, or engage in a regulated profession or occupation solely because of a prior criminal conviction unless the criminal conviction directly relates to the profession or occupation for which the authorization to practice is sought.

The defendants have failed or refused to show that Ms. Perez has been convicted within the meaning of 40-1-140.

(f) The defendants have failed or refused to show that any evidence that Ms Perez has been convicted of any crime within the last ten years.

The Defendants failed or refused to show any evidence that Ms Perez has been convicted of a crime within the last ten years , any allegation stating otherwise is irrelevant within the meaning of Rules of Evidence 401-403 and 609 ¹⁹.

¹⁹ State v. Young, 661 S.E.2d 387, 378 S.C. 101 (S.C. 05/19/2008) ; Green vs Hewett, 407 SE 651, 653 (1991); United States v. Sanders, 964 F.2d 295 (4th Cir. 04/29/1992)

VII

MS. PEREZ HAS SHOWN THAT SHE HAS A RIGHT TO OBTAIN A WRIT OF MANDAMUS

The primary purpose of a writ of mandamus is to enforce established rights and to enforce a corresponding imperative duty created or imposed by law²⁰. To obtain a writ of mandamus requiring the performance of an act, the petitioner must show: (1) a duty to perform the act; (2) the ministerial nature of the act; (3) the petitioner's specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy²¹. Mandamus is based on the theory that an officer charged with a purely ministerial duty can be compelled to perform that duty in case of refusal²². Ms Perez adopts and incorporates herein the rights identified in in the instant motion.

VIII

CONSIDERING MS PEREZ' CIRCUMSTANCES THE POLICE POWER INVOKED BY THE DEFENDANTS IS UNCONSTITUTIONAL AS APPLIED

²⁰ Sanford v. South Carolina State Ethics Commission, 685 S.E.2d 600, 385 S.C. 483 (S.C. 11/05/2009) citing Redmond v. Lexington County Sch. Dist. No. 4, 314 SC 431, 445 SE 2d 441 (1994)

²¹ Sanford v. South Carolina State Ethics Commission, 685 S.E.2d 600, 385 S.C. 483 (S.C. 11/05/2009) citing Wilson v. Preston, 378 SC 348, 662 SE 2d 580 (2008);

²² id

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The general assembly's police power is limited to protecting the public interest rather than protecting or promoting the interests of individuals or groups²³. As shown hereinabove, the Nurse Practice Act was motivated by the desire to benefit the SC Nurses Association and not to protect the health and safety of South Carolinians.

Assuming, arguendo, that the usage of the police power is authorized in the regulation of nursing then the same is unreasonable in the instant case because Ms. Perez worked as a nurse in Texas for eighteen years without adversely affecting the health or safety of Texans. Courts must take into consideration an individual's circumstances when considering as applied challenges²⁴.

IX

THE TRIAL COURT RULING TRANSGRESSES UPON SC RULE OF EVIDENCE 404(b)

The August 14th, 2015 Court order states that the defendants may deny an authorization to practice to an applicant who has committed an act that would be grounds for disciplinary action²⁵.

But US and South Carolina law preclude evidence of a defendant's prior crimes or other bad acts to prove character of person in order to show action in conformity

²³ Edens , et al v. City of Columbia, et al, 228 S.C. 563, 91 S.E.2d 280 (S.C. 01/30/1956) citing Bookhart v. Central Elec. Power Co-op., 219 S.C. 414, 65 S.E.2d 781, 788 (1951)

²⁴ Educational Media Co.at Virginia Tech, Inc. v. Insley, 12-2183 (4th Cir. 09/25/2013) citing Educational Media Co. at Va. Tech., Inc. v. Swecker, 602 F.3d 583, 589 (4th Cir. 2010)

²⁵ Order of Dismissal , August 10, 2015 page 2

therewith²⁶. To admit evidence of prior bad acts, the trial court must first determine whether the proffered evidence is relevant²⁷. "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence²⁸. The trial court failed or refused to determine if the evidence was relevant.

X

THE TRIAL COURT ERRED WHEN IT FAILED OR REFUSED TO CONDUCT A RULE 403 , SCRE PREJUDICE ANALYSIS

If a bad act evidence is found admissible under Rule 404(b) , the trial court must then conduct the prejudice analysis required by Rule 403, SCRE²⁹."

Pursuant to Rule 403, "relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.". "Unfair prejudice means an undue tendency to suggest [a] decision on an improper basis³⁰."

²⁶ United States v Briley , 770 F 3d 267 (Fourth Cir – October 22, 2014) Huddleston v. United States, 485 US 681 , 689, 108 S. Ct. 1496, 99 L. Ed. 2d 771 (1988)

²⁷ State v. Clasby, 385 SC 148, 154, 682 S.E.2d 892, 895 (2009).

²⁸ The State v. Berry, Appellant, Opinion No. 5329 (Ct Of Appeals - July 15, 2015) citing Rule 401, SCRE

²⁹ State v. Wallace, 384 S.C. 428, 435, 683 S.E.2d 275, 278 (2009) citing Rule 403, SCRE

³⁰ State v. Gilchrist, 329 S.C. 621, 627, 496 S.E.2d 424, 427 (Ct. App. 1998)

If the trial court finds the evidence is relevant, the court must then determine whether the bad act evidence is admissible under Rule 404(b) of the South Carolina Rules of Evidence³¹. Rule 404(b) precludes evidence of a defendant's prior crimes or other bad acts to prove the defendant's guilt for the crime charged, except to establish (1) motive; (2) intent; (3) the absence of mistake or accident; (4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the other; or (5) the identity of the perpetrator³². Accordingly, Ms. Perez respectfully object to the trial court error in not conducting a Rule 403, SCRE, analysis.

XI

THE COURT OF COMMON PLEAS HAS SUBJECT MATTER JURISDICTION OVER MS PEREZ' COMPLAINT

The Defendant claims that Ms. Perez' cause of action ought to be dismissed because the Court has no jurisdiction to entertain a lawsuit where the defendant is challenging a penalty imposed by Department of Labor, Licensing and Regulation³³ (DLLR). Ms. Perez respectfully but adamantly objects.

South Carolina circuit courts are vested with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given

³¹ State v. Clasby, 385 SC 148, 154, 682 S.E.2d 892, 895 (2009).

³² id

³³ Defendant's Opposition to the Petition for A Writ of Mandamus , Page 1 , item 1.

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to inferior courts, and shall have such appellate jurisdiction as provided by law³⁴.

The Defendants did not, and could not, identify when the S.C. Const. Art. V, § 11³⁵ was amended in order to exclude from the circuit Courts causes of action which are “administrative in nature”³⁶. The Defendant did not, and could not, identify when S.C. Const. , article 1, Section 23³⁷ was amended within the meaning of Article 1 , Section 3³⁸ in order to make Constitutional provisos discretionary instead of mandatory.

³⁴ Rainey v. Haley , 745 SE 2d 81, 83 (Supreme Court - 06/12/2013) (citing S.C. Const. art. V, § 11); The construction of a statute is a judicial function and responsibility, Lindsay v. Nat'l Old Line Ins. Co., 262 S.C. 621, 628, 207 S.E.2d 75, 78 (1974).

³⁵ Article V **SECTION 11.** Jurisdiction of Circuit Court. The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.) Rainey v. Haley , 745 SE 2d 81, 83 (Supreme Court - 06/12/2013) (citing S.C. Const. art. V, § 11);

³⁶ See *Muldrow v. Jeffords*, 144 S.C. 509, 520, 142 SE 602, 605 (1928) According to a well-established rule of law, those who undertake to deprive [a court] of jurisdiction in any given case and give it to [another] must be able to point out some particular provision of the Constitution which either expressly or by necessary implication gives jurisdiction of such case to the limited and inferior tribunal to the exclusion of the superior tribunal.").

³⁷ **SECTION 23.** Provisions of Constitution mandatory. The provisions of the Constitution shall be taken, deemed, and construed to be **mandatory and prohibitory, and not merely directory**, except where expressly made directory or permissive by its own terms. (1970 (56) 2684; 1971 (57) 315.)

³⁸ **SECTION 3.** Privileges and immunities; due process; equal protection of laws. The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, **nor shall any person be deprived of life, liberty, or property without due process of law**, nor shall any person be denied the equal protection of the laws. (1970 (56) 2684; 1971 (57) 315.)

The Defendants did not, and could not, identify when S.C. Const. Article 16 was abolished or amended in in order to allow the General Assembly to Amend the Constitution without a Constitutional Convention³⁹, i.e., in order to add the phrase “ except those cases in which exclusive jurisdiction shall be given to administrative agencies”.

South Carolina Circuit Courts have the Constitutional and statutory authority to declare rights, status and other legal relations⁴⁰.

XII

THE TRIAL COURT HAS JURISDICTION DIRECTLY UNDER SOUTH CAROLINA CONSTITUTION ARTICLE 1 § 22

The South Carolina Supreme Court has ruled that S.C. Const. art. I, § 22 allows an individual who , as here , is being deprived of liberty and property

³⁹ **SECTION 3.** Constitutional Convention. Whenever two-thirds of the members elected to each branch of the General Assembly shall think it necessary to call a Convention to revise, amend or change this Constitution, they shall recommend to the electors to vote for or against a Convention at the next election for Representatives; and if a majority of all the electors voting at said election shall have voted for a Convention, the General Assembly shall, at its next session, provide by law for calling the same; and such Convention shall consist of a number of members equal to that of the most numerous branch of the General Assembly.

⁴⁰ Rainey v. Haley, 27269 (S.C. 06/12/2013) Citing S.C. Code Ann. § 15-53-20 (2005) and Rule 57, SCRCP.

, to access the circuit courts even when a contested case under the APA is not involved⁴¹ .

South Carolina and Federal Law provide that Ms. Perez has the right to engage in a lawful profession, trade, or occupation of choice and the same is clearly protected by both the Constitution of the United States and the Constitution of the State of South Carolina⁴². The State cannot abridge this right except as a reasonable exercise of its police powers when it is clearly found that abridgement is necessary for the preservation of the health, safety, and welfare of the public⁴³.

⁴¹ South Carolina Coastal Conservation League v. South Carolina Dep't of Health and Environmental Control, 669 S.E.2d 899, 380 S.C. 349 (S.C.App. 10/23/2008) citing S.C. Const. art. I, § 22 and Ross v. Med. Univ. of S.C. 492 SE 2d 62, 71 (1997)

⁴² SECTION 40-1-10. ; see also Hawker v. People of State of New York, 170 US 189 (1898); Dent v. State of West Virginia, 129 US 114 , (1889) ; Sloan v. South Carolina Board of Physical Therapy Examiners, 636 S.E.2d 598, 370 S.C. 452 (S.C. 09/25/2006) citing US Constitution Fourteenth Amendment

⁴³ Id, Accord 2009 South Carolina Code 40-33-1315. Recognition of multi-state licensure privilege A party state may, in accordance with that state's due process laws, revoke, suspend, or limit the multi-state licensure privilege of any licensee to practice in its state and may take any other actions under its applicable state laws that are **necessary to protect the health and safety of its citizens**; see also **SECTION 1-23-370 Procedures regarding issuance, denial or renewal of licenses**. No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. **If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action.** These proceedings shall be promptly instituted and determined.(emph. Added)

The Defendants are presently abridging Ms Perez' rights pursuant to the Fourteenth Amendment and SC Statute § 40-1-10 . They have not, and can not, identify any evidence which shows that allowing Ms Perez to exercise her right to work in her lawful vocation is necessary for the preservation of the health, safety, and welfare of the public.

Once the right to practice nursing is lawfully acquired, it is a **property**⁴⁴ right protected by the due process clauses of the state and federal constitutions⁴⁵.

XIII

AN AGENCY ACTION IS REVIEWABLE IF A FINAL AGENCY DECISION WOULD NOT PROVIDE AN ADEQUATE REMEDY

⁴⁴ The right to hold specific employment and the right to follow a chosen profession free from unreasonable governmental interference come within the liberty and property interests protected by the Due Process Clause [of the Fourteenth Amendment]. The liberty interest at stake is the individual's freedom to practice his or her chosen profession; the property interest is the specific employment." *Brown v. S.C. State Bd. of Educ.*, 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990) (citing *Greene v. McElroy*, 360 U.S. 474, 79 S.Ct. 1400, 3 L.Ed. 2d 1377 (1959)); *Baird v. Charleston County*, 333 S.C. 519, 537, 511 S.E.2d 69, 79 (1999) (recognizing same principle); *Ezell v. Ritholz*, 188 S.C. 39, 46-49, 198 S.E. 419, 422-23 (1938) (discussing same principle). "It cannot be doubted that a man's trade or profession is his property." *Byrne's Adminstrs. v. Stewart's Adminstrs.*, 3 S.C. Eq. (3 Des. Eq.) 466, 479 (1812). Likewise, the practices of medicine and physical therapy by properly licensed individuals undoubtedly are cognizable property interests rooted in state law. *Dantzler v. Callison*, 230 S.C. 75, 92, 94 S.E.2d 177, 186 (1956) (stating "[t]here is no reasonable doubt that the rights of those who have been duly licensed to practice medicine or other professions are property rights of value which are entitled to protection"). *Sloan v. South Carolina Board of Physical Therapy Examiners*, 636 S.E.2d 598, 370 S.C. 452 (S.C. 09/25/2006) Liberty or property interests protected under the Due Process Clause "attain this constitutional status by virtue of the fact that they have been initially recognized and protected by state law" *Paul v. Davis*, 424 US 693, 710-11 (1976).

⁴⁵ *id*

Furthermore, the General Assembly has also provided that a preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy⁴⁶.

(a) Right to Jury Trial

As stated hereinbefore, at common law only employers could terminate a nurses' employment, not a government agency. Disputes concerning the employment contract were adjudicated by the courts.

Consequently, the Department Of Labor , Licensing and Regulation (DLLR) has no statutory or Constitutional authority to adjudicate Ms Perez' case⁴⁷. The Jurisdiction of the DLLR does not apply where, as here, (1) Ms. Perez has the right to a jury trial before being deprived of her property. South Carolina Constitution art. I, § 14 provides " [t]he right to a trial by jury shall be preserved inviolate." This guarantee preserves the right to a jury trial in those cases where jury trials were allowed at common law⁴⁸.

⁴⁶ Bone v. U.S. Food Service, Case # 27278 (S.C. 06/26/2013) S.C. Code Ann §1-23-380(A) .

⁴⁷ State v. Gentry, 610 S.E.2d 494, 363 S.C. 93 (S.C. 03/07/2005) (defining jurisdiction)

⁴⁸ In the Interest of Stephen W., a Juvenile Under the Age of Seventeen, 409 S.C. 73; 761 S.E.2d 231; 2014 (SC Supreme Court SC - July 16, 2014) citing Mims Amusement Co. v. S.C. Law Enforcement Div., 366 SC 141, 149, 621 S.E.2d 344, 348 (2005)

Ms. Perez' cause of actions pursuant to state law for the recovery of money or for specific real or personal property must be tried by a jury⁴⁹. Her federal actions are also triable to a jury⁵⁰. Attachment 1 shows that the nursing profession existed at common law and was regulated by the state for the first time on February 23rd, 1910⁵¹.

Secondly, in her amended complaint Nancy C Perez averred⁵² that Kathryn Nedovic, the defendant's Licensure and Compliance Supervisor, directed Ms. Perez to travel to Colombia and appear before the SC Board Of Nursing and "*answer any questions they [SCBON] may have*". According to Ms. Nedovic, the SCBON can prevent Ms. Perez from working unless she appears before the SCBON and testifies⁵³.

But the Fifth and 14th Amendments of the US Constitution prevent the SCBON from coercing Ms. Perez into providing testimony which may be

⁴⁹ Bateman v. Rouse, 358 S.C. 667, 596 S.E.2d 386 (S.C.App. 05/03/2004) citing Rule 38 (a), SCRCF

⁵⁰ City of Monterey v. Del Monte Dunes at Monterey, 526 U.S. 687, 119 S.Ct. 1624, 143 L.Ed.2d 882 (U.S. 05/24/1999)

⁵¹ A true and correct copy is attached hereto

⁵² First Amended /Supplemented Petition For A Writ of Mandamus and declaratory judgment or, in the alternative, inverse condemnation proceedings. When considering the defendants' motion to dismiss, the facts must be deemed as true, Disabato vs South Carolina Association of School Administrators, 746 S.E.2d 329 (SCT - July 17, 2013)

⁵³ id

used against her⁵⁴. The protection applies to criminal, civil and administrative proceedings⁵⁵.

The Fifth Amendment prevents the SCBON from penalizing Ms. Perez' for her refusal to testify by preventing her from becoming gainfully employed⁵⁶. The SCBON is an administrative agency hence its officers have no statutory or Constitutional authority to declare and/or rule upon any objection interpose by Ms. Perez during her proposed interrogation⁵⁷. For that reason, inter alia, the final agency action does not provide an adequate remedy.

XV

THE DEPARTMENT OF LABOR, LICENSING AND REGULATION AND MS HOLLY PISARIK ARE THE PROPER PARTIES

⁵⁴ Lefkowitzvs Turley, et al, 414 US 70, 77 (U.S. 11/19/1973) (The Amendment not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings] citing McCarthy v. Arndstein, 266 US 34, 40 (1924), Jackson v. Denno, 378 S 368 (1964), Accord : State v. Hook, 348 S.C. 401, 559 S.E.2d 856 (S.C.App. 12/17/2001) citing S.C. Const. Art. I, § 12, affirmed, State v. Hook, 356 S.C. 421, 590 S.E.2d 25 (S.C. 11/24/2003)

⁵⁵ id

⁵⁶ Gardner v Broderick, 392 US 273, 279 (U.S. 06/10/1968) ; Accord : State v. Hook, 348 S.C. 401, 559 S.E.2d 856 (S.C.App. 12/17/2001) citing S.C. Const. Art. I, § 12, State v. Hook, 356 S.C. 421, 590 S.E.2d 25 (S.C. 11/24/2003)

⁵⁷ Rainey v. Haley, 27269 (S.C. 06/12/2013) Citing S.C. Code Ann. § 15-53-20 (2005) and Rule 57, SCRCP

By Order dated June 4th, 2015 the trial court denied Ms. Perez' motion to add **Holly Gillespie Pisarik, Esq.**, Director of Labor, Licensing and Regulation, as a defendant **in her individual capacity** to the above styled case Ms Perez objects.

South Carolina statute Section 40-1-40 states that the General Assembly created the South Carolina Department of Labor, Licensing and Regulation, in order to protect the public through the regulation of professional and occupational licensees and the administration of boards charged with the regulation of professional and occupational practitioners. Subsection (B) states that the [Board of Nursing] and the occupations it licenses or otherwise regulates must be administered by the Department of Labor, Licensing and Regulation pursuant to this article. Accordingly, Ms. Perez respectfully submits that the DLLR is a proper party.

42 USC 1983 authorizes Ms Perez to file a cause of action against Ms Pisarik, in her official capacity, for transgressing upon her rights⁵⁸. Defendant Pisarik does not have qualified immunity. The doctrine of qualified immunity protects government officials 'from liability for civil

⁵⁸ In our federal system of government, state as well as federal courts have jurisdiction over suits brought pursuant to 42 U. S. C. §1983, the statute that creates a remedy for violations of federal rights committed by persons acting under color of state law, Haywood v. Drown, 129 S.Ct. 2108, 173 L.Ed.2d 920 (U.S. 05/26/2009) Verizon Maryland, Inc. v. Public Service Commission of Maryland, 535 U.S. 635, 122 S.Ct. 1753 (U.S. 05/20/2002)

XVII

THE REVERSE CONDEMNATION PROCEEDING IS PROPERLY BEFORE THE COURT

Inverse condemnation proceedings apply when any type of property⁶⁷ – i.e., physical , intangible⁶⁸, intellectual – is affected by a governmental taking. Since 1922 it has been understood that a “regulatory taking” constitutes a taking requiring compensation⁶⁹. Governmental immunity from suit does not shield the government from an action for compensation under the US Constitution Fifth Amendment takings clause⁷⁰ . A Fifth Amendment

⁶⁷ *Eastern Enterprises v. Apfel*, 524 U.S. 498 , 522-523 (U.S. 06/25/1998) (Health benefit funds) (This case does not present the "classi[c] taking" in which the government directly appropriates private property for its own use. See *United States v. Security Industrial Bank*, 459 U. S. 70, 78 (1982). Although takings problems are more commonly presented when "the interference with property can be characterized as a physical invasion by government, than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good," *Penn Central Transp. Co. v. New York City*, 438 U. S. 104, 124 (1978) (citation omitted), economic regulation such as the Coal Act may nonetheless effect a taking, see *Security Industrial Bank*, supra, at 78. See also *Calder v. Bull*, 3 Dall. 386, 388 (1798) (Chase, J.) ("It is against all reason and Justice" to presume that the legislature has been entrusted with the power to enact "a law that takes property from A. and gives it to B"). By operation of the Act, Eastern is "permanently deprived of those assets necessary to satisfy its statutory obligation, not to the Government, but to [the Combined Benefit Fund]," Connolly, supra, at 222; and "a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change," *Pennsylvania Coal Co. v. Mahon*, 260 U. S. 393, 416 (1922). *Whiting v. University of Southern Mississippi*, 451 F.3d 339 (5th Cir. 06/02/2006) quoting *Bd. of Regents of State Colls. v. Roth*, 408 US 564 566-7 (1972) (The Fourteenth Amendment's procedural protection of property is a safeguard of the security of interests that a person has already acquired in specific benefits. **These interests -- property interests -- may take many forms.**)

⁶⁸ *Nautilus, Inc. v. Biosig Instruments, Inc.* No. 13-369 (US Supreme Court - June 2, 2014) (patents) ; *Kent, et al, v Dulles*, 357 US 116 (U.S. 06/16/1958)(Right to travel)

⁶⁹ *Pennsylvania Coal Co. v. Mahon*, 260 US 393 (1922),

⁷⁰ *Horne v. Department of Agriculture*, 12-123 (U.S. 06/10/2013) supra, citing *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 US 172 (1985).

claim is ripe where, as here, the Plaintiff has been injured by an agency decision⁷¹. A takings clause case" or controversy exists once the government has taken private property without paying for it⁷². Thus, it is a taking when a state regulation deprives him of all economically beneficial use of his property⁷³. Whether or not it was taken for "public use" is irrelevant⁷⁴. It is also irrelevant for 5th Amendment purposes whether the taking was effectuated by the executive, legislative or **judicial branch**⁷⁵.

"The Takings Clause of the Fifth Amendment, made applicable to the States through the Fourteenth Amendment, directs that 'private property' shall not 'be taken for public use, without just compensation'⁷⁶. Because the Constitution protects rather than creates property interests, courts must "resort to 'existing rules or understandings that stem from an independent source such as state law' to define

Accord: Gen. Services Com'n v. Little-Tex Insulation Co., Inc. 39 SW 3rd 591, 598-99 (Tex. 2001); Steele v. City of Houston, 603 SW 2d 786, 791 (Tex. 1980). See Article I, section 17 of the Texas Constitution

⁷¹ Horne v. Department of Agriculture, 12-123 (U.S. 06/10/2013), supra, citing Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City, 473 US 172 (1985).

⁷² Horne v. Department of Agriculture, 12-123 (U.S. 06/10/2013) FN 6, supra, citing

⁷³ Stop the Beach Renourishment, Inc. v. Florida Dep't of Environmental Protection, No. 08-1151 (U.S. 06/17/2010) citing Lucas v. South Carolina Coastal Council, 505 US 100, 1019 (1992).

⁷⁴ Lucas v. South Carolina Coastal Council, 505 US 1003, (1992); Pennsylvania Coal Co. v. Mahon, 260 US 393 (1922).

⁷⁵ Stop the Beach Renourishment, Inc. v. Florida Dep't of Environmental Protection, No. 08-1151 (U.S. 06/17/2010) Quoting PruneYard Shopping Center v. Robins, 447 US 74 (1980)

⁷⁶ Urban Developers LLC v. City of Jackson, 468 F.3d 281, 292 (5th Cir. 2006) (quoting U.S. Const. amend. V) (internal citation omitted)

the range of interests that qualify for protection as 'property' under the Fifth and Fourteenth Amendments⁷⁷.

Once the right to practice nursing is lawfully acquired, it is a **property**⁷⁸ right protected by the due process clauses of the state and federal constitutions⁷⁹. At common law, only the Judicial Department could revoke the right to practice a profession.⁸⁰ To state a cause of action for inverse condemnation under the South

⁷⁷ ." Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1030 (1992) (quoting Bd. of Regents of State Colls. v. Roth, 408 U.S. 564, 577 (1972))

⁷⁸ The right to hold specific employment and the right to follow a chosen profession free from unreasonable governmental interference come within the liberty and property interests protected by the Due Process Clause [of the Fourteenth Amendment]. The liberty interest at stake is the individual's freedom to practice his or her chosen profession; the property interest is the specific employment." Brown v. S.C. State Bd. of Educ., 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990) (citing Greene v. McElroy, 360 U.S. 474, 79 S.Ct. 1400, 3 L.Ed. 2d 1377 (1959)); Baird v. Charleston County, 333 S.C. 519, 537, 511 S.E.2d 69, 79 (1999) (recognizing same principle); Ezell v. Ritholz, 188 S.C. 39, 46-49, 198 S.E. 419, 422-23 (1938) (discussing same principle). "It cannot be doubted that a man's trade or profession is his property." Byrne's Adminstrs. v. Stewart's Adminstrs., 3 S.C. Eq. (3 Des. Eq.) 466, 479 (1812). Likewise, the practices of medicine and physical therapy by properly licensed individuals undoubtedly are cognizable property interests rooted in state law. Dantzler v. Callison, 230 S.C. 75, 92, 94 S.E.2d 177, 186 (1956) (stating "[t]here is no reasonable doubt that the rights of those who have been duly licensed to practice medicine or other professions are property rights of value which are entitled to protection"). Sloan v. South Carolina Board of Physical Therapy Examiners, 636 S.E.2d 598, 370 S.C. 452 (S.C. 09/25/2006) Liberty or property interests protected under the Due Process Clause "attain this constitutional status by virtue of the fact that they have been initially recognized and protected by state law" Paul v. Davis, 424 US 693, 710-11 (1976).

⁷⁹ id

⁸⁰ Scott v. Texas State Board of Medical Examiners, 384 S.W.2d 686, 690 (Tex. Sup. 1964)(It is seen from the legislative history of the Medical Practice Act that from the beginning the revocation of a medical license has been committed to the district courts as a judicial function. **It has been traditionally so....**There is a difference, legislatively recognized through the years, between an exercise of the power to examine and issue a medical license, and an exercise of the power to revoke a medical license for cause. Texas Vending Comm. v. Headquarters Corp., 505 SW 2d 402 (Tex. Civ. App. 1974, writ ref'd n.r.e.). (Appellants rely on Scott v. Texas State Board of Medical Examiners, 384 S.W.2d 686 (Tex. 1964)... In Scott, the court was concerned with the provision of Tex.Civ.Stat.Ann.Art. 4506 providing a de novo review of the orders of the State Board of Medical Examiners. There the Board had revoked and canceled Scott's license to

Carolina constitution, a plaintiff must allege (1) an intentional governmental act; (2) that resulted in his property being taken, damaged, or destroyed; (3) for public use⁸¹. Once the right to practice medicine is lawfully acquired, it is a right protected by the due process clauses of the state and federal constitutions⁸² and can only be revoked by the district courts⁸³

The Federal⁸⁴ and the SC⁸⁵ Constitutions protect vested rights. The Fourteenth Amendment, §1 provides, among other things, that a State may not abridge "the privileges or immunities of citizens of the United States" or deprive "any person of life, liberty, or property, without due process of

practice medicine. **The Supreme Court observed that traditionally the revocation of a medical license has been committed to the district courts as a judicial function. The court also recognized, at least in the regulation of the practice of medicine, that a difference existed between an exercise of the power to examine and issue a license, and an exercise of the power to revoke a license.**

⁸¹ Carolina Chloride, Inc v. Richland County, 394 S.C. 154, 171, 714 S.E.2d 869, 877 (2011) (S.C. 07/25/2011)

⁸² Scott v. Texas State Board of Medical Examiners, 384 S.W.2d 686, 690 (Tex. Sup. 1964), I citing Vernon's Ann.St.Const. art. 1, § 19; U.S.C.A.Const. amend. 14. Sherman v. State Board of Dental Examiners, Tex.Civ.App., 116 S.W.2d 843, error refused. " Waller v. State, 68 S.W.2d 601, 605 (Tex. Civ. App. -- Amarillo 1934, writ ref'd)) Liberty or property interests protected under the Due Process Clause "attain this constitutional status by virtue of the fact that they have been initially recognized and protected by state law" Paul v. Davis, 424 US 693, 710-11 (1976).

⁸³ Texas Vending Comm. v. Headquarters Corp., 505 SW 2d 402 (Tex. Civ. App. -- Austin - 1974, writ ref'd n.r.e.) quoting Scott v. Texas State Board of Medical Examiners, supra.; Francisco v. Board of Dental Examiners, 149 S.W.2d 619 (Tex.App. 03/05/1941)

⁸⁴ Vartelas v. Holder, 132 S.Ct. 1479 (U.S. 03/28/2012) quoting Landgraf v. USI Film Products, 511 US 244, 263 (1994) and several provisions of the Constitution, among them, the Ex Post Facto Clause, the Contract Clause, and the Fifth Amendment's Due Process Clause.

⁸⁵ Sloan v. South Carolina Board of Physical Therapy Examiners, 636 S.E.2d 598, 370 S.C. 452 (S.C. 09/25/2006)

damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known⁵⁹. Ms. Pisarik has not, and cannot, claim that she was not aware that South Carolina Statute Section 40-1-10 protects Ms. Perez' right – her property interest - to engage in a lawful profession, trade, or occupation of choice.

Ms. Pisarik has not, and cannot, claim that she was not aware that Ms. Perez' right to engage in a lawful profession, trade, or occupation of choice is protected by South Carolina Statute 40-1-10 , and can only be abridged when it is clearly found that abridgement is necessary for the preservation of the health, safety, and welfare of the public⁶⁰. The court erred in dismissing Ms. Perez' claims against Ms. Pisarik without identifying the facts upon which it relied for finding that she was entitled to qualified immunity⁶¹.

XVI

MS PEREZ IS BEING SUBJECTED TO CRUEL AND UNUSUAL PUNISHMENT

⁵⁹ Messerschmidt v. Millender, 132 S.Ct. 1235, 182 L.Ed.2d 47 (U.S. 02/22/2012) citing Pearson v. Callahan, 555 U. S. 223, 231 (2009)

⁶⁰ South Carolina Statute 40-1-10

⁶¹ Ussery vs Sgt Mansfield, et al, No. 14-7096 (Fourth US Court of Appeals – 2015) citing Behrens v. Pelletier, 516 US 299 , 305 (1996)

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The facts show that Ms. Perez is being prevented from earning a livelihood as a nurse even though the Defendants have not clearly found that abridgement is necessary for the preservation of the health, safety, and welfare of the public⁶²

The facts also show that the Defendants claim that they have the authority to prevent her from working as nurse until she travels to Columbia and testifies before the SCBON⁶³.

The Excessive Fines Clause of the Eighth Amendment and S.C. Constitution Article I, § 15 prohibit the government from imposing excessive fines as punishment⁶⁴. A civil sanction is punitive if "it can only be explained as serving in part to punish"⁶⁵. Courts have stated that they will find a violation of the Excessive Fines Clause if the penalty is **grossly** disproportional to the gravity of a defendant's offense⁶⁶. The facts show that Ms. Perez has committed no offense.

⁶² Id, see also Please see SECTION 1-23-370 Procedures regarding issuance, denial or renewal of licenses. No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.(emph. Added)

⁶³ Nancy C Perez affidavit

⁶⁴ State v. Ortho-McNeil-Janssen Pharmaceuticals, Inc., Opinion No. 27502 SC Supreme Court - February 25, 2015, U.S. Const. amend. VIII, SC Constitution Article I, § 15

⁶⁵ United States v. Bajakajian, 524 U. S. 321 (1998); Austin v. United States, 509 U.S. 602, 610, 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993).

⁶⁶ State v. Ortho-McNeil-Janssen Pharmaceuticals, Inc., Opinion No. 27502 SC Supreme Court - February 25, 2015

law."⁸⁶

Since the right of the citizen to use his property as he chooses so long as he harms nobody, is an inherent and constitutional right, the police power cannot be invoked for the abridgment of a particular use of private property, unless such use reasonably endangers or threatens the public health, the public safety, the public comfort or welfare⁸⁷.

A law which assumes to be a police regulation but deprives the citizen of the use of his property under the pretense of preserving the public health, safety, comfort or welfare, when it is manifest that such is not the real object and purpose of the regulation, will be set aside as a clear and direct invasion of the right of property without any compensating advantages⁸⁸.

XVIII

**IF THE COURT CONCLUDES THAT
THE PROPERTY HAS NOT BEEN TAKEN WITHIN
THE MEANING OF SOUTH CAROLINA CONSTITUTION
ARTICLE 1, SECTION 13, THEN THE COURT OUGHT
TO ADJUDICATE WHETHER THE PROPERTY HAS BEEN
TAKEN AND/OR SEIZED WITHIN THE MEANING OF US
CONSTITUTION FOURTH AND FIFTH AMENDMENTS**

The Fifth Amendment forbids takings in the form of government regulations

⁸⁶ McDonald v. City of Chicago, Illinois, No. 08-1521 (U.S. 06/28/2010) quoting District of Columbia v. Heller, 554 US 570 (2008).

⁸⁷ City of Houston v. Johnny Frank's Auto Parts, 480 SW 2d 774 (Tex.Civ.App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). quoting Spann v. City of Dallas, 111 Tex. 350, 235 S.W. 513 (1921).

⁸⁸ Id, see also Cooley, Const.Lim. 248

that effectively deprive a property of all economic value⁸⁹. The Takings Clause applies to the states⁹⁰. Where a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation.⁹¹

But the *Williamson County* ripeness doctrine "does not preclude state courts from hearing simultaneously a plaintiff's request for compensation under state law and a claim that, in the alternative, the denial of compensation would violate the Fifth Amendment of the Federal Constitution."⁹²

The Fourth Amendment, made applicable to the States by the Fourteenth Amendment⁹³, provides in relevant part that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated" A "seizure" of property occurs when "there is some meaningful interference with an individual's

⁸⁹ *Stop the Beach Renourishment, Inc. v. Florida Dep't of Environmental Protection*, No. 08-1151 (U.S. 06/17/2010) citing *Lucas v. South Carolina Coastal Council*, 505 US 1003, 1019 (1992).

⁹⁰ *Chicago, B & Q.R. Co. v. Chicago*, 166 U.S. 226 (1897),

⁹¹ *Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 195 (1985).

⁹² *Town of Nags Head v. Toloczko*, 12-1537 (4th Cir. 08/27/2013) citing *San Remo Hotel, L.P. v. City & Cnty. of S.F., Cal.*, 545 US 323, 346 (2005).

⁹³ *Ker v. California*, 374 U.S. 23, 30, 83 S.Ct. 1623, 1628 (1963),

possessory interests in that property⁹⁴.

The Fourth Amendment applies to civil as well as criminal seizures⁹⁵, and the Supreme Court holds that an interference with individual property rights may be found to breach more than one provision of the Constitution⁹⁶. Separate claims for constitutionally unreasonable seizure and taking of property may coexist⁹⁷.

Further, the courts have ruled more than once that substantive due process, procedural due process, equal protection and takings claims may be implicated simultaneously in various types of governmental actions that interfere with individual property rights⁹⁸.

The Fourth and Fifth Amendments both provide specific constitutional commands⁹⁹. That they may have evolved through caselaw to overlap in providing remedies for some deprivations of property interests does not authorize the court to fail to apply one or the other provision¹⁰⁰. Indeed, as

⁹⁴ *Severance v. Patterson*, 566 F.3d 490 (5th Cir. 04/23/2009) citing *United States v. Jacobsen*, 466 U.S. 109, 113, 104 S.Ct. 1652, (1984); *Soldal v. Cook County*, 506 U.S. 56, 61, 113 S.Ct. 538, 543 (1992).

⁹⁵ *Severance v. Patterson*, 566 F.3d 490 (5th Cir. 04/23/2009) citing *Freeman v. City of Dallas*, 242 F.3d 642, 647 n.5 (5th Cir. 2001) (en banc),

⁹⁶ *Id* citing *United States v. James Daniel Good Real Property*, 510 U.S. 43, 49-50, 114 S.Ct. 492, 499 (1993).

⁹⁷ *Id* citing *Presley v. City of Charlottesville*, 464 F.3d 480, 487 (4th Cir. 2006).

⁹⁸ *Id* citing *Simi Inv. Co.. v. Harris County*, 236 F.3d 240, 248-49 (5th Cir. 2000); *John Corp. v. City of Houston*, 214 F.3d 573, 584-85 (5th Cir. 2000).

⁹⁹ *id*

¹⁰⁰ *id*

Presley noted, the elements of a violation of the two amendments differ, with the touchstone of a takings claim being lack of just compensation and that of a seizure claim being its unreasonableness¹⁰¹. Further, § 1983 authorizes different damage measures for the claims¹⁰².

Mandamus is the highest judicial writ and is issued only when there is a specific right to be enforced, a positive duty to be performed, and no other specific remedy¹⁰³. A writ of mandamus is a coercive writ that orders a public official to perform a ministerial duty¹⁰⁴.

WHEREFORE, Ms. Perez respectfully request that the Relief sought herein ought to be granted.

Respectfully Submitted,

Nancy C Perez
713 E. Greenville St – D220
Anderson, SC 29621
281-746-4948

¹⁰¹ Severance v. Patterson, 566 F.3d 490 (5th Cir. 04/23/2009)

¹⁰² City of Monterey v. Del Monte Dunes at Monterey, 526 U.S. 687, 119 S.Ct. 1624, 143 L.Ed.2d 882 (U.S. 05/24/1999) citing Heck v. Humphrey, 512 U. S. 477, 483 (1994)

¹⁰³ City of Rock Hill v. Thompson, 349 S.C. 197, 563 S.E.2d 101 (S.C. 03/11/2002)

¹⁰⁴ City of Rock Hill v. Thompson, 349 S.C. 197, 563 S.E.2d 101 (S.C. 03/11/2002)

AFFIDAVIT OF NANCY C PEREZ

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Being first duly sworn, I depose and declare under penalty of perjury that the following is true and correct of my own personal knowledge and would testify hereto if called at trial .

I was born in Aiken, South Carolina on July 11th, 1948. I graduated as a Licensed Practical Nurse from Clarendon College, Texas in 1996. Clarendon College is an accredited educational institution. I obtained Texas License 160059 on October 9th, 1996. I worked in Texas until May 2014. A total of eighteen (18) Years. The Texas Board of Nursing never brought any disciplinary actions against me. No Texas patient ever sued me for malpractice.

In May 2014 I returned to my native South Carolina. I informed the South Carolina Board of Nursing (SCBON) and submitted an application to resume exercising my common law profession in the state. I also provided the SCBON the authority to conduct a criminal background check.

The Patrick B. Harris Psychiatric Hospital (PBHPH) offered me a full time position earning \$15.16 an hour, plus insurance and benefits. The

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PBHPH conducted a previous employment history and found no derogatory information about me. The Patrick B. Harris Psychiatric Hospital withdrew the offer because the SCBON failed or refused to allow me to earn a livelihood.

The Department of Labor, Licensing and Regulation and Ms Holly Gillespie Pisarik have failed or refused to inform me that they have made a finding that abridging my right to work as a nurse is necessary for the preservation of the health, safety and welfare of the public. The DLLR has informed me that they have the authority to prevent me from being gainfully employed until I travel to Columbia and testify before the SCBON.

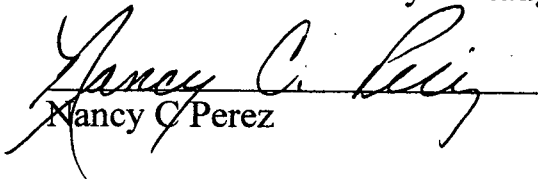
Nursing as a profession existed in 1868. The nursing profession in South Carolina was regulated by the state for the first time in 1910. The South Carolina Nursing Association requested that nurses be registered with the state in order to empower the profession and women.

The Defendants have never informed Ms Perez that their research shows that the marketplace and/or other common law regulations were not appropriate for regulating the nursing profession and therefore government regulation is necessary. The Defendants have failed or refused to allege that employers such as hospitals, cannot be trusted with the supervision of

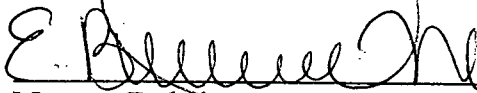
nurses. The defendants have failed or refuse to allege that at common law ,
the nursing profession was adversely affecting the health and safety of South
Carolinians. Historical evidence shows that Ms Florence Nightingale,
founded the nursing profession and excelled in its practice even though she
was not licensed by any government agency.

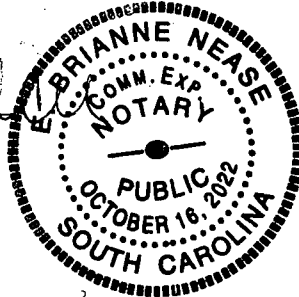
The documents attached to the Rule 59 (e) motion are true and correct
copies of the original.

Further affiant sayeth naught.


Nancy C Perez

Before me the undersigned personally appeared Nancy C Perez and
acknowledged the execution of this instrument.


Notary Public



8/17/15
Date

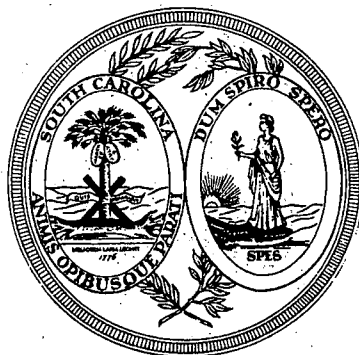
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SOUTH CAROLINA
STATE DOCUMENT

State Board of Nursing for S.C.
50th
Anniversary
1935-1985



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Remembering the Past

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II. THE EARLY YEARS: 1935 - 1952

The early years of the State Board of Nursing for South Carolina can hardly be remembered without remembering the "Founding Mother", Miss Nellie Cunningham. Miss Cunningham was the first Executive Secretary of the Board of Nursing and served in this capacity from 1935 to 1952. From 1935 until 1947 she also served as the Executive Secretary of the South Carolina Nurses' Association. "Miss Nellie", as she was affectionately called, was considered to be an "educated" nurse, as she had earned a Masters Degree from Columbia University. After receiving her degree she worked in public health nursing in New York City. Upon returning to South Carolina she became actively involved in the South Carolina Nurses' Association.

Some of the earliest writings of the formation of the Board came from Miss Cunningham's 1940 paper, "Nursing in South Carolina". According to Miss Cunningham, in 1907 the members of the South Carolina Nurses' Association wanted a "system of registration" for the nurses in the state. In October, 1907, nursing leaders began to draft, "A Proposed Bill for the Legal Registration of Nurses in South Carolina". Two years later, in 1909, the bill was submitted to the legislature but failed to pass. In 1910 the bill was introduced again, and the Nurse Practice Act became part of State law. The new law placed the responsibility for the examination and registration of nurses under the State Board of Medical Examiners. Nursing leaders wanted to "improve and strengthen" the work of the Board of Medical Examiners by having two or more nurses serve on the Medical Board.

Many years were to pass before nurses were to succeed in having a voice in the control and direction of nursing in South Carolina. For example, at the Annual Convention of the South Carolina Nurses' Association in 1914, there was a "great deal of discussion on the subject of reciprocity registration," as reciprocity was not a provision of the Nurse Practice Act of 1910. The Committee on Legislation recommended that the South Carolina Nurses' Association go on record as "supporting and amending the Law to provide for reciprocity." Twenty-one years were to pass before this provision would become a part of the Nurse Practice Act.

Miss Cunningham wrote...

"The State Board of Medical Examiners had full charge of the examination and registration of nurses, and nurses themselves had no voice in the control and direction of conditions having the most vital influence on their profession. There was no provision for the inspection of nursing schools and the safeguarding of student nurses from exploitation. For many years repeated efforts were made, first to secure nurse representation on the (Medical) Examining Board, and later to have a Board of our own, separate and distinct from the Medical Board. This we finally achieved in 1935. Our law, although a great improvement over the first one, is still far from perfect, but we hope to eliminate its weaknesses within the next few years."

*Revising Law passed Feb. 23, 1910.
 Repealed April 6, 1935.*

AN ACT

TO PROVIDE FOR THE EXAMINATION AND REGISTRATION OF TRAINED NURSES.

SECTION 1. *Be it enacted* by the General Assembly of the State of South Carolina, That the State Board of Medical Examiners of this State at their regular annual meetings hereafter, and at such special meetings as the said Board may deem proper and necessary for such purpose, shall, in addition to their present duties, examine all applicants for registration under the provisions of this Act, for the purpose of determining their qualifications and fitness to give efficient care to the sick, and shall award a certificate, duly attested by the Secretary of said Board and signed by the Chairman thereof, to all applicants who pass in a satisfactory manner the examination required by the said Board and who are registered as herein required. That each applicant for examination under this Act shall forward with his or her application a fee of two dollars, which shall be deposited with the Treasurer of said Board, and used as now prescribed by law.

SEC. 2. That on and after January 1, 1911, it shall be unlawful for any person to practice or pursue the calling of a professional nurse in this State for compensation, unless such person shall have furnished to the said State Board of Medical Examiners, satisfactory evidence, of such nature, and in such form and manner, as said Board shall require, that he or she is twenty-one years of age, of good moral character, has received the equivalent of a common school education, and has graduated from a training school connected with a general hospital, where at least two years of continuous residence training with a systematic course of instruction is given, and has passed a satisfactory examination before said Board and registered as hereinafter required by the provisions of this Act: *Provided*, That this section shall not be construed to apply to those who may be registered prior to January 1, 1911, in accordance with the provisions of this Act applicable to such persons as hereinafter declared in Sections 3 and 4: *Provided, further*, That this section shall not apply, at any time, to the gratuitous nursing of the sick by friends or members of the family

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thereof, nor to those persons nursing the sick for hire who do not in any way claim or assume to be, or to hold themselves out as, registered nurses: *Provided, further,* That nothing in this Act shall be construed so as to prevent a professional nurse, who does not hold such a certificate from said Board, and who resides in another State, from accompanying and attending a person traveling in or through this State, or sojourning therein for his or her health, or any nonresident nurse without such certificate from serving any person in this State in case of necessity or emergency, where such nurse is authorized and empowered to practice his or her profession under the laws of the State in which he or she resides, and if there be no such law when such nurse has received the training required in this Act as a prerequisite to examination and registration by said Board of Examiners after January 1, 1911.

Given | SEC. 3. That all nurses heretofore graduated, or hereafter graduated before January 1, 1911, from such general hospital, and otherwise possessing the qualifications prescribed in this Act, shall be permitted to register and receive a certificate without an examination upon application duly made and upon payment of the prescribed fee, provided that such application be made before January 1, 1911. }

SEC. 4. That all nurses graduating from training schools in connection with special hospitals whose standing and reputation shall be approved by the said Board, giving a two years' course who shall obtain six months' additional training in general hospital, shall be entitled to registration and a certificate without examination before January 1, 1911, upon payment of required fee; and all nurses graduating from such special hospitals shall be entitled to registration and a certificate prior to said date, upon passing a special examination before the Board of Examiners, in subjects not adequately taught in the training school from which they are graduated, upon payment of the required fee. }

SEC. 5. That a nurse who has received his or her certificate according to the provisions of this Act shall be styled and known as a "Registered Nurse," and no other person without a certificate from the said Board of Examiners shall assume such a title or use the abbreviation "R. N." or any other letters,

figures or characters to indicate that he or she is a registered nurse.

SEC. 6. That the said Board of Examiners shall prescribe and have printed application blanks and such other forms as may be necessary to carry out the provisions of this Act, which shall be furnished to any applicant upon request and free of charge. Said Board shall also keep a register in which shall be entered the full name, age, residence, source of training and date of registration of every person to whom a certificate is issued under the provisions of this Act, and said register shall be at all times open to public inspection, and be *prima facie* evidence of all matters therein contained. It shall also be the duty of the Board to keep the application of each applicant, together with any additional evidence which shall be required by the Board to be offered in support of the qualifications of said applicant, which shall also be open to public inspection.

SEC. 7. The said Board of Examiners may revoke any certificate issued under this Act for sufficient cause, of which the Board shall be the judge, but before this is done the holder of said certificate shall have thirty days' notice, and such action shall only be taken after a full and fair hearing of the charge, in which counsel may appear for either, or both sides, and only by a majority of the whole Board: *Provided*, That from such judgment of revocation of license the person feeling himself or herself aggrieved shall have the right to appeal to the Circuit Court of the county in which he or she resides, and to the Supreme Court.

SEC. 8. That any person violating any of the provisions of this Act, or who shall wilfully make any false representations to the Board of Examiners in applying for a certificate, or otherwise violating the provisions hereof, shall be guilty of a misdemeanor, and, upon conviction thereof, be punished by a fine not exceeding two hundred (\$200.00) dollars or imprisonment not exceeding three (3) months, or both, in the discretion of the Court.

SEC. 9. That all Acts and parts of Acts inconsistent herewith be, and the same are hereby, repealed.

Approved the 23d day of February, A. D. 1910.

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Power and Empowerment in Nursing: Looking Backward to Inform the Future

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Milisa Manojlovich PhD, RN, CCRN

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Abstract There are compelling reasons to empower nurses. Powerless nurses are ineffective nurses. Powerless nurses are less satisfied with their jobs and more susceptible to burnout and depersonalization. This article will begin with an examination of the concept of power; move on to a historical review of nurses' power over nursing practice; describe the kinds of power over nursing care needed for nurses to make their optimum contribution; and conclude with a discussion on the current state of nursing empowerment related to nursing care. Empowerment for nurses may consist of three components: a workplace that has the requisite structures to promote empowerment; a psychological belief in one's ability to be empowered; and acknowledgement that there is power in the relationships and caring that nurses provide. A more thorough understanding of these three components may help nurses to become empowered and use their power for better patient care.

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Key words: burnout, empowerment, feminist theory, job satisfaction, nursing outcomes, nursing practice, nursing practice environment, power, relational theory, socialist feminism

The new millennium is upon us. Many advances in technology and health care indeed make this a brave new world. However, relatively little has changed in nursing, where almost 95% of all nurses are still women (Spratley, Johnson, Sochalski, Fritz, & Spencer, 2000). Even now, years after the feminist movement, many nurses do not feel empowered, and what we do "as nurses does not seem to be working" (Fletcher, 2006, p. 50). An examination of the state of the science on power and empowerment in nursing is warranted, to determine if the literature can provide insights into how, if at all, nursing can garner power for the profession as well as for patient care.

This paper will begin with an examination of the concept of power; move on to a historical review of nurses' power over nursing practice; describe the kinds of power over nursing care needed for nurses to make their optimum contribution; and conclude with a discussion on the current state of nursing empowerment related to nursing care.

The Concept of Power

Power is a widely used concept in both the physical and social sciences, and as a result, there are many definitions. In the physical sciences power refers to the amount of energy transferred per unit of time. Electricians work to provide and restore this type of power as a matter of course. Mathematicians have a different notion of power in mind when they talk about a numeral to the second (or third) power. Sociologists describe power as the ability to impose one's will upon others, and savvy researchers conduct power analyses before they begin their experiments [<http://en.wikipedia.org/wiki/Power>].

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physicians, and other
health care professionals.

Several definitions of power have been used in nursing. Power has been defined as having control, influence, or domination over something or someone (Chandler, 1992). Another definition views power as "the ability to get things done, to mobilize resources, to get and use whatever it is that a person needs for the goals he or she is attempting to meet" (Kanter, 1993, p. 166). For Benner, power includes caring practices by nurses which are used to empower patients (Benner, 2001). Power may also be viewed as a positive, infinite force that helps to establish the possibility that people can free themselves from oppression (Ryles, 1999).

Some researchers have described types of power, such as legal, coercive, remunerative, normative, and expert power (Conger & Kanungo, 1988). Of particular interest to nursing is the concept of expert power, which has been defined as "the ability to influence others through the possession of knowledge or skills that are useful to others" (Kubisch, 1996, p. 198). Benner (2001) has described qualities of power associated with caring provided by nurses such as transformative and healing power. Transformative and healing power contribute to the power of caring, which is central to the profession of nursing (Benner, 2001).

Power is necessary to be able to influence an individual or group. Nurses need power to be able to influence patients, physicians, and other health care professionals, as well as each other. Powerless nurses are ineffective nurses, and the consequences of nurses' lack of power has only recently come to light (Page, 2004). Powerless nurses are less satisfied with their jobs (Manojlovich & Laschinger, 2002), and more susceptible to burnout and depersonalization (Leiter & Laschinger, 2006). Lack of nursing power may also contribute to poorer patient outcomes (Manojlovich & DeCicco, in review). Studies such as these suggest that there are compelling reasons to promote power in nursing.

Historical Review of Nurses' Power over Nursing Practice

Although the feminist movement of the 1960s did much to bring women in other professions on an equal footing with men, nursing's low status in the health care hierarchy remains.

A historical review of nurses' power over nursing practice should include social, cultural, and educational factors that influence nurses' power over their practice. Social and cultural factors that influence nursing power have their roots in the view of nursing as women's work (Wuest, 1994). Initially, nursing was a domestic role women were expected to fulfill in the home (Wuest). In addition, a lot of nursing work is done in private, behind drawn curtains (Wolf, 1989). The persistent invisibility of a lot of nursing work decreases nursing's social status and perceived value (Benner, 2001; Wolf), contributing to powerlessness.

The fact that women's right to vote is less than 100 years old suggests oppression of women was common in the not too distant past, and may explain in part ongoing powerlessness. Although the feminist movement of the 1960s did much to bring women in other professions on an equal footing with men, nursing's low status in the health care hierarchy remains. Educational factors contribute to this situation, and they are twofold. First, nursing has historically been taught in hospitals, perpetuating nursing's low status in relation to physicians and other health care providers. Since twenty-two percent of nurses in America today are diploma graduates (Spratley et al., 2000), this educational factor may still be contributing to nursing's powerlessness. Second, the multiple entry levels into nursing practice further dissipate whatever influence nursing may be able to generate. Nursing's ongoing debate over entry level issues may be contributing, inadvertently, to the lack of power that education should be mitigating.

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It has been over twenty years since both Styles and Hall maintained that power is central to nursing's

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development as a profession (Hall, 1982; Styles, 1982). Nurses' lack of power may be rooted in a societal reluctance in general to discuss power openly (Kanter, 1979). Nurses may be more reluctant than most to discuss power because 95% of all nurses are women (Spratley et al., 2000), and women have not been socialized to exert power (Rafael, 1996). Historically nurses have had difficulty acknowledging their own power (Rafael). This reluctance to acknowledge and subsequently use one's power as a nurse may in part explain many nurses' inability to control their practice.

According to Rafael (1996) power has been viewed as a outcome of masculinity and in direct opposition to caring, which is seen as the essence of nursing and traditionally aligned with femininity. Many nurses may be reluctant to access or use power because they view power as a masculine attribute that is inconsistent with their self-identities as women. Therefore, a masculine view of power may be contributing to nurses' continuing lack of power.

Kanter (1993) maintains that power is acquired through the process of empowerment. She views empowerment as arising from social structures in the workplace that enable employees to be satisfied and more effective on the job (Kanter, 1993). Chandler argues that empowerment arises from relationships and not merely from the parceling out control, authority, and influence (Chandler, 1992). Empowerment has been conceptualized from many different perspectives (Kuokkanen & Katajisto, 2003). Empowerment may be either an individual or a group attribute (Ryles, 1999). It may arise from the work environment (Kanter, 1993) or from within one's own psyche (Conger & Kanungo, 1988) and may be viewed as either a process or an outcome (Gibson, 1991).

The concept of empowerment emerged in the late 1960s and early 1970s as a result of the self-help and political awareness movements (Ryles, 1999). Although power has been discussed in nursing literature since the 1970s (Kalisch, 1978), Chandler (1986) was among the first to describe the process of empowerment in nursing. Chandler (1992) also distinguished between power and empowerment, noting that empowerment enables one to act, whereas power connotes having control, influence, or domination.

Ongoing research on empowerment in nursing has demonstrated that empowered nurses are "highly motivated and are able to motivate and empower others by sharing the sources of power" (Laschinger & Havens, 1996, p. 28). Empowered nurses experience less burnout (Laschinger, Finegan, Shamian, & Wilk, 2003) and less job strain (Laschinger, Finegan, & Shamian, 2001). Alternatively, disempowerment, or the inability to act, creates feelings of frustration and failure in staff nurses, even though they may still be accountable (Laschinger & Havens, 1996).

Historically access to and the content of nursing education has not been fully under the control of nurses (Rafael, 1996). Other groups continue to exert control over nurses' professional lives, as exemplified by the increasing use of unlicensed health care personnel and the medical lobby opposing nurse practitioners as primary health care providers (Rafael). It is small wonder that nursing remains powerless relative to other professions.

Despite empirical evidence of the positive outcomes of empowerment for nursing practice, a historical perspective is helpful in understanding why many nurses remain disempowered. As long as nurses view power as only having control or dominance, and as long as nursing does not control its own destiny, nurses will continue to struggle with issues of power and empowerment.

Kinds of Power over Nursing Care Needed for Nurses to Make Their Optimum Contribution

There are at least three types of power that nurses need to be able to make their optimum contribution. The various types of power can all be categorized as stemming from nurses' control in three domains: control over the content of practice, control over the context of practice, and control over competence. The continued lack of control over both the content and context of nursing work suggests that power remains an elusive attribute for many nurses (Majnoilovich, 2005a). In this section, power will be discussed as it is manifested by nurses' control over the content, context, and competence of nursing practice.

Control Over the Content of Nursing Practice

Power is an attribute that nurses must cultivate in order to practice more autonomously because it is through power that members of an occupation are able to raise their status, define their area of expertise, and achieve and maintain autonomy and influence (Hall, 1982). One of the characteristics of a profession is that professionals have power over the practice of their discipline which is often referred to as professional autonomy (Laschinger, Sabiston, & Kutzscher, 1997). Autonomy represents one kind of power nurses need, and has been defined as "the freedom to act on what one knows" (Kramer & Schmalenberg, 1993, p. 62). Therefore a key element of empowerment is nurses' control over their practice (Page, 2004). The ability to act according to one's knowledge and judgment is known as control over the content of nursing practice (Laschinger et al., 1997), and is often synonymous with autonomy. High levels of autonomy increased nurses' identification with the profession in one study (Apker, Ford, & Fox, 2003), providing recent empirical support for this supposition.

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Having control over the content of nursing practice may not be enough to provide power for nurses.

Of all decision makers in the hospital environment, only the bedside nurse, who is in closest proximity to the patient, can fully appreciate subtle patient cues and trends as they arise and act on them to properly care for that patient (Manojlovich, 2005a). To identify the appropriate course of action and effectively function, professionals must have understanding and control over the entire spectrum of activities associated with the job at hand (Manojlovich). However, it may be that nurses are frequently unable to use their professional preparation, which focuses on autonomous practice and independent decision making, because they are powerless relative to organizational administrators and medical staff (Manojlovich). Having control over the content of nursing practice may not be enough to provide power for nurses.

Control Over the Context of Nursing Practice

Besides control over the *content* of nursing practice, which represents one type of power, a related type of control is known as control over the *context* of practice, and represents another type of power that nurses need (Laschinger et al., 1997). Over twenty years ago it was noted that "nurses should be more meaningfully involved in the running of hospitals" (Prescott & Dennis, 1985, p. 348). Nurses' involvement in hospital affairs is one of the hallmarks of a magnet hospital environment (McClure & Hinshaw, 2002) but otherwise may not be apparent.

Research on magnet hospital characteristics has largely demonstrated relationships between the work environment and patient outcomes (Aiken, Clarke, Sloane, Sochalski, & Silber, 2002; Aiken, Sloane, Lake, Sochalski, & Weber, 1999). The positive findings of the magnet hospital research may be attributed to empowering organizational social structures, although they were not identified as such. Hospital characteristics which were found to attract and retain qualified staff nurses included decentralization and participatory decision making. Although relatively little attention has been paid to how a magnet work environment contributes to nurses' sense of power (Upenieks, 2003c), repeated magnet hospital study findings of empowering workplace structures and their relationship to improved nursing and patient outcomes suggest that magnet hospitals attract nurses in part because of their empowering environments.

All of the magnet hospital studies have also consistently demonstrated positive benefits for nursing and patients when nurses control both the content and the context of their practice.

All of the magnet hospital studies have also consistently demonstrated positive benefits for nursing and patients when nurses control both the content and the context of their practice. In the original magnet hospital study, nursing staff felt able to influence decisions and were in control of their own practice, while recognizing the power of physicians and nurse leaders (McClure, Poulin, Sovie, & Wandelt, 1983). The original magnet hospital study also recognized that the power base of staff nurses emerged from nursing leadership, whose power came from staff, hospital administrators, and boards of trustees (McClure et al.). A more recent study has validated the magnet hospital findings, demonstrating that strong nursing leadership strengthens the effect of empowerment on nursing practice behaviors (Manojlovich, 2005c). Professional practice models, shared governance models, and collaborative governance all use similar processes to increase nurses' participation in decision making, thereby increasing their control over the context of nursing practice and promoting power.

There is strong empirical justification for promoting nurses' power through control over both the content and context of nursing practice. In multiple studies, patient outcomes were improved when the hospital organization was supportive of autonomous nursing practice (Aiken et al., 1999; Aiken, Clarke, & Sloane, 2000). In these studies, autonomous nursing practice was operationalized as control over the practice environment, decision-making ability, and collegial relationships with physicians, suggesting an important link between power and patient outcomes.

Control Over the Competence of Nursing Practice

A necessary precursor for both autonomy and power is competence (Kramer & Schmalenberg, 1993), which

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has its foundation in educational preparation. Power is maintained through knowledge development (Rafael, 1996), which is acquired through education and expertise. The multiple entry levels into nursing practice, as well as the low educational level of nurses (relative to other health care professionals) may contribute to nurses' powerlessness. The statement, "Being less well-educated than other groups within the hospital puts nursing at a serious disadvantage in organizational politics" (Prescott & Dennis, 1985, p. 355), is no less true now than it was when written more than twenty years ago.

Nursing expertise is a related source of power that has a transformative effect on patients' lives (Rafael, 1996). Expertise is not the same as experience, nor can expertise be acquired on nursing units with high turnover (Benner, 2001). This suggests a complex relationship between organizational factors that contribute to nursing turnover and the development of nursing expertise. Educational preparation and expertise represent two additional types of power nurses need to make their optimal contribution to patient care.

Organizational systems aimed at promoting nurses' power so that they can use their professional skills may provide an attractive and rewarding career choice for today's sophisticated students (Bednash, 2000). There may be additional benefits for hospitals that promote nursing power. Bednash (2000) reported on a study indicating that hospitals that allowed their staff autonomy over their own practice and active participation in decision making about patient care issues were the most successful in recruiting and retaining nurses. In another study patient satisfaction improved when there was more organizational control by staff nurses (Aiken et al., 1999).

The Current State of Nursing Empowerment Related to Nursing Care

Part of the difficulty many nurses have in being powerful may be due to their inability to develop the types of power described in the previous section. Power over the content, context, and competence of nursing practice contributes to feelings of empowerment, but control in these three domains may not be enough. An examination of the two major areas of empowerment literature in nursing, as well as a third area not yet embraced by nursing, may help inform future directions for the development of power and empowerment for nurses.

Empowerment in nursing has largely been studied from two perspectives. Most nursing researchers view empowerment as either arising from the environment (Laschinger, Finegan, Shamian, & Wilk, 2001) or developing from one's psychological state (Manojlovich, 2005b; Spreitzer, 1995).

Another contributor to nurses' lack of power may be that they don't understand how power can develop from relationships, as originally proposed by Chandler (1992). Therefore a third perspective on empowerment, not yet embraced by nursing, is gender specific. Relational theory explains how women engage in relationships to foster growth and nurturance (Fletcher, Jordan, & Miller, 2000). Women develop empathy and empowerment through relationships, although the mutual processes of empathy and empowerment are largely invisible (Fletcher et al., 2000). The answer to increasing nursing empowerment may lie in understanding workplace sources of power, expanding the view of empowerment to include the notion of empowerment as a motivational construct, and finally making more explicit growth fostering relationships which also contribute to power.

Theory of Structural Empowerment

The theory of structural empowerment states that opportunity and power in organizations are essential to empowerment, and must be available to all employees for maximal organizational effectiveness and success. The theory of structural empowerment was developed by Kanter (1993) who saw employees' work behavior as arising from conditions and situations in the work place, and not from personal attributes (Laschinger & Havens, 1996).

There are four structural conditions identified by Kanter (1993) as being the key contributors to empowerment. They are: having opportunity for advancement or opportunity to be involved in activities beyond one's job description; access to information about all facets of the organization; access to support for one's job responsibilities and decision making; and access to resources as needed by the employee (Kanter, 1993). Empowerment is on a continuum, because the environment will provide relatively more or less empowerment, depending on how many of the four structures are present in the work setting. The theory of structural empowerment places the focus of causative factors of behavior fully on the organization, in effect maintaining that powerless individuals have not been exposed enough to the four empowering workplace structures.

In this worldview of empowerment, employees' behavior is merely a response to the structural conditions they face in the work setting. Therefore, the qualities of a job and its context evoke behaviors from those in a job position that determine the likelihood of success (Kanter, 1993). Employees' behavior becomes more effective, and organizational output increases and improves when the organization is structured to provide opportunity and power to all employees across all organizational levels (Kanter, 1993).

Laschinger and her colleagues have done the bulk of the work on structural empowerment in nursing (Laschinger, Finegan, Shamian, & Almost, 2001; Laschinger et al., 2003; Laschinger, Finegan, & Wilk,

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2004; Leiter & Laschinger, 2006; Sabiston & Laschinger, 1995). However evidence of the essence of structural empowerment, if not the name, appears in other research as well. Kramer and Schmalenberg (1993) identified organizational strategies necessary before individuals could act in an empowered manner. These included participative management, job enrichment, meaningful organizational goals, less bureaucracy, and involving staff in decision making (Kramer & Schmalenberg, 1993). Although not identified as conditions in the environment, the access to opportunity, resources and support that these strategies would provide would certainly strengthen nurses' perceptions of empowerment.

Other than the magnet program there is additional support for configuring work environments in a way that promotes empowerment. Aiken and colleagues (2001) conducted an international study in five countries to compare nurse staffing, work environments, and patient outcomes. Even in countries with vastly different health care systems nurses reported similarities in workplace empowerment elements. The results of this international study further suggest that the relative presence or absence of specific environmental factors associated with structural empowerment may contribute to variation in nursing and patient outcomes in multiple countries.

There is evidence in the literature that structural empowerment contributes to higher levels of job satisfaction (Manoilovich, 2005d), and is interrelated with nursing leadership (Upenieks, 2003a). In fact, nursing leaders must empower themselves by first accessing empowering work environment structures before moving forward to offer these same empowering work conditions to their staff (Upenieks, 2003b).

Theory of Psychological Empowerment

Thus empowerment, as provided by the environment, tells part of the story, but alone it is not enough. Some environments are empowering because they allow workers to do what it is the workers feel is necessary to get the job done. In other words, these environments provide the sources of power. Other work environments may not be as empowering, yet there will still be a few hardy individuals who manage to do whatever it takes to be effective on the job. It may be that these people are able to recognize what few empowering social structures in the environment are present, and manipulate them, since it is only in recognition that the structures can be used.

An alternative theoretical perspective on empowerment acknowledges the fact that empowerment is also a psychological experience. Conger and Kanungo (1988) viewed empowerment as a motivational construct, while maintaining that it is still a personal attribute. They saw empowerment as enabling, which "implies motivating through enhancing personal efficacy" (Conger & Kanungo, 1988, p. 473). Spreitzer (1995) developed this version of empowerment further. According to Spreitzer, the process of psychological empowerment is a motivational construct which manifests as a set of four cognitions that are shaped by a work environment. The four cognitions are: meaning, competence, self-determination, and impact (Spreitzer, 1995).

Meaning occurs when there is congruence between a nurse's beliefs, values, and behaviors, and job requirements (Laschinger, Finegan, & Shamian, 2001). Competence refers to confidence in one's abilities to perform the job, and is also known as self-efficacy (Laschinger, Finegan, & Shamian). Self-determination, similar to autonomy, refers to feelings of control that are exerted over one's work. Finally, impact is seen as a sense of being able to influence important organizational outcomes (Laschinger, Finegan, & Shamian).

Psychological empowerment is a process because it begins with the interaction of a work environment with one's personality characteristics; then the interaction of environment with personality shapes the four empowerment cognitions, which in turn motivate individual behavior (Spreitzer, 1995). Psychological empowerment reflects an active rather than a passive orientation to work, and conveys the notion that individuals not only want to, but are able to, shape their work role and context (Boudrias, Gaudreau, & Laschinger, 2004).

Several studies have demonstrated the effect of psychological empowerment on nursing outcomes of burnout and nursing job satisfaction (Laschinger, Finegan, & Shamian, 2001; Laschinger, Finegan, & Shamian & Almost, 2001). Self-efficacy for nursing practice (one of the psychological empowerment cognitions) was recently found to contribute to professional nursing practice behaviors (Manoilovich, 2005b). In fact, this study demonstrated that structural empowerment contributed to professional practice behaviors through self efficacy, consistent with the notion that both forms of empowerment may be necessary to sustain professional practice behaviors (Manoilovich). Research has also shown that work environment characteristics, such as structural empowerment, contribute to psychological empowerment in both nursing (Laschinger, Finegan, & Shamian & Almost, 2001) and non-nursing populations (Spreitzer, 1996).

A Relational View of Empowerment

Relational theory may have greater relevance to the development of

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empowerment in nursing than either workplace or motivational views of empowerment because of the nature of nursing's work.

Despite the large amount of literature describing how to foster empowerment, a recent study done in New York reported that nurses are feeling they still lack power to influence their working conditions (Brewer, Zayas, Kahn, & Sienkiewicz, 2006). In addition to accessing workplace structures to garner structural empowerment, and developing power through psychological empowerment, yet one more perspective on empowerment may be required.

Viewing empowerment through a feminist lens may help explain persistent findings of disempowerment. Most feminist scholarship on nursing focuses on overcoming oppressive working conditions brought on by the patriarchal structure of medicine and the health care industry (Chinn, 1995; Sampsel, 1990). Feminist theory that focuses on eliminating oppression and seeking equal status for women is known as liberal feminism (Wuest, 1994). While this perspective has its merits, it tends to dichotomize the empowerment debate and becomes constraining when viewed as part of a dualistic ideology: masculinity/femininity; oppressor/oppressed; good/bad; right or wrong.

An alternative feminist perspective argues for a relational context to empowerment: one that values and rewards interactive relationships (Chandler, 1992; Rafael, 1996).

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This perspective falls under the broad umbrella of socialist feminist theory, and emphasizes the development of relationships through interactions with one another (Wuest, 1994). Socialist feminists maintain that the worldview of women is valid not because women are equal to men, but because women's reality provides knowledge inaccessible to men (Wuest, 1994).

Relational theory comes from the school of social feminism, and posits that women engage in growth fostering and nurturance relationships, which maintain society (Fletcher et al., 2000). Women foster growth and nurture others, deriving strength from the relationships and bonds that develop as a result of these activities (Fletcher et al.). By engaging in growth fostering relationships at work, mutual empowerment ensues and enables the achievement of others and increases one's own job effectiveness (Fletcher et al.). Relational theory may have greater relevance to the development of empowerment in nursing than either workplace or motivational views of empowerment because of the nature of nursing work. As Chandler has argued:

Clinical knowledge and committee work is only one piece of the staff nurse-based formula for empowerment. The other critical variables are those underestimated, trivialized, and unexamined aspects of what has been women's domain—the domain that nurses know and would prefer (Chandler, 1992, p. 70).

Thus Chandler implies that a psychological belief in one's ability to be empowered may not be enough to increase empowerment in nursing, but that a truly empowering environment for nurses should nurture reciprocal professional relationships.

Fletcher (2006) suggests a relational theory approach when she asserts that nurses need to focus on relationships to build power. Fletcher maintains that relationships are built through dialogue and self-awareness and that the development of self-awareness "can begin to break the cycle of oppression and lead to changes in the structures that oppress nurses" (Fletcher, 2006, p. 57). Benner (2001) also argues for power through relationships and caring: the core of nursing practice. When nursing embraces caring, empathy, and compassion as components of power, nurses will be more likely to adopt and accept power as part of their practice (Benner).

Conclusion

...there remains a need for research to examine the power that exists in relationships.

In conclusion, nurses' power may arise from three components: a workplace that has the requisite structures that promote empowerment; a psychological belief in one's ability to be empowered; and acknowledgement that there is power in the relationships and caring that nurses provide. Nursing research has been able to

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demonstrate the relationship between the first two components and empowerment; yet there remains a need for research to examine the power that exists in relationships. Nursing research from a relational theory perspective may help make nurses' power more explicit and more visible, moving our understanding of power in nursing further than has previously been possible. A more thorough understanding of these three components may help nurses to become empowered and use their power for their practice and for better patient care.

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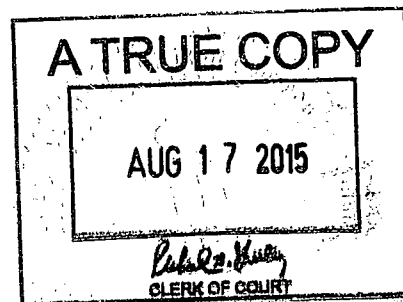
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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing "Nancy C Perez' Rule 59 (e),
SCRIP, verified motion for new trial and reconsideration" was delivered by
mailing a copy thereof on August 17th, 2015 to :

Donnell G. Jennings, Esq
South Carolina Department of Labor, Licensing
And Regulation
PO Box 11329
Columbia, SC 29211-1329



Nancy C Perez

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Pages 66-87

Petitioner's Motion For Summary Judgment

Case # 2014-CP-04-01780

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT
ANDERSON COUNTY, SOUTH CAROLINA

NANCY C. PEREZ

Petitioner

Vs

SOUTH CAROLINA
DEPARMENT OF LABOR , LICENSING AND REGULATION –
BOARD OF NURSING

Respondent

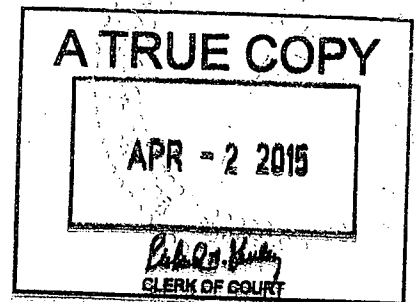
PETITIONER'S MOTION FOR SUMMARY JUDGMENT

Nancy C. Perez, respectfully submits the instant motion, pursuant to, inter alia,
Rule 56, SCRCP. As grounds therefore she shows:

I

FACTUAL BACKGROUND¹

¹ Please Nancy C. Perez' affidavit attached and incorporated hereto.



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Nancy C. Perez was born in Aiken, South Carolina in July 11th, 1948. She graduated as a License Practical Nurse from Clarendon College, Texas in 1996. Clarendon College is an accredited educational institution. Nancy C. Perez obtained Texas License 160059 on October 9th, 1996. She worked in Texas until May 2014. A total of eighteen (18) Years. The Texas Board of Nursing never brought any disciplinary actions against Ms. Perez. No Texas patient ever sued Ms. Perez for malpractice.

In May 2014 Ms. Perez returned to her native South Carolina. She informed the South Carolina Board of Nursing (SCBON) and submitted an application to resume exercising her common law profession in the state. She also provided the SCBON the authority to conduct a criminal background check.

The Patrick B. Harris Psychiatric Hospital (PBHPH) offered Ms. Perez a full time position earning \$15.16 an hour, plus insurance and benefits. The PBHPH conducted a previous employment history and found no derogatory information. The Patrick B. Harris Psychiatric Hospital withdrew the offer because the SCBON failed or refused to allow Ms. Perez to earn a livelihood.

Nursing as a profession existed in 1868. The nursing profession in South Carolina was regulated for the first time in 1910. The Department of Labor,

Licensing and Regulation and Ms Holly Gillespie Pisarik have failed or refused to inform Ms Perez that they have made a finding that abridging her right to work as a nurse is necessary for the preservation of the health, safety and welfare of the public. The DLLR has informed Ms. Perez that they have the authority to prevent Ms Perez from being gainfully employed until she travels to Columbia and testifies before the SCBON.

II

LEGAL STANDARD

Summary judgment is proper where, as here, there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law². The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder³. Accordingly, summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery prove there is no genuine issue of material fact and the movant must prevail as a matter of law. The burden is on the non-moving party to designate specific facts showing a genuine issue for trial⁴.

² Providence Hospital v. The South Carolina Medical Malpractice Liability Joint Underwriting Association, Opinion No. 27484, Supreme Court Of South Carolina - January 21, 2015 citing Rule 56© , SCRCF

³ Dawkins v. Fields, 580 S.E.2d 433, 438 (2003)

⁴ SSI Med. Srvcs., Inc. v. Cox, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990)

II

THE COURT OF COMMON PLEAS HAS SUBJECT MATTER JURISDICTION OVER MS PEREZ' COMPLAINT

South Carolina circuit courts are vested with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law⁵.

S.C. Const. Art. V, § 11⁶ has never been amended in order to exclude from the circuit Courts causes of action which are “administrative in nature”⁷. S.C. Const., article 1, Section 23⁸ has never been amended within the meaning of Article 1, Section 3⁹ in order to make Constitutional

⁵ Rainey v. Haley, 745 SE 2d 81, 83 (Supreme Court - 06/12/2013) (citing S.C. Const. art. V, § 11); The construction of a statute is a judicial function and responsibility, Lindsay v. Nat'l Old Line Ins. Co., 262 S.C. 621, 628, 207 S.E.2d 75, 78 (1974).

⁶ Article V **SECTION 11**. Jurisdiction of Circuit Court. The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.) Rainey v. Haley, 745 SE 2d 81, 83 (Supreme Court - 06/12/2013) (citing S.C. Const. art. V, § 11);

⁷ See *Muldrow v. Jeffords*, 144 S.C. 509, 520, 142 SE 602, 605 (1928) According to a well-established rule of law, those who undertake to deprive [a court] of jurisdiction in any given case and give it to [another] must be able to point out **some particular provision of the Constitution** which either expressly or by necessary implication gives jurisdiction of such case to the limited and inferior tribunal to the exclusion of the superior tribunal.”).

⁸ **SECTION 23**. Provisions of Constitution mandatory. The provisions of the Constitution shall be taken, deemed, and construed to be **mandatory and prohibitory, and not merely directory**, except where expressly made directory or permissive by its own terms. (1970 (56) 2684; 1971 (57) 315.)

⁹ **SECTION 3**. Privileges and immunities; due process; equal protection of laws. The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, **nor shall any person be deprived of life, liberty, or property without due**

provisos discretionary instead of mandatory. S.C. Const. Article 16 has not been abolished or amended in in order to allow the General Assembly to Amend the Constitution without a Constitutional Convention¹⁰, i.e., in order to add the phrase “ except those cases in which exclusive jurisdiction shall be given to administrative agencies”.

South Carolina Circuit Courts have the Constitutional and statutory authority to declare rights, status and other legal relations¹¹. Furthermore, the South Carolina Supreme Court has ruled that S.C. Const. art. I, § 22 allows an individual who, as here, is being deprived of liberty and property, to access the circuit courts even when a contested case under the APA is not involved¹². Additionally, the General Assembly has also provided that a preliminary, procedural, or intermediate agency action or ruling is

process of law, nor shall any person be denied the equal protection of the laws. (1970 (56) 2684; 1971 (57) 315.)

¹⁰ **SECTION 3. Constitutional Convention.** Whenever two-thirds of the members elected to each branch of the General Assembly shall think it necessary to call a Convention to revise, amend or change this Constitution, they shall recommend to the electors to vote for or against a Convention at the next election for Representatives; and if a majority of all the electors voting at said election shall have voted for a Convention, the General Assembly shall, at its next session, provide by law for calling the same; and such Convention shall consist of a number of members equal to that of the most numerous branch of the General Assembly.

¹¹ Rainey v. Haley, 745 SE 2d 81, 82 (2013) citing S.C. Code Ann. § 15-53-20 (2005) and Rule 57, SCRCP.

¹² South Carolina Coastal Conservation League v. South Carolina Dep't of Health and Environmental Control, 669 S.E.2d 899, 380 S.C. 349 (S.C.App. 10/23/2008) citing S.C. Const. art. I, § 22 and Ross v. Med. Univ. of S.C. 492 SE 2d 62, 71 (1997)

immediately reviewable if review of the final agency decision would not provide an adequate remedy¹³.

III

THE DEPARTMENT OF LABOR, LICENSING AND REGULATION AND MS HOLLY PISARIK ARE THE PROPER PARTIES

South Carolina statute Section 40-1-40 states that the General Assembly created the South Carolina Department of Labor, Licensing and Regulation, in order to protect the public through the regulation of professional and occupational licensees and the administration of boards charged with the regulation of professional and occupational practitioners. Subsection (B) states that the [Board of Nursing] and the occupations it licenses or otherwise regulates must be administered by the Department of Labor, Licensing and Regulation pursuant to this article. Accordingly, Ms. Perez respectfully submits that the DLLR is a proper party.

42 USC 1983 authorizes Ms Perez to file a cause of action against Ms Pisarik, in her official capacity, for transgressing upon her rights¹⁴.

Defendant Pisarik does not have qualified immunity. The doctrine of qualified immunity protects government officials 'from liability for civil

¹³ Bone v. U.S. Food Service, Case # 27278 (S.C. 06/26/2013) S.C. Code Ann §1-23-380(A) .

¹⁴ Verizon Maryland, Inc. v. Public Service Commission of Maryland, 535 U.S. 635, 122 S.Ct. 1753 (U.S. 05/20/2002).

damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known¹⁵. Ms. Pisarik has not, and cannot, claim that she was not aware that South Carolina Statute Section 40-1-10 protects Ms. Perez' right – her property interest - to engage in a lawful profession, trade, or occupation of choice.

Ms. Pisarik has not, and cannot, claim that she was not aware that Ms. Perez' right to engage in a lawful profession, trade, or occupation of choice is protected by South Carolina Statute 40-1-10 , and can only be abridged when it is clearly found that abridgement is necessary for the preservation of the health, safety, and welfare of the public¹⁶.

IV

THE DEFENDANTS HAVE A MINISTERIAL DUTY TO PERMIT MS. PEREZ TO BE GAINFULLY EMPLOYED UNLESS THEY FIND THAT ABRIDGING HER RIGHT IS NECESSARY FOR THE PRESERVATION OF THE HEALTH, SAFETY AND WELFARE OF THE PUBLIC

South Carolina and Federal Law provide that Ms. Perez has the right to engage in a lawful profession, trade, or occupation of choice is clearly protected by both the Constitution of the United States and the Constitution

¹⁵ Messerschmidt v. Millender, 132 S.Ct. 1235, 182 L.Ed.2d 47 (U.S. 02/22/2012) citing Pearson v. Callahan, 555 U. S. 223, 231 (2009)

¹⁶ South Carolina Statute 40-1-10

of the State of South Carolina¹⁷. The State cannot abridge this right except as a reasonable exercise of its police powers when it is clearly found that abridgement is necessary for the preservation of the health, safety, and welfare of the public¹⁸. The Defendants have not, and can not, identify any evidence which shows that allowing Ms Perez to exercise her right to work in her lawful vocation is necessary for the preservation of the health, safety, and welfare of the public.

The Defendants have stated that the only reason they have refused to permit Ms. Perez to become gainfully employed is because she has refused to travel to Columbia and testify before the SCBON¹⁹.

Ms. Perez respectfully submit that the defendants' pretext transgresses upon her right to work as secured by the Federal and State Constitution as shown hereinabove²⁰.

¹⁷ SECTION 40-1-10. ; see also Hawker v. People of State of New York, 170 US 189 (1898); Dent v. State of West Virginia, 129 US 114 , (1889) ; Sloan v. South Carolina Board of Physical Therapy Examiners, 636 S.E.2d 598, 370 S.C. 452 (S.C. 09/25/2006) citing US Constitution Fourteenth Amendment

¹⁸ Id, see also Please see **SECTION 1-23-370** Procedures regarding issuance, denial or renewal of licenses. No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. **If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action.** These proceedings shall be promptly instituted and determined.(emph. Added)

¹⁹ Affidavit of Nancy C Perez

²⁰ FN's 14 and 15 , supra

Furthermore , the Fifth and 14th Amendments of the US Constitution prevent the SCBON from coercing Ms. Perez into providing testimony which may be used against her²¹. The protection applies to criminal, civil and administrative proceedings²². The Fifth Amendment prevents the SCBON from penalizing Ms. Perez' for her refusal to testify by preventing her from becoming gainfully employed²³. The SCBON is an administrative agency hence its officers have no statutory or Constitutional authority to declare and/or rule upon any objection interpose by Ms. Perez during her proposed interrogation²⁴.

V

CONSTITUTIONAL VIOLATIONS ARE CONSIDERED PER SE IRREPARABLE HARM

²¹ Lefkowitzvs Turley, et al, 414 US 70, 77 (U.S. 11/19/1973) (The Amendment not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings] citing McCarthy v. Arndstein, 266 US 34, 40 (1924), Jackson v. Denno, 378 S 368 (1964), Accord : State v. Hook, 348 S.C. 401, 559 S.E.2d 856 (S.C.App. 12/17/2001) citing S.C. Const. Art. I, § 12, affirmed , State v. Hook, 356 S.C. 421, 590 S.E.2d 25 (S.C. 11/24/2003)

²² id

²³ Gardner v Broderick, 392 US 273, 279 (U.S. 06/10/1968) ; Accord : State v. Hook, 348 S.C. 401, 559 S.E.2d 856 (S.C.App. 12/17/2001) citing S.C. Const. Art. I, § 12, State v. Hook, 356 S.C. 421, 590 S.E.2d 25 (S.C. 11/24/2003)

²⁴ Rainey v. Haley, 27269 (S.C. 06/12/2013) Citing S.C. Code Ann. § 15-53-20 (2005) and Rule 57, SCRCP

It is well-established that constitutional claims enjoy a special status in the law when it comes to demonstrating “irreparable harm”. Most decisions invoking this doctrine cite the U.S. Supreme Court’s 1976 decision in Elrod v. Burns, which observed that “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury²⁵. Importing this “irreparable-if-only-for-a-minute” concept to cases involving other constitutional rights, federal circuits including the Fourth Circuit have made clear that a deprivation of constitutional rights is per se particularly²⁶ irreparable harm²⁷.

VI

MS PEREZ IS BEING SUBJECTED TO CRUEL AND UNUSUAL PUNISHMENT

²⁵ . Elrod v. Burns, 427 U.S. 347, 373 (1976)

²⁶ Long Beach Area Peace Network v. City of Long Beach, 522 F.3d 1010, 1020 (9th Cir. 2008).

²⁷ Ross v. Meese, 818 F.2d 1132, 1135 (4th Cir. 1987) (holding that violations of First, Fourth, and Sixth Amendment rights constituted per se irreparable harm); Giovani Carandola, Ltd. v. Bason, 303 F.3d 507, 511 (4th Cir. 2002) (holding that violation of constitutional rights, when shown amounts to per se irreparable harm); Daly v. Leake, 1998 U.S. Dist. LEXIS 8114, *7 (E.D.N.C. Apr. 27, 1998) (“The Fourth Circuit has held that a deprivation of constitutional rights is per se irreparable harm.”) (citing Doe v. Charleston Area Medical Center, Inc., 529 F.2d 638, 640 (4th Cir. 1975), and Henry v. Greenville Airport Comm’n, 284 F.2d 631, 632-33 (4th Cir. 1960)); Dean v. Leake, 550 F. Supp. 2d 594, 602 (E.D.N.C. 2008) (quoting Elrod, 427 U.S. at 373, for the proposition that “[d]eprivation of a constitutional right, even for a short period of time, constitutes irreparable harm”); Byrd v. Moore, 252 F. Supp. 2d 293, 298 (W.D.N.C. 2003) (holding that “[v]iolation of [various constitutional] rights would constitute irreparable harm of the first order”).

The facts show that Ms. Perez is being prevented from earning a livelihood as a nurse even though the Defendants have not clearly found that abridgement is necessary for the preservation of the health, safety, and welfare of the public²⁸

The facts also show that the Defendants claim that they have the authority to prevent her from working as nurse until she travels to Columbia and testifies before the SCBON²⁹.

The Excessive Fines Clause of the Eighth Amendment and S.C. Constitution Article I, § 15 prohibit the government from imposing excessive fines as punishment³⁰. A civil sanction is punitive if "it can only be explained as serving in part to punish"³¹. Courts have stated that they will find a violation of the Excessive Fines Clause if the penalty is **grossly** disproportional to the gravity of a defendant's offense³². The facts show that Ms. Perez has committed no offense.

²⁸ Id, see also Please see SECTION 1-23-370 Procedures regarding issuance, denial or renewal of licenses. No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.(emph. Added)

²⁹ Nancy C Perez affidavit

³⁰ State v. Ortho-McNeil-Janssen Pharmaceuticals, Inc., Opinion No. 27502 SC Supreme Court - February 25, 2015, U.S. Const. amend. VIII, SC Constitution Article I, § 15

³¹ United States v. Bajakajian, 524 U. S. 321 (1998); Austin v. United States, 509 U.S. 602, 610, 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993).

³² State v. Ortho-McNeil-Janssen Pharmaceuticals, Inc., Opinion No. 27502 SC Supreme Court - February 25, 2015

VII

THE REVERSE CONDEMNATION PROCEEDING IS PROPERLY BEFORE THE COURT

Inverse condemnation proceedings apply when any type of property³³ – i.e., physical , intangible³⁴, intellectual – is affected by a governmental taking. Since 1922 it has been understood that a “regulatory taking” constitutes a taking requiring compensation³⁵. Governmental immunity from suit does not shield the government from an action for compensation under the US Constitution Fifth Amendment takings clause³⁶ . A Fifth Amendment

³³ Eastern Enterprises v. Apfel, 524 U.S. 498 , 522-523 (U.S. 06/25/1998) (Health benefit funds) (This case does not present the "classi[c] taking" in which the government directly appropriates private property for its own use. See United States v. Security Industrial Bank, 459 U. S. 70, 78 (1982). Although takings problems are more commonly presented when "the interference with property can be characterized as a physical invasion by government, than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good," Penn Central Transp. Co. v. New York City, 438 U. S. 104, 124 (1978) (citation omitted), economic regulation such as the Coal Act may nonetheless effect a taking, see Security Industrial Bank, supra, at 78. See also Calder v. Bull, 3 Dall. 386, 388 (1798) (Chase, J.) ("It is against all reason and Justice" to presume that the legislature has been entrusted with the power to enact "a law that takes property from A. and gives it to B"). By operation of the Act, Eastern is "permanently deprived of those assets necessary to satisfy its statutory obligation, not to the Government, but to [the Combined Benefit Fund]," Connolly, supra, at 222, and "a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change," Pennsylvania Coal Co. v. Mahon, 260 U. S. 393, 416 (1922). Whiting v. University of Southern Mississippi, 451 F.3d 339 (5th Cir. 06/02/2006) quoting Bd. of Regents of State Colls. v. Roth, 408 US 564 566-7 (1972) (The Fourteenth Amendment's procedural protection of property is a safeguard of the security of interests that a person has already acquired in specific benefits. **These interests -- property interests -- may take many forms.**)

³⁴ Nautilus , Inc. v Biosig Instruments, Inc. No. 13-369 (US Supreme Court - June 2, 2014) (patents) ; Kent , et al, v Dulles, 357 US 116 (U.S. 06/16/1958)(Right to travel)

³⁵ *Pennsylvania Coal Co. v. Mahon*, 260 US 393 (1922),

³⁶ *Horne v. Department of Agriculture*, 12-123 (U.S. 06/10/2013) supra, citing *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 US 172 (1985).

claim is ripe where, as here, the Plaintiff has been injured by an agency decision³⁷. A takings clause case" or controversy exists once the government has taken private property without paying for it³⁸. Thus, it is a taking when a state regulation deprives him of all economically beneficial use of his property³⁹. Whether or not it was taken for "public use" is irrelevant⁴⁰. It is also irrelevant for 5th Amendment purposes whether the taking was effectuated by the executive, legislative or **judicial branch**⁴¹.

"The Takings Clause of the Fifth Amendment, made applicable to the States through the Fourteenth Amendment, directs that 'private property' shall not 'be taken for public use, without just compensation'⁴². Because the Constitution protects rather than creates property interests, courts must "resort to 'existing rules or understandings that stem from an independent source such as state law' to define

Accord: *Gen. Services Com'n v. Little-Tex Insulation Co., Inc.* 39 SW 3rd 591, 598-99 (Tex. 2001); *Steele v. City of Houston*, 603 SW 2d 786, 791 (Tex. 1980). See Article I, section 17 of the Texas Constitution

³⁷ *Horne v. Department of Agriculture*, 12-123 (U.S. 06/10/2013), *supra*, citing *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 US 172 (1985).

³⁸ *Horne v. Department of Agriculture*, 12-123 (U.S. 06/10/2013) FN 6, *supra*, citing

³⁹ *Stop the Beach Renourishment, Inc. v. Florida Dep't of Environmental Protection*, No. 08-1151 (U.S. 06/17/2010) citing *Lucas v. South Carolina Coastal Council*, 505 US 100, 1019 (1992).

⁴⁰ *Lucas v. South Carolina Coastal Council*, 505 US 1003, (1992); *Pennsylvania Coal Co. v. Mahon*, 260 US 393 (1922).

⁴¹ *Stop the Beach Renourishment, Inc. v. Florida Dep't of Environmental Protection*, No. 08-1151 (U.S. 06/17/2010) Quoting *PruneYard Shopping Center v. Robins*, 447 US 74 (1980)

⁴² *Urban Developers LLC v. City of Jackson*, 468 F.3d 281, 292 (5th Cir. 2006) (quoting U.S. Const. amend. V) (internal citation omitted)

the range of interests that qualify for protection as 'property' under the Fifth and Fourteenth Amendments⁴³.

Once the right to practice nursing is lawfully acquired, it is a **property**⁴⁴ right protected by the due process clauses of the state and federal constitutions⁴⁵. At common law, only the Judicial Department could revoke the right to practice a profession.⁴⁶ To state a cause of action for inverse condemnation under the South

⁴³ . " Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1030 (1992) (quoting Bd. of Regents of State Colls. v. Roth, 408 U.S. 564, 577 (1972))

⁴⁴ The right to hold specific employment and the right to follow a chosen profession free from unreasonable governmental interference come within the liberty and property interests protected by the Due Process Clause [of the Fourteenth Amendment]. The liberty interest at stake is the individual's freedom to practice his or her chosen profession; the property interest is the specific employment." Brown v. S.C. State Bd. of Educ., 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990) (citing Greene v. McElroy, 360 U.S. 474, 79 S.Ct. 1400, 3 L.Ed. 2d 1377 (1959)); Baird v. Charleston County, 333 S.C. 519, 537, 511 S.E.2d 69, 79 (1999) (recognizing same principle); Ezell v. Ritholz, 188 S.C. 39, 46-49, 198 S.E. 419, 422-23 (1938) (discussing same principle). "It cannot be doubted that a man's trade or profession is his property." Byrne's Adminstrs. v. Stewart's Adminstrs., 3 S.C. Eq. (3 Des. Eq.) 466, 479 (1812). Likewise, the practices of medicine and physical therapy by properly licensed individuals undoubtedly are cognizable property interests rooted in state law. Dantzler v. Callison, 230 S.C. 75, 92, 94 S.E.2d 177, 186 (1956) (stating "[t]here is no reasonable doubt that the rights of those who have been duly licensed to practice medicine or other professions are property rights of value which are entitled to protection"). Sloan v. South Carolina Board of Physical Therapy Examiners, 636 S.E.2d 598, 370 S.C. 452 (S.C. 09/25/2006) Liberty or property interests protected under the Due Process Clause "attain this constitutional status by virtue of the fact that they have been initially recognized and protected by state law" Paul v. Davis, 424 US 693, 710-11 (1976).

⁴⁵ id

⁴⁶ Scott v. Texas State Board of Medical Examiners, 384 S.W.2d 686, 690 (Tex. Sup. 1964) (It is seen from the legislative history of the Medical Practice Act that from the beginning the revocation of a medical license has been committed to the district courts as a judicial function. **It has been traditionally so....** There is a difference, legislatively recognized through the years, between an exercise of the power to examine and issue a medical license, and an exercise of the power to revoke a medical license for cause. Texas Vending Comm. v. Headquarters Corp., 505 SW 2d 402 (Tex. Civ. App. 1974, writ ref'd n.r.e.). (Appellants rely on Scott v. Texas State Board of Medical Examiners, 384 S.W.2d 686 (Tex. 1964)... In Scott, the court was concerned with the provision of Tex.Civ.Stat.Ann.Art. 4506 providing a de novo review of the orders of the State Board of Medical Examiners. There the Board had revoked and canceled Scott's license to

Carolina constitution, a plaintiff must allege (1) an intentional governmental act; (2) that resulted in his property being taken, damaged, or destroyed; (3) for public use⁴⁷. Once the right to practice medicine is lawfully acquired, it is a right protected by the due process clauses of the state and federal constitutions⁴⁸ and can only be revoked by the district courts⁴⁹.

The Federal⁵⁰ and the SC⁵¹ Constitutions protect vested rights. The Fourteenth Amendment, §1 provides, among other things, that a State may not abridge "the privileges or immunities of citizens of the United States" or deprive "any person of life, liberty, or property, without due process of

practice medicine. **The Supreme Court observed that traditionally the revocation of a medical license has been committed to the district courts as a judicial function. The court also recognized, at least in the regulation of the practice of medicine, that a difference existed between an exercise of the power to examine and issue a license, and an exercise of the power to revoke a license.**

⁴⁷ Carolina Chloride, Inc v. Richland County, 394 S.C. 154, 171, 714 S.E.2d 869, 877 (2011) (S.C. 07/25/2011)

⁴⁸ Scott v. Texas State Board of Medical Examiners, 384 S.W.2d 686, 690 (Tex. Sup. 1964), I citing Vernon's Ann.St.Const. art. 1, § 19; U.S.C.A.Const. amend. 14. Sherman v. State Board of Dental Examiners, Tex.Civ.App., 116 S.W.2d 843, error refused. " Waller v. State, 68 S.W.2d 601, 605 (Tex. Civ. App. -- Amarillo 1934, writ ref'd)) Liberty or property interests protected under the Due Process Clause "attain this constitutional status by virtue of the fact that they have been initially recognized and protected by state law" Paul v. Davis, 424 US 693, 710-11 (1976).

⁴⁹ Texas Vending Comm. v. Headquarters Corp., 505 SW 2d 402 (Tex. Civ. App. – Austin - 1974, writ ref'd n.r.e.) quoting Scott v. Texas State Board of Medical Examiners, supra.; Francisco v. Board of Dental Examiners, 149 S.W.2d 619 (Tex.App. 03/05/1941)

⁵⁰ Vartelas v. Holder, 132 S.Ct. 1479 (U.S. 03/28/2012) quoting Landgraf v. USI Film Products, 511 US 244, 263 (1994) and several provisions of the Constitution, among them, the Ex Post Facto Clause, the Contract Clause, and the Fifth Amendment's Due Process Clause.

⁵¹ Sloan v. South Carolina Board of Physical Therapy Examiners, 636 S.E.2d 598, 370 S.C. 452 (S.C. 09/25/2006)

law."⁵²

Since the right of the citizen to use his property as he chooses so long as he harms nobody, is an inherent and constitutional right, the police power cannot be invoked for the abridgment of a particular use of private property, unless such use reasonably endangers or threatens the public health, the public safety, the public comfort or welfare⁵³.

A law which assumes to be a police regulation but deprives the citizen of the use of his property under the pretense of preserving the public health, safety, comfort or welfare, when it is manifest that such is not the real object and purpose of the regulation, will be set aside as a clear and direct invasion of the right of property without any compensating advantages⁵⁴.

VI

**IF THE COURT CONCLUDES THAT
THE PROPERTY HAS NOT BEEN TAKEN WITHIN
THE MEANING OF SOUTH CAROLINA CONSTITUTION
ARTICLE 1, SECTION 13, THEN THE COURT OUGHT
TO ADJUDICATE WHETHER THE PROPERTY HAS BEEN
TAKEN AND/OR SEIZED WITHIN THE MEANING OF US
CONSTITUTION FOURTH AND FIFTH AMENDMENTS**

The Fifth Amendment forbids takings in the form of government regulations

⁵² McDonald v. City of Chicago, Illinois, No. 08-1521 (U.S. 06/28/2010) quoting District of Columbia v. Heller, 554 US 570 (2008).

⁵³ City of Houston v. Johnny Frank's Auto Parts, 480 SW 2d 774 (Tex.Civ.App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). quoting Spann v. City of Dallas, 111 Tex. 350, 235 S.W. 513 (1921).

⁵⁴ Id, see also Cooley, Const.Lim. 248

that effectively deprive a property of all economic value⁵⁵. The Takings Clause applies to the states⁵⁶. Where a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation.⁵⁷

But the *Williamson County* ripeness doctrine "does not preclude state courts from hearing simultaneously a plaintiff's request for compensation under state law and a claim that, in the alternative, the denial of compensation would violate the Fifth Amendment of the Federal Constitution."⁵⁸

The Fourth Amendment, made applicable to the States by the Fourteenth Amendment⁵⁹, provides in relevant part that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated" A "seizure" of property occurs when "there is some meaningful interference with an individual's

⁵⁵ *Stop the Beach Renourishment, Inc. v. Florida Dep't of Environmental Protection*, No. 08-1151 (U.S. 06/17/2010) citing *Lucas v. South Carolina Coastal Council*, 505 US 1003, 1019 (1992).

⁵⁶ *Chicago, B & Q.R. Co. v. Chicago*, 166 U.S. 226 (1897),

⁵⁷ *Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 195 (1985).

⁵⁸ *Town of Nags Head v. Toloczko*, 12-1537 (4th Cir. 08/27/2013) citing *San Remo Hotel, L.P. v. City & Cnty. of S.F., Cal.*, 545 US 323, 346 (2005).

⁵⁹ *Ker v. California*, 374 U.S. 23, 30, 83 S.Ct. 1623, 1628 (1963),

possessory interests in that property⁶⁰.

The Fourth Amendment applies to civil as well as criminal seizures⁶¹, and the Supreme Court holds that an interference with individual property rights may be found to breach more than one provision of the Constitution⁶². Separate claims for constitutionally unreasonable seizure and taking of property may coexist⁶³.

Further, the courts have ruled more than once that substantive due process, procedural due process, equal protection and takings claims may be implicated simultaneously in various types of governmental actions that interfere with individual property rights⁶⁴.

The Fourth and Fifth Amendments both provide specific constitutional commands⁶⁵. That they may have evolved through caselaw to overlap in providing remedies for some deprivations of property interests does not authorize the court to fail to apply one or the other provision⁶⁶. Indeed, as

⁶⁰ *Severance v. Patterson*, 566 F.3d 490 (5th Cir. 04/23/2009) citing *United States v. Jacobsen*, 466 U.S. 109, 113, 104 S.Ct. 1652, (1984); *Soldal v. Cook County*, 506 U.S. 56, 61, 113 S.Ct. 538, 543 (1992).

⁶¹ *Severance v. Patterson*, 566 F.3d 490 (5th Cir. 04/23/2009) citing *Freeman v. City of Dallas*, 242 F.3d 642, 647 n.5 (5th Cir. 2001) (en banc),

⁶² *Id* citing *United States v. James Daniel Good Real Property*, 510 U.S. 43, 49-50, 114 S.Ct. 492, 499 (1993).

⁶³ *Id* citing *Presley v. City of Charlottesville*, 464 F.3d 480, 487 (4th Cir. 2006).

⁶⁴ *Id* citing *Simi Inv. Co. v. Harris County*, 236 F.3d 240, 248-49 (5th Cir. 2000); *John Corp. v. City of Houston*, 214 F.3d 573, 584-85 (5th Cir. 2000).

⁶⁵ *id*

⁶⁶ *id*

AFFIDAVIT OF NANCY C PEREZ

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Being first duly sworn, I depose and declare under penalty of perjury that the following is true and correct of my own personal knowledge and would testify hereto if called at trial .

I was born in Aiken, South Carolina on July 11th, 1948. I graduated as a Licensed Practical Nurse from Clarendon College, Texas in 1996. Clarendon College is an accredited educational institution. I obtained Texas License 160059 on October 9th, 1996. I worked in Texas until May 2014. A total of eighteen (18) Years. The Texas Board of Nursing never brought any disciplinary actions against me. No Texas patient ever sued me for malpractice.

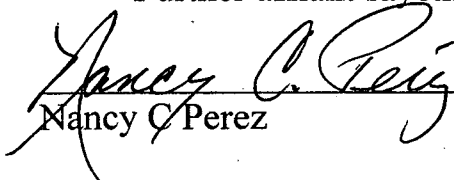
In May 2014 I returned to my native South Carolina. I informed the South Carolina Board of Nursing (SCBON) and submitted an application to resume exercising my common law profession in the state. I also provided the SCBON the authority to conduct a criminal background check.

The Patrick B. Harris Psychiatric Hospital (PBHPH) offered me a full time position earning \$15.16 an hour, plus insurance and benefits. The PBHPH conducted a previous employment history and found no derogatory

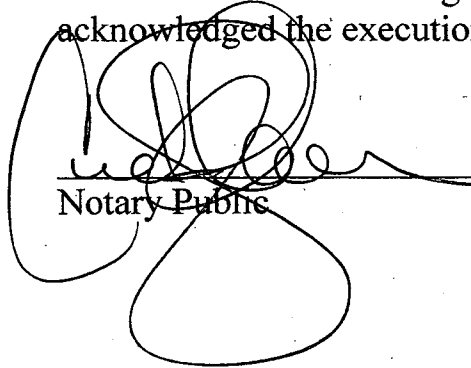
information about me. The Patrick B. Harris Psychiatric Hospital withdrew the offer because the SCBON failed or refused to allow me to earn a livelihood.

Nursing as a profession existed in 1868. The nursing profession in South Carolina was regulated for the first time in 1910. The Department of Labor, Licensing and Regulation and Ms Holly Gillespie Pisarik have failed or refused to inform me that they have made a finding that abridging my right to work as a nurse is necessary for the preservation of the health, safety and welfare of the public. The DLLR has informed me that they have the authority to prevent me from being gainfully employed until I travel to Columbia and testify before the SCBON.

Further affiant sayeth naught.


Nancy C Perez

Before me the undersigned personally appeared Nancy C Perez and acknowledged the execution of this instrument.


Notary Public



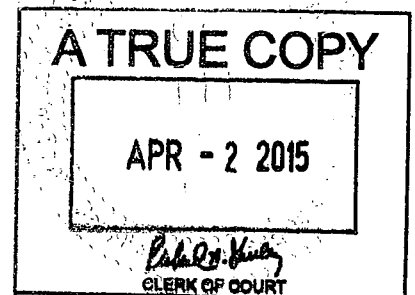
4/2/15
Date

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing "Motion For Summary Judgment" was delivered by mailing a copy thereof on this 2nd day of April 2014 to:

Darra James Coleman, Esq
Chief Counsel - DLLR
PO Box 11329
Columbia, SC 29211-1329

Nancy C Perez



Pages 88-129

**Defendants' Opposition to Writ of Mandamus and Cross Motion to Dismiss
case**

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

) IN THE COURT OF COMMON PLEAS
) TENTH JUDICIAL CIRCUIT
)

) DOCKET NO. 2014-CP-04-01780
)

Nancy C. Perez,

Petitioner,

) Opposition to Pro Se Petition for
) Writ of Mandamus
)

vs.

) AND
) Cross Motion to Dismiss Case
)

South Carolina Department of Labor,
Licensing and Regulation, Board of
Nursing

Respondent.

Respondent hereby opposes and moves to dismiss Petitioner's *pro se* Petition for A Writ of Mandamus and Declaratory Judgment, or in the Alternative, Inverse Condemnation Proceedings, originally filed by Petitioner on August 19, 2014, and amended September 4, 2014 ("Writ"). The grounds for opposition to the Writ include Rules 3(a), 4(d), 12(b)(1), 12(b)(2), 12(b)(4-6) and 65, SCRPC. Respondent further hereby moves pursuant to Rules 3(a), 12(b)(1), 12(b)(2), 12(b)(4-6), and 12(h) before the presiding Judge in the Court of Common Pleas for an Order dismissing the case ("Motion to Dismiss"). The dual grounds for Opposition to the Writ and for the Motion to Dismiss are as follows:

1. The Court does not have jurisdiction to hear this matter. *See Berry v. South Carolina Dept. of Health and Environmental Control*, 402 S.C. 358, 742 S.E.2d 2 (2013) (holding the Circuit Court had no subject matter jurisdiction to hear a case challenging DHEC's penalty for violating a permit because the matter was administrative in nature and exclusively governed by the APA). Under the APA and S.C. Code §40-1-50(F), Petitioner is entitled to a review of the denial by the LLR staff of Petitioner's application for re-licensure as an LPN in this State. If the Board were to deny Petitioner's licensure application, any appeal, if timely and properly made, would be to the Administrative Law Court, not to this Court. Rule 12(h)(3), SCRPC, states "[w]hensoever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court *shall* dismiss the case." (Emphasis added). Subject matter jurisdiction may not be waived by the parties, and may be raised by the court itself. *Ex Parte Cannon*, 385 S.C. 643, 685 S.E. 2d 814 (Ct. App. 2009).

BOA 88

3. The Complaint fails to state facts sufficient to constitute a cause of action for inverse condemnation by Petitioner. The elements of an action for inverse condemnation are: (1) affirmative conduct of a government entity; (2) the conduct effects a taking; and (3) the taking is for a public use.. *S. C. State Highway Dep't v. Wilson*, 254 S.C. 360, 365, 175 S.E.2d 391, 394 (1970). First, a lapsed occupational license is not a property interest for which a taking, whether direct, or indirect, can occur. Second, even if such a property interest existed which could be taken, the requirement of a taking for public use is absent.

4. The Writ should not be granted because Petitioner has not filed the motion required by Rule 65(f), SCRPC. Rule 65(f) requires a separate motion for writ of mandamus to accompany the summons and complaint.

5. Even if this Court has jurisdiction, and if Petitioner should file the required motion, a writ of mandamus is not appropriate because the licensure denial alleged in the Complaint was not ministerial in nature and because Petitioner has an available alternative legal remedy. To obtain a writ of mandamus requiring the performance of an act, the applicant must show 1) a duty of respondent to perform the act, 2) the ministerial nature of the act, 3) the applicant's specific legal right for which discharge of the duty is necessary, and 4) a lack of any other legal remedy. *Willimon v. City of Greenville*, 243 S.C. 82, 132 S.E.2d 169 (1963).

A. Reinstatement in this instance is discretionary rather than ministerial. The South Carolina Department of Labor, Licensing and Regulation (LLR) staff denied the Petitioner's application and scheduled it for Board review because the Board has not delegated to its LLR staff discretion to grant permanent licensure when an applicant has provided a false answer on an application to a question regarding criminal history, pursuant to S.C. Code Ann. §40-1-50(F)(2011). Respondent failed to disclose a criminal matter both on her initial South Carolina application in 1996, as well as on her reinstatement application in May, 2014. (Affidavit of Kathryn Nedovic). Pursuant to S.C. Code Ann. §40-1-130 (2011), the Board may deny an authorization to practice to an applicant who has committed an act that would be grounds for disciplinary action. Under S.C. Code Ann. §40-33-110(A)(19)(2011), obtaining or attempting to obtain a license to practice nursing through fraud, deceit or misrepresentation or any other dishonesty in any phase of the licensing process is grounds for discipline. Additionally, pursuant to S.C. Code Ann. §40-33-41(2011), the Board has the discretion to deny reinstatement based on evidence of unlawful

acts, incompetence, unprofessional conduct, or other misconduct. See also *Trimmier v. South Carolina Dept. of Labor, Licensing and Regulation*, 405 S.C. 239, 245 746 S.E.2d 491, 494 (Ct. App. 2013), cert. denied, July 25, 2014 (finding the Board of Dentistry is permitted discretion in determining whether to reinstate a lapsed license).

B. Petitioner has an available legal remedy which she has failed to pursue. The State Board of Nursing has not yet heard this matter because Petitioner rescinded her waiver of the 30 day notice of hearing needed to allow the Board to consider her the licensure on an expedited basis at the Board's July, 2014, board meeting. (See Exhibits F and G to Kathryn Nedovic Affidavit). Petitioner was then scheduled for this matter to be considered at the Board's next meeting in September, 2014. (See Exhibit J to Nedovic Affidavit). At this point, Petitioner has objected and has expressed an intent not to appear at that scheduled September hearing. (Amended Writ ¶8; Nedovic Affidavit).

6. The Court lacks personal jurisdiction over the Respondent to issue the requested writ of mandamus because Petitioner did not properly serve Respondent with the Summons and Complaint in this matter. The Respondent hereby makes a special appearance and does not waive personal jurisdiction.

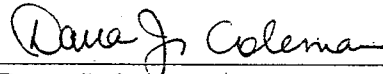
A. Attempted service by United States Mail was deficient because service was not accomplished by restricted delivery as required by Rule 4(d)(8), SCRC. Rule 4(d)(8) requires service by certified mail to be accomplished by return receipt requested as well as by delivery restricted to the addressee. *Jacobson v. Sternberg*, 305 S.C. 337, 339, 408 S.E. 2d 245, 246 (1991).

B. The envelope containing the summons and complaint mailed to Respondent was sent certified mail, return receipt requested, but the postage on the certified mail receipt attached to the Petitioner's August 28, 2014, affidavit demonstrates it was not sent restricted delivery, as there is no fee charged for restricted delivery. Proper postage for the 2.9 ounce large envelope if mailed restricted delivery to Respondent would be \$12.45, rather than the \$7.40 postage affixed to the envelope postmarked August 20, 2014. The actual \$7.40 postage affixed to the envelope reflects the following: \$1.40 postage for a 2.9 ounce large envelope, \$3.30 fee for sending it certified, and the \$2.70 fee for return receipt. (Certified mail receipt attached to Affidavit of Nancy C. Perez dated August 28, 2014, a copy of which is included in Exhibit L to the Nedovic Affidavit). There is nothing on the envelope, the certificate of service, the other contents of the envelope, or the track and confirm information from the

USPS website indicating that service was accomplished by restricted delivery. Nedovic Affidavit There is an additional \$4.04 fee for restricted delivery. See postage calculation from the USPS website, attached to Nedovic Affidavit as Exhibit I.

Respectfully submitted,

September 12, 2014



Darra J. Coleman
S.C. Bar No. 15666
Donnell Jennings,
S.C. Bar No. 11944
Attorneys for Respondent
Office of Advice Counsel
South Carolina Department of Labor, Licensing
and Regulation
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Post Office Box 11329
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darra.coleman@llr.sc.gov
(803) 896-4835

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

) IN THE COURT OF COMMON PLEAS
) TENTH JUDICIAL CIRCUIT
)

Nancy C. Perez,

) DOCKET NO. 2014-CP-04-01780
)

Petitioner,

) Affidavit of Kathryn Nedovic
)

) In Support of Respondent's Motion to Dismiss
)

vs.

South Carolina Department of Labor,
Licensing and Regulation, Board of
Nursing

Respondent.

)
)

Personally appeared before me, the undersigned, who being duly sworn, deposes and states:

1. My name is Kathryn Nedovic. I am over the age of 18 and make these statements of my personal knowledge.

2. I have been employed by the South Carolina Department of Labor Licensing and Regulation ("LLR") in the State Board of Nursing ("Board") section since January 9, 2012. I am the Licensure and Compliance supervisor for the Board. My responsibilities include administration of the applications for licenses issued by the Board, review of licensure applications for the Board, and approval of applications within the parameters established by the Board.

3. South Carolina and Texas are members of the Nurse Licensure Compact. South Carolina was not a member of the Nurse Licensure Compact at the time Ms. Perez was first licensed in South Carolina.

4. The licensing records that LLR maintains for the Board reflect the following regarding Ms. Perez's licensure and licensure application history as a nurse in South Carolina:

A. Ms. Perez was first licensed in South Carolina as a licensed practical nurse (LPN) on February 3, 1997, pursuant to her application submitted in late 1996. That license expired on February 3, 1998, and was not renewed. That 1996 application asked whether the Applicant had been convicted of any crime other than a minor traffic violation. Ms. Perez answered

negatively to that question. A copy of that application, with certain personal information redacted, is attached hereto as Exhibit A.

B. The Board received Ms. Perez's application dated May 20, 2014, for reinstatement of her South Carolina license on May 23, 2014. On the reinstatement application, Ms. Perez answered "No" to the following question (#6): "Have you ever been arrested, charged or convicted (including a nolo contendere pleas or guilty plea) in any state or federal court (other than minor traffic violations) whether or not sentence was imposed or suspended?" A copy of Ms. Perez's reinstatement application, with certain personal information redacted, is attached hereto as Exhibit B.

C. The Board received the South Carolina Law Enforcement (SLED) and Federal Bureau of Investigation (FBI) criminal background reports which are now conducted on all applicants pursuant to S.C. Code §40-33-25. The SLED report did not reflect any criminal history, but the FBI Report did. This code section authorizing federal criminal background checks did not exist when Ms. Perez was initially licensed in South Carolina.

5. Although the Board has authorized me to approve licensure of applicants with specified criminal backgrounds, the Board has not authorized me to approve licenses in situations where the applicant has failed to disclose prior criminal history on a licensure application.

6. On June 9, 2014, LLR sent Ms. Perez a written notification advising her of outstanding issues regarding her reinstatement application, and the need to submit additional documentation, such as her South Carolina drivers license, her Texas nursing license and continuing education coursework. A true copy of that notification is attached hereto as Exhibit C.

7. On June 16, 2014, I sent Ms. Perez a letter acknowledging receipt of some of the documentation requested in the June 9, 2014, communication, and requesting information regarding the criminal matter, including probation information. A copy of that letter is attached hereto as Exhibit D.

8. On June 26, 2014, the Board received Ms. Perez's response to the request for information regarding the criminal matter, which was dated June 21, 2014. A copy of that response is attached hereto as Exhibit E. It references a violation of federal tax law, 26 USC 7203, arising out of events in 1987, but did not fully respond with the information requested in the June 16, 2014, letter.

9. On June 30, 2014, I sent Ms. Perez a letter confirming her agreement to waive the 30 day notice of the hearing and scheduling her for an appearance the Board's July 25, 2014, meeting for consideration of her reinstatement application. A copy of that letter is attached hereto as Exhibit F.

10. By a letter dated July 4, 2014, addressed to me, and received on July 9, 2014, Ms. Perez subsequently rescinded her oral waiver of the 30 days notice, and declined to confirm her Board appearance at the Board's upcoming July 25, 2014, meeting. A copy of the July 4, 2012, letter from Ms. Perez to me is attached hereto as Exhibit G.

11. On August 25, 2014, I received a large manila envelope from LLR's mail room, which is handled by a third party vendor. The return address indicated Nancy C. Perez was the sender, and it was addressed to South Carolina Department of Labor Licensing and Regulation, 110 Centerview Dr., Columbia, SC. 29210, bore a postmark indicating postage of \$7.40, and was mailed from the Sandy Springs, SC, 29677 Post Office. The envelope contained on its exterior a certified mail tag with the following item number: 7011 2000 0001 6102 3596. A copy of the envelope is attached hereto as Exhibit H.

12. The envelope received August 25, 2014, contained thirteen sheets of paper, consisting of a one page summons, a three page civil cover sheet and a nine page document entitled "Petition For Writ of Mandamus And Declaratory Judgment or, in the Alternative, Inverse Condemnation Proceedings and Brief in Support." There is nothing on the envelope itself or the contents indicating it was mailed restricted delivery. The envelope was not addressed to the attention of any particular person. The postage of \$7.40 does not include the \$5.05 fee for restricted delivery. See postage price calculations obtained from the United States Postal Service Website, attached hereto as Exhibit I.

13. On August 28, 2014, the Board's chair was advised of Ms. Perez's need for licensure by September 2, 2014, of the issue of why the application could not be approved at my level, and why her appearance before the Board was necessary.

14. Thereafter, on August 28, 2014, I spoke with Nancy C. Perez by telephone regarding the status of her reinstatement application and advised her that the Board agreed to offer her the option of a temporary license valid through the Board's September 26, 2014, meeting to accommodate her need for licensure by September 2, 2014. I advised her there would be a Ten Dollar fee for the temporary license. Ms. Perez declined the offer of the temporary

license, indicated that she would not be appearing in person at the Board's September meeting, and told me, "I'll see you in court."

15. I followed up on my August 28, 2014, conversation with Ms. Perez with an e-mail the next day. A copy of that e-mail, along with the August 19, 2014, e-mail correspondence between myself and Ms. Perez is attached hereto as Exhibit J.

16. In addition to the e-mail, I followed up by sending Ms. Perez a letter on August 29, 2014, offering her the temporary license through September 26, 2014, for the Ten Dollar temporary license fee. A copy of that August 29, 2014, letter is attached hereto as Exhibit K.

17. On or about September 3, 2014, LLR received a certified proof of service of summons with accompanying affidavit of Nancy Perez, postmarked August 29, 2014, and sent by first class regular mail, a copy of which is attached hereto as Exhibit L.

FURTHER AFFIANT SAYETH NOT.

Kathryn E NEDOVIC
Kathryn Nedovic

Sworn to before me

This 12th day of September, 2014

[Signature]

Notary Public for South Carolina

My Commission Expires: 11/02/2014

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION
BOARD OF NURSING
220 EXECUTIVE CENTER DRIVE., SUITE 220
P.O. BOX 12367
COLUMBIA, SOUTH CAROLINA 29211-2367
(803) 731-1648

EXHIBIT A

FOR OFFICE USE ONLY:

PR27857
LICENSE NUMBER
RENEWAL NUMBER
APPROVED BY 12-30-96
DATE 11-11-96
PERMIT# 11-11-96 - 1-10-97
BEG. EXP.

FOR OFFICE USE ONLY:

NOV 12 1996
DATE 707
CODE 711-014
CHECK CASH 85

APPLICATION FOR LICENSURE AS A LICENSED PRACTICAL NURSE BY ENDORSEMENT

I hereby apply to the State Board of Nursing for South Carolina for a license as a Licensed Practical Nurse in accordance with provisions of LAWS GOVERNING NURSING IN SOUTH CAROLINA. Enclosed is the required application fee of SEVENTY-FIVE DOLLARS (\$75.00) and a copy of my current license. I understand that an application which is not completed within one year from the date of receipt of any portion thereof shall not be accepted by the Board, and that the APPLICATION FEES ARE SUBJECT TO CHANGE AND ARE NOT REFUNDABLE.

- (1) FULL LEGAL NAME PEREZ Nancy Catherine Walton
LAST FIRST MIDDLE MAIDEN (if married)
- (2) Present Address [REDACTED] Rd Aiken S.C. 29801
Street City State Zip Code + 4
- (3) Date of Birth 07-1-1956
- (4) Place of Birth Aiken S.C.
- (5) Sex F
- (6) SSN [REDACTED]
- (7) Telephone Number 803-648-6285
- (8) Single, Married, Widowed, Divorced
- (9) Race: ☐ American Indian ☐ Black ☒ Caucasian ☐ Oriental/Asian
☐ Hispanic ☐ Other
- (10) Are you a High School graduate? YES [For statistical purposes only]
- (11) Name and Address of School of Nursing from which graduated Cherndon College Cherndon TX 79726
- (12) Month and year graduated Aug. 1996
- (13) Original license issued in name of Nancy Catherine Perez
- (14) Year 1996
- (15) List state in which licensed by examination Texas
- (16) List all states where you have ever been licensed Texas
- (17) Date examination first taken OCT 4, 1996
- (18) Date passed OCT 4, 1996
- (19) Number of times taken 1
- (20) The Examination was: State Board Test Pool Exam Board Constructed
National Council Licensure Examination
- (21) List state(s) where you are currently licensed Texas
- (22) Has your license ever been disciplined in any state? NO If yes, explain fully in a letter and attach.
- (23) Have you ever been convicted of a crime (other than minor traffic violation)? NO If yes, explain fully in a letter and attach.
- (24) Have you received disciplinary action by an employer for problems with our job performance related to any physical, psychiatric or substance abuse disorder/limitation? NO If yes, explain fully in a letter and attach.

11-11-96

- (25) Have you ever applied for licensure in South Carolina? NO (26) Date _____
 (27) Have you ever been licensed in South Carolina? NO (28) Date _____
 (29) Licensed number 160059 (for Texas)

Five year history of Employment: (Start with present or last position.)
 List each year separately.

(30)	TYPE OF POSITION	NAME AND ADDRESS OF EMPLOYER OR AGENCY	DATE OF EMPLOYMENT		HOURS WORKED
			STARTED	ENDED	
1.		<u>Intensive Care Unit, Baptist Hospital of Miami</u>	<u>11-78</u>	<u>11-79</u>	<u>11-79</u>
2.		<u>I was also a unit secretary.</u>			
3.					
4.					
5.					

- (31) Nurses licensed for five years or more must show a work history of nursing practice for a minimum of 960 hours in the last five years to obtain a South Carolina license. Have you met this requirement? _____

I HEREBY SWEAR/AFFIRM THE STATEMENTS MADE IN THIS APPLICATION TO BE TRUE TO THE BEST OF MY KNOWLEDGE.

[Signature]
 (Applicant Signature)

11-5-96
 (Date)

DID YOU REMEMBER TO:

- Sign and date your picture
- Include your notarized birth certificate
- Answer all questions
- Sign and date your application
- Enclose your payment for \$75 (without permit) or \$85 (with permit) payable to LBS Board of Nursing for S.C.
- Enclose a copy of your current license

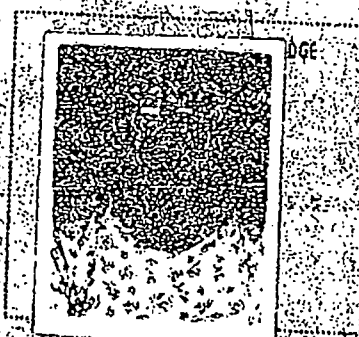


Exhibit B

not 3840988716

\$60.00



South Carolina Department of Labor, Licensing and Regulation

South Carolina Board of Nursing

P.O. Box 12367 • Columbia, SC 29211

Phone: 803-896-4550 • Fax: 803-896-4515 • www.llronline.com/SCOL/nursing/



REINSTATEMENT/ REACTIVATION APPLICATION

Check all that apply: ☐ RN or ☒ LPN ☐ Disciplined / ☐ Reinstatement or ☐ Reactivation or ☐ Refresher

South Carolina is a member of the Nurse Licensure Compact. If your primary state of residence is another Compact State, you are not eligible to reinstate/reactivate your South Carolina Nursing License. Please visit www.ncsbn.org for more information and a current list of Compact States. Personal information provided in this application may be subject to public scrutiny or release under the SC Freedom of Information Act or other provisions of federal and state law. The disclosure of the social security number for identification purposes is authorized and mandated by state and federal statutes. The social security number is not subject to disclosure as public information. South Carolina Law requires that every individual who applies for an occupational or professional license provide a social security number for use in the establishment, enforcement and collection of child support obligations and for reporting to certain databanks established by law. Failure to provide your social security number for these mandatory purposes will result in the denial of your licensure application. Social security numbers may also be disclosed to other governmental regulatory agencies and for identification purposes to testing providers and organizations involved in professional regulation. Your social security number will not be released for any other purpose not provided for by law.

Please print. Answer all questions and submit with proper fee. Careful completion of this application will avoid a delay in processing.

Social Security Number: [REDACTED]

Full Legal Name: Nancy C (WALTON) Perez
First Middle Maiden (if married) Last

Mailing Address: _____
Street/PO Box City State Zip

Home Address: 713 E. Greenville ST # D 220 Anderson SC 29621
Street (physical address required) City State Zip

County: Anderson Email Address: [REDACTED]@gmail.com

Telephone #: [REDACTED] Date of Birth: [REDACTED] Place of Birth: Aiken, S.C.

Race: (for statistical purposes only)

☐ American Indian ☐ African American ☒ Caucasian ☐ Hispanic ☐ Oriental/Asian ☐ Other

Marital Status: ☐ Single ☒ Married ☐ Widowed ☐ Divorced Sex: ☒ Female ☐ Male

Declaration of Primary State of Residence: (where I hold a driver's license, pay taxes or vote)

I declare my primary state of residence is South Carolina plan to primarily practice in the state of South Carolina

I am in the military or federal government. I am currently licensed in Texas (state) and I do not intend to work outside of military or federal government.

Remit fee by money order, cashier check or personal check, made payable to LLR-Board of Nursing with application. For a legal name change, include documented proof (required- marriage license, divorce decree or court document). The application fee is non-refundable. Check only one box below.

- ☒ RN/LPN Reinstatement of lapsed license - \$60.00
☐ RN/LPN Reinstatement with refresher course - \$70.00
☐ RN/LPN Reactivation of inactive license - \$50.00
☐ RN/LPN Reactivation with refresher course - \$60.00
☐ RN/LPN Reinstatement of Disciplined license - \$150.00

Rev. 08/2013

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MAY 23 2014

SC BOARD OF NURSING



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If you answer "yes" to any of the questions below (1-11), you must attach a full written explanation pertaining to that particular question.

1. Have you ever had any application for any professional license, certification, or registration refused or denied by any licensing authority? ☐ Yes ☒ No
2. Have you ever been refused or denied the privilege of taking an examination required for any professional license? By any person, hospital, or nursing board in any jurisdiction? ☐ Yes ☒ No
3. Have you ever been the subject of disciplinary action with regard to a license, been revoked or sanctioned by any licensing authority, association, licensed facility, or staff of such facility? ☐ Yes ☒ No
4. Have your privileges ever been restricted or terminated by any association, licensed facility, or staff of such facility; Or have you ever voluntarily or involuntarily resigned or withdrawn from such association or facility to avoid imposition of such measures? ☐ Yes ☒ No
5. To your knowledge have any unresolved or pending complaints ever been filed against you with any federal or state agency, professional association, licensed hospital or clinic, or staff of such hospital or clinic? ☐ Yes ☒ No
6. Have you ever been arrested, charged or convicted (including a nolo contendere plea or guilty plea) in any state or federal court (other than minor traffic violations) whether or not sentence was imposed or suspended? **If yes, attach a certified copy of the court records regarding your conviction, the nature of the offense, date of discharge, if applicable, as well as a statement from the probation or parole officer sent directly to the Board from the above-mentioned authorities.** ☐ Yes ☒ No
7. Currently are you being treated or within the last five years, have you been treated for drug or alcohol addiction that might interfere with your ability to competently and safely perform the essential functions of practice? ☐ Yes ☒ No
8. Currently or within the last five years, have you been treated for any physical, mental or emotional condition that might interfere with your ability to competently and safely perform the essential functions of practice? ☐ Yes ☒ No
9. Currently or within the last five years, have you developed any disease or conditions, physical, mental, or emotional that might interfere with your ability to competently and safely perform the essential functions of practice? ☐ Yes ☒ No
10. Have you ever voluntarily surrendered a nursing license? ☐ Yes ☒ No
11. Have you practiced nursing, using your South Carolina license, since the license status was placed inactive/lapsed? ☐ Yes ☒ No
12. Are you employed as a nurse at this time? ☐ Yes ☒ No
13. Please check here if you are trained and willing to volunteer your services during a bioterrorism disaster. ☐ Yes ☒ No

I, Nancy C Perez, am the person described and identified, of good moral character, and the person named in all documents presented in support of this application. I have carefully read the questions in the foregoing application and have answered them completely, without reservations of any kind and I declare that all statements made by me herein are true and correct. Should I furnish any false or incomplete information in this application, I hereby agree that such act shall constitute the cause for denial or revocation of my license to practice in South Carolina.

Nancy C Perez
Signature of applicant (do not print)

May 20, 2014
Date

Printed name of applicant (first, middle, maiden, last)

Subscribed and sworn before me this 20th day of May, 2014

Stella Marie Smith
(Signature of notary public)

04/03/2022
My commission expires

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Rev. 08/2013

MAY 23 2014

SC BOARD OF NURSING

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STATE OF SOUTH CAROLINA
DEPARTMENT OF LABOR, LICENSING AND REGULATION



VERIFICATION OF LAWFUL PRESENCE IN THE UNITED STATES
AFFIDAVIT OF ELIGIBILITY

Pursuant to Section 8-29-10, et seq. of the South Carolina Code of Laws (1976, as amended), the Department of Labor, Licensing and Regulation must verify that any person who applies for a South Carolina license is lawfully present in the United States. Complete and sign this affidavit of eligibility. The information provided is subject to verification.

Section A: LAWFUL PRESENCE in the United States.

The undersigned Nancy C. Perez, of 713 E. Greenville ST, #220 D
(Print clearly First, Middle, and Last name) (Home Address, City, State, and Zip Code)
Anderson, SC 29621
being first duly sworn deposes and states as follows:

Check only one box:

1. ☒ I am a United States citizen; or
2. ☐ I am a Legal Permanent Resident of the United States eighteen years of age or older; or
3. ☐ I am a Qualified Alien or non-immigrant under the Federal Immigration and Nationality Act, Public Law 82-414, eighteen years of age or older, and lawfully present in the United States.
4. ☐ Other: _____ Please submit any documentation that supports this status.

Date of Birth: 7/1/1972

Alien Number: _____

I-94 Number: _____

(If you checked number 2, 3, or 4 you must attach a copy of your immigration documents. See Instruction sheet for a list of accepted immigration documents.)

Section B: ATTESTATION.

I understand that in accordance with section 8-29-10 of the South Carolina Code of Laws, a person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall, in addition to other sanctions imposed by this State or the United States, be guilty of a felony, and upon conviction must be fined and/or imprisoned for not more than 5 years (or both).

I understand that the representations made in this Affidavit shall apply through any license(s) or renewals issued, and that I shall have an affirmative duty to immediately advise the Department of Labor, Licensing and Regulation of any change of my immigration or citizenship status.

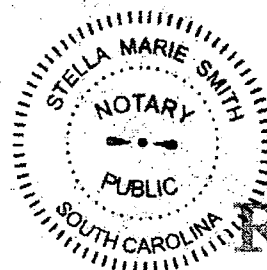
I swear and attest the information contained herein is true and correct to the best of my knowledge. I understand that under South Carolina law, providing false information is grounds for denial, suspension, or revocation of a license, certificate, registration or permit.

Nancy C. Perez
Signature of Affiant

SWORN to before me this 20th day of May

2014 Stella Marie Smith
Notary Public for South Carolina

My Commission Expires: 04/03/2022 (SS)
Rev. 08/2013



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MAY 23 2014

SC BOARD OF NURSING

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South Carolina Department of Labor, Licensing and Regulation

South Carolina Board of Nursing

P.O. Box 12367 • Columbia, SC 29211

Phone: 803-896-4550 • Fax: 803-896-4515 • www.llronline.com/POL/Nursing



June 9, 2014

NANCY C PEREZ
713 E. GREENVILLE STREET, #D220
ANDERSON, SC 29621

Licensed Practical Nurse Pending Application

The following items are needed in order to complete your application. If your application does not require an appearance before the full Board, a license number will be generated within 10 business days.

- | | |
|---|--|
| ☐ Application fee of _____ | ☐ Name Change Document- marriage certificate, or divorce decree, or official court document |
| ☐ Signed and Dated 2x2 Photo. | |
| ☐ Copy of Social Security Card | ☐ Complete the Affidavit of Eligibility |
| ☐ Birth Certificate or Valid Passport (hospital birth certificates are not accepted). | ☒ Copy of your Driver's License or Voter Registration Card |
| ☐ Criminal Background Check | ☐ Register with Pearson Vue- www.pearsonvue.com |
| ☐ Verification from Original State of Licensure | ☐ Certificate of Endorsement from Nursing Program |
| ☒ Demonstration of Continued Competence (i.e.-CE certificates or Employer Certification Form) | ☐ Credential Evaluation Service (CES) Report |
| ☐ Official Transcript from Nursing School | ☐ Copy of Test of English as First Language Certificate (TOEFL) |
| ☒ Copy of Current Nursing License | |
| ☐ Nursys Verification- www.nursys.com | |

Comments: We have received certificates of completion showing you have 20 contact hours from a SCBON approved education provider. However, 30 CEU's is required along with completion of a Legal Aspects course. Please provide proof of 10 additional hours AND the certificate of completion for Legal Aspects for Nursing. We also need a copy of your driver's license and your current nursing license.

Thank you,

Christie Watson
Christie.Watson@llr.sc.gov

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Exhibit D



Nikki R. Haley
Governor

Holly G. Pisarik
Director

South Carolina
Department of Labor, Licensing and Regulation



Board of Nursing

110 Centerview Drive
Post Office Box 12367
Columbia, SC 29211-2367
Phone: (803) 896-4550
FAX: (803) 896-4515

June 16, 2014

NANCY C PEREZ
713 E. GREENVILLE STREET, #D220
ANDERSON, SC 29621

Dear Ms. Perez,

We are presently reviewing your application for nursing licensure in our state.

Information has been obtained from your Criminal Background Check. Please provide a personal statement and any pertinent court documents regarding this matter *and* information regarding your probation. Also, if you did not disclose this information on your application, please explain why you answered "no". You may fax these documents to the attention of Kate Nedovic at 803-896-4515. Documents may also be submitted via e-mail to the contact information below.

We received the other documents that we needed to process your application (i.e. SC driver's license, TX nursing license, and CEU's). However, please submit the actual courses certificate for the "Professional Accountability and Legal Liability" course. The grade progress report is not sufficient.

Please be advised that we must receive these documents to continue processing your application. All documentation will be reviewed and you will be notified if a personal appearance before the Board is required.

Sincerely,

Kate Nedovic
Compliance Supervisor
South Carolina Board of Nursing
803-896-4505
kathryn.nedovic@llr.sc.gov

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Exhibit E

June 21st, 2014

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JUN 26 2014

SC BOARD OF NURSING

Ms Kate Nedovic
Compliance Supervisor
South Carolina Board of Nursing
PO Box 12367
Columbia, SC 29211-2367
Kathryn.nedovic@llr.sc.gov

Ref: The June 16th, 2014 Correspondence from the South Carolina Board of Nursing (SCBON)

Dear Ms. Nedovic:

Thank you kindly for the referenced letter.

The SCBON states therein that I need to provide information concerning events that transpired in 1987.

For the reasons identified hereinbelow I believe that the issue is irrelevant and immaterial.

In South Carolina, the right of a person to engage in a lawful profession, trade, or occupation of choice is clearly protected by both the Constitution of the United States and the Constitution of the State of South Carolina¹. The State cannot abridge this right except as a reasonable exercise of its police powers when it is clearly found that abridgement is necessary for the preservation of the health, safety, and welfare of the public². -

The evidence already submitted to the SCBON shows that I have had a Texas License since 1996. Eighteen years later my Texas license is crystal clear. So any concern(s) that the events that occurred twenty-seven years ago were going to adversely affect my performance as a Licensed Practical Nurse (LPN) are

¹ SECTION 40-1-10. Hawker v. People of State of New York, 170 U.S. 189, (1898); 18 S.Ct. 573, 42 L.Ed. 1002; Dent v. State of West Virginia, 129 US 114, (1889); Sloan v. South Carolina Board of Physical Therapy Examiners, 636 S.E.2d 598, 370 S.C. 452 (S.C. 09/25/2006) citing US Constitution Fourteenth Amendment

² id

unfounded. There is no evidence that the health and safety of Texans was prejudiced.

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JUN 26 2014

Furthermore, § 40-33-25 of the Nursing Practice Act does not apply to me because the law became effective March 2, 2009, I acquired my South Carolina License on January 1st, 1997 and the Texas one on October 9, 1996. I have demonstrated that after 20 years of practice both licenses are completely and totally clear. The SCBON has not, and cannot, find that an abridgement is necessary for the preservation of the health, safety, and welfare of the public. Therefore, I respectfully submit that the SCBON present posture is punitive. The US Constitutions prevents the state of South Carolina from adopting ex post facto laws³.

SC BOARD OF NURSING

Additionally, the State of South Carolina adopted the "Nurse Licensure Compact, § 40-33-1305. The State of South Carolina states therein that the only thing a nurse from Texas is required to prove before acquiring a South Carolina license is that South Carolina is her new primary state of residence, § 40-33-1320 ©. That fact, I have proven. I respectfully submit that the State is estopped from now changing the rule⁴.

Proceedings by the Department of Labor, Licensing and Regulation are quasi-criminal in nature⁵. South Carolina has long recognized the principle that penal statutes are to be strictly construed⁶. But even if the instant proceeding is not penal the SCBON must prove that it was the intent of the legislature⁷ to (a) apply § 40-33-25 of the Nursing Practice Act to LVN's which are in the Nurse Licensure Compact. Specifically, South Carolina Code § 40-33-1315 (2) states that "A

³ Smith v. Doe I, 538 U.S. 84, 123 S.Ct. 1140, 155 L.Ed.2d 164 (U.S. 03/05/2003) citing Kansas v. Hendricks, 521 US 346, 361 (1996)

⁴ Goodwine v. Dorchester Department of Social Services, 336 S.C. 413, 519 S.E.2d 116 (S.C.App. 06/09/1999) citing Service Mgm't, Inc. v. State Health & Human Servs. Fin. Comm'n, 298 S.C. 234, 238, 379 S.E.2d 442, 444, (Ct. App. 1989)

⁵ Anonymous v. State Bd. of Med. Exam'rs, 323 S.C. 260, 264, 473 SE 2d 870, 872 (Ct. App. 1996), rev'd on other grounds, 329 S.C.2D 371, 496 S.E.2d 17 (1998).

⁶ State v. Germany, 216 S.C. 182, 188, 57 S.E.2d 165, 168 (1949) (

⁷ Hinton v. S.C. Dep't of Prob. Parole & Pardon Servs., 592 SE 2d 335, 338 (Ct. App. 2004) cert. denied Hinton v. South Carolina Dep't of Probation, 614 S.E.2d 635, 364 S.C. 608 (S.C. 06/06/2005)

licensed practical nurse who has been granted multi-state licensing privileges by a party state may practice practical nursing in this State. " and (3) A nurse who has been granted multi-state licensing privileges as provided for in subsection (D)(1) or (2) shall notify the board, on a standard form provided by the board, before commencing any nursing practice in this State, of the identity and location of the nurse's prospective practice location, the nurse's current address, and other contact information as requested. A nurse shall maintain at all times a current address and contact information during practice in this State. It does not state therein that the LVN must also comply with § 40-33-25.

Secondly, the SCBON has not proven that the general assembly considered crimes committed pursuant to 26 USC 7203 as involving moral turpitude. If US Supreme Court justices do not know what crimes involve "moral turpitude"⁸ why then does the SCBON expect an LVN to know?

Thirdly, the SCBON has not proven that the general assembly had evidence before it, clearly showing that individuals who have been found to be guilty of 26 USC 7203 were inclined to adversely affect the health, safety, and welfare of the public⁹.

The SCBON wants to know the reason I answer "no" in my application. Whether or not an individual has been convicted of a crime is a "conclusion of law" – The South Carolina Supreme Court¹⁰ defines conclusion of laws as statements which describe legal status . condition, or legal offense. A Conviction is defined as a determination of guilt resulting from a trial.¹¹ A trial is defined as the process where the facts and the law were examined¹². I believe that the SCBON form was asking that I disclose facts not legal conclusions. At any rate, given the issues discussed hereinabove whether or not I was convicted of a crime is irrelevant.

Attached hereto please find a copy of the certificate showing that I completed the Professional Accountability and Legal Liability course.

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JUN 26 2014

SC BOARD OF NURSING

⁸ Padilla v. Kentucky, 130 S. Ct. 1473 (U.S. 03/31/2010) (Alito, J. concurring)

⁹ id

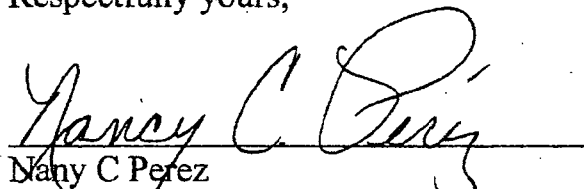
¹⁰ Stroud v Riddle , STROUD , 194 S.E.2d 236 (S.C. 01/31/1973)

¹¹ State v. Peterson, 667 So.2d 199, 21 Fla. L. Weekly S52 (Fla. 02/01/1996)

¹² Brandt v. Gooding, 630 S.E.2d 259, 368 S.C. 618 (S.C. 04/10/2006)

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Respectfully yours,



Nancy C Perez

713 E Greenville Street – D-220

Anderson, SC 29621

theaesculapius@gmail.com

864-209-1509

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JUN 26 2014

SC BOARD OF NURSING

Exhibit F



South Carolina
Department of Labor, Licensing and Regulation



Board of Nursing

Nikki R. Haley
Governor

Holly G. Pisarik
Director

110 Centerview Drive
Post Office Box 12367
Columbia, SC 29211-2367
Phone: (803) 896-4550
FAX: (803) 896-4515

June 30, 2014

NANCY C PEREZ
713 E. GREENVILLE STREET, #D220
ANDERSON, SC 29621

Ms. Perez,

You have been scheduled to appear before the Board of Nursing on **July 25th, 2014**, at **8:30 am**, in regards to your reinstatement application. You have agreed to waive your 30 days notice in the interest of expediting your hearing. Please be prepared to discuss your circumstances with the Board and to answer any questions they may have.

As you are aware, in accordance with the South Carolina Code of Laws, Chapter 33, the Nurse Practice Act, section 40-33-25, the licensure application process requires a criminal background check (CBC). Your CBC report has been carefully reviewed, and in accordance with the South Carolina Code of Laws, Chapter 33, the Nurse Practice Act, Section 40-33-110, it has been determined that it lists acts which could be grounds for disciplinary action in this State. Additionally, these matters were not disclosed on previous licensure applications, which may be deemed a violation of section 40-33-110(19). Therefore, the Board will consider this matter in its deliberations regarding your licensure, and it may impose sanctions. Possible disciplinary actions extend to, and include, revocation or denial of licensure.

You have the right to hire counsel of your own choosing to assist you in this matter. You also have the right to call any witnesses you wish in the interest of providing additional information to the Board. You, along with anyone speaking for you, will be sworn in before providing statements. Any supporting documents that you deem appropriate for the Board to review in reference to this hearing must be submitted no later than July 7, 2014, in order to be included in the Board's materials prior to the meeting.

If you have any questions, please contact me at 803-896-4505. You are required to confirm your appointment no later than **July 18, 2014**. You are advised to arrive at least 15 minutes before your scheduled appearance, and since there will be several appearances scheduled, please plan to be here for several hours.

Sincerely,

K. NEDOVIC

Kate Nedovic
Compliance Supervisor

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Product & Tracking Information

Postal Product:

Features:
Certified Mail™

Available Actions

DATE & TIME	STATUS OF ITEM	LOCATION
July 2, 2014, 11:53 am	Delivered	ANDERSON, SC 29621
Your item was delivered at 11:53 am on July 2, 2014 in ANDERSON, SC 29621		
July 2, 2014, 8:50 am	Out for Delivery	ANDERSON, SC 29621
July 2, 2014, 8:40 am	Sorting Complete	ANDERSON, SC 29621
July 2, 2014, 5:45 am	Arrived at Unit	ANDERSON, SC 29621
July 1, 2014, 10:34 pm	Departed USPS Facility	GREENVILLE, SC 29607
July 1, 2014, 7:55 pm	Arrived at USPS Facility	GREENVILLE, SC 29607
June 30, 2014, 10:37 pm	Departed USPS Facility	COLUMBIA, SC 29201
June 30, 2014, 7:35 pm	Arrived at USPS Facility	COLUMBIA, SC 29201

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SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Nancy C. Perez
713 E. Greenville St.
#D-220
Anderson, SC 29621

2. Article Number

(Transfer from service label)

117002 2920 0001 6476 8283

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1640

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

Jim Davis

C. Date of Delivery

7/2/11

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☒ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

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July 4th, 2014

JUL 09 2014

SC BOARD OF NURSING

Ms Kate Nedovic
Compliance Supervisor
South Carolina Board of Nursing
PO Box 12367
Columbia, SC 29211-2367
Kathryn.nedovic@llr.sc.gov

Ref: The June 16th, 2014 and June 30th, Correspondence from the South Carolina Board of Nursing (SCBON) ; My Letter to the SCBON dated June 21st, 2014¹

Dear Ms. Nedovic:

Thank you kindly for the referenced letters.

The SCBON states therein that a hearing has been set for July 25th, 2014 in Columbia.

I respectfully object.

- 1- The SCBON has failed of refused to address the issues raised in my June 21st, 2014 letter. Specifically, the reason the SCBON has decided to arbitrarily, capriciously and whimsically deprive me of my right to earn a livelihood.
- 2- I object to the instant proceedings because the legislature has no constitutional authority to delegate to an administrative agency the authority to deprive me of my right to exercise a profession²; or to deprive me of my right to the separation of powers doctrine³ nor my right to a trial by jury⁴.

1 A copy of the same and the US Post Office Certificate of Mailing are attached hereto

2 Conway v. City of Greenville, 254 S.C. 96,173 SE 2d 648 S.C. Const. art. 1, § 8.; "The construction of a statute is a judicial function and responsibility." *Lindsay v. Nat'l Old Line Ins. Co.*, 262 S.C. 621, 628, 207 S.E.2d 75, 78 (1974). Judge James L. Dennis, *Judicial Power and the Administrative State*, 62 La. L. Rev. 59, 74 (2001). ; 'Is Administrative Law Unlawful?' by Philip Hamburger

3 id

4 *Mims Amusement Co. v. S.C. Law Enforcement Div.*, 621 SE 2d , 344, , 348 (2005) ("The right to a trial by jury is guaranteed in every case in which the right to a jury was secured at the time of the adoption of the Constitution in 1868.").

JUL 09 2014

SC BOARD OF NURSING

- 3- Nursing as a profession was recognized at common law⁵. It was not created by a statute⁶. The legislature has no authority to deprive me of vested or common law rights⁷.
- 4- Once the right to practice nursing is lawfully acquired, it is a right protected by the due process clauses of the state and federal constitutions⁸. At common law, only the Judicial Department could revoke the right to practice a profession.⁹
- 5- I also object to the instant proceedings because depriving me of my right to earn a living, at this point in time, violates the federal and state constitutions prohibitions against ex post facto laws, unusual and cruel punishments and double jeopardy.
- 6- I also object to the SCBON decision to take my property without just compensation,
- 7- I hereby refuse to waive my 30 days statutory notice;
- 8- I do waive a personal appearance before the SCBON. My letters should be construed as an appearance thereto by written submissions.

⁵ <http://www.scribd.com/doc/63816424/The-History-of-Nursing-in-North-Carolina> ;
http://www.ehow.com/about_7183680_history-home-health-nursing.html

⁶ id

⁷ Lindsay v. Nat'l Old Line Ins. Co., 262 S.C. 621, 628, 207 S.E.2d 75, 78 (1974). "

⁸ Scott v. Texas State Board of Medical Examiners, 384 S.W.2d 686, 690 (Tex. Sup. 1964); I citing Vernon's Ann.St.Const. art. 1, § 19; U.S.C.A.Const. amend. 14. Sherman v. State Board of Dental Examiners, Tex.Civ.App., 116 S.W.2d 843, error refused. " Waller v. State, 68 S.W.2d 601, 605 (Tex. Civ. App. -- Amarillo 1934, writ ref'd)) Liberty or property interests protected under the Due Process Clause "attain this constitutional status by virtue of the fact that they have been initially recognized and protected by state law" Paul v. Davis, 424 US 693, 710-11 (1976).

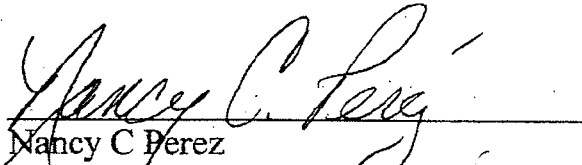
⁹ Scott v. Texas State Board of Medical Examiners, 384 S.W.2d 686, 690 (Tex. Sup. 1964)(It is seen from the legislative history of the Medical Practice Act that from the beginning the revocation of a medical license has been committed to the district courts as a judicial function. **It has been traditionally so....**There is a difference, legislatively recognized through the years, between an exercise of the power to examine and issue a medical license, and an exercise of the power to revoke a medical license for cause. Texas Vending Comm. v. Headquarters Corp., 505 SW 2d 402 (Tex. Civ. App. 1974, writ ref'd n.r.e.). (Appellants rely on Scott v. Texas State Board of Medical Examiners, 384 S.W.2d 686 (Tex. 1964)... In Scott, the court was concerned with the provision of Tex.Civ.Stat.Ann.Art. 4506 providing a de novo review of the orders of the State Board of Medical Examiners. There the Board had revoked and canceled Scott's license to practice medicine. **The Supreme Court observed that traditionally the revocation of a medical license has been committed to the district courts as a judicial function. The court also recognized, at least in the regulation of the practice of medicine, that a difference existed between an exercise of the power to examine and issue a license, and an exercise of the power to revoke a license.**

Attached hereto please find a copy of the certificate showing that I have completed my 30 CEU's.

RECEIVED

JUL 09 2014

Respectfully yours,



Nancy C Perez

713-E Greenville Street - D-220

Anderson, SC 29621

theaesculapius@gmail.com

864-209-1509

SC BOARD OF NURSING

113

Exhibit H

NANCY C. PEREZ
713 East Greenville Street - D-220
Anderson, SC 29621-2367



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29210

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Exhibit J

From: Kathryn Nedovic
Sent: Friday, August 29, 2014 10:27 AM
To: 'theaesculapius@gmail.com'
Subject: RE: Nancy C Perez, LVN Lic # PR27857

Ms. Perez,

I just wanted to follow-up with you regarding the status of your application. Per our phone conversation yesterday the South Carolina Board of Nursing has agreed to extend to you the option of temporary licensure in order to accommodate your continued employment through your scheduled appearance at the September 26th, 2014 Board of Nursing meeting. When we spoke yesterday you declined this option; however if it is something you wish to pursue you may submit the ten (\$10) dollar temporary license fee via check or money order, and we will update your status. I will be sending similar correspondence via certified mail for your convenience, and certainly feel free to contact me if you have any questions. Have a great Labor Day weekend!

Sincerely,

Kate Nedovic
Licensure and Compliance Supervisor
South Carolina Board of Nursing
SC Department of Labor, Licensing & Regulation
110 Centerview Drive, Columbia, SC 29211-1329
Telephone: 803-896-4505
kathryn.nedovic@llr.sc.gov
Website: www.llr.state.sc.us

From: Kathryn Nedovic
Sent: Tuesday, August 19, 2014 9:16 AM
To: 'The Perez'
Subject: RE: Nancy C Perez, LVN Lic # PR27857

Ms. Perez,

The documentation that you've submitted has not been sufficient as you have declined to provide the letter of explanation requested by the Board. Furthermore, in your last correspondence to the Board dated July 4th, 2014, you refused to waive your 30 days notice to the hearing. Even if we could have considered the application in your absence, we would not have been authorized to do so based on this refusal. Again, I will be glad to schedule you for the September meeting, where you will be required to personally appear in order for your application to be considered.

Sincerely,

Kate Nedovic
Licensure and Compliance Supervisor
South Carolina Board of Nursing

SC Department of Labor, Licensing & Regulation
110 Centerview Drive, Columbia, SC 29211-1329
Telephone: 803-896-4505
kathryn.nedovic@llr.sc.gov
Website: www.llr.state.sc.us

From: The Perez [<mailto:theaesculapius@gmail.com>]
Sent: Tuesday, August 19, 2014 8:53 AM
To: Kathryn Nedovic
Subject: Re: Nancy C Perez, LVN Lic # PR27857

Ms Nedovic:

I declined to appear in person because the documentation I provided was sufficient to address any concerns. No one informed me that written submissions would not be considered.

Thanks

Nancy C Perez

On Tue, Aug 19, 2014 at 8:38 AM, Kathryn Nedovic <Kathryn.Nedovic@llr.sc.gov> wrote:

Ms. Perez,

Per previous correspondence your application requires an appearance before the full board for consideration of licensure reinstatement. You were originally scheduled to appear at the July Board Meeting; however, you declined that appearance. I'd be happy to add you to the agenda for the next Board meeting which is scheduled to take place on September 25th and 26th. Unfortunately, this will not meet your employer's September 2nd deadline. Please feel free to contact me directly if you have any questions about this process.

Sincerely,

Kate Nedovic

Licensure and Compliance Supervisor

South Carolina Board of Nursing

SC Department of Labor, Licensing & Regulation

119

110 Centerview Drive, Columbia, SC 29211-1329

Telephone: 803-896-4505

kathryn.nedovic@llr.sc.gov

Website: www.llr.state.sc.us

From: The Perez [mailto:theaesculapius@gmail.com]

Sent: Tuesday, August 19, 2014 7:45 AM

To: Kathryn Nedovic

Subject: Nancy C Perez, LVN Lic # PR27857

Dear Ms Nedovic

My employer is demanding that I produce a SC License by September 2nd, 2014.

My Texas License expired on Jul 31st, 2014. I can not renew it because I am now living in SC.

Please advise.

Nancy C. Perez

864-209-1509

120

Exhibit K



Nikki R. Haley
Governor

Holly G. Pisarik
Director

South Carolina Department of Labor, Licensing and Regulation

Board of Nursing



110 Centerview Drive
Post Office Box 12367
Columbia, SC 29211-2367
Phone: (803) 896-4550
FAX: (803) 896-4515

August 29, 2014

NANCY C PEREZ
713 E. GREENVILLE STREET, #D220
ANDERSON, SC 29621

Re: Reinstatement Application

Ms. Perez,

Please allow this correspondence to serve as notice of the South Carolina Board of Nursing's decision to extend to you the option of temporary licensure to accommodate your continued employment pending your scheduled appearance at the September 26, 2014 Board of Nursing meeting. Per our phone conversation on August 28, 2014 you have declined this option; however, if it is something you wish to pursue, please submit the ten (\$10) dollar, temporary license fee, via check or money order. Upon receipt of this payment, we will update your status to reflect temporary licensure valid through September 26, 2014.

If you have any questions regarding this matter, or require further assistance, please feel free to contact me at 803-896-4505.

Sincerely,

K. NEDOVIC

Kate Nedovic
Licensure and Compliance Supervisor
SC Board of Nursing
kathryn.nedovic@llr.sc.gov

121

Exhibit L

Case # 2014-CP-04-01780

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT
ANDERSON COUNTY, SOUTH CAROLINA

NANCY C. PEREZ

Petitioner

Vs

SOUTH CAROLINA
DEPARMENT OF LABOR , LICENSING AND REGULATION –
BOARD OF NURSING

Respondent

CERTIFIED PROOF OF SERVICE OF SUMMONS

Nancy C. Perez hereby respectfully informs¹ the Court that she has delivered to the Defendant a true copy of the Complaint, Summons and the Civil Action Coversheet² via United States Post Office Certified Mail³ . Copies were also

¹ Nancy C. Perez Affidavit attached and incorporated hereto.

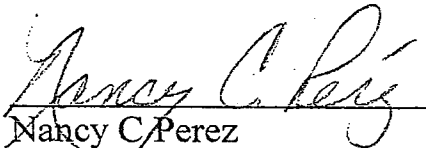
² Please see attachment 2.

³ Id

delivered to the South Carolina Attorney General and the South Carolina Board of Nursing⁴.

The Due Process Clause only requires "notice reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."⁵

Respectfully Submitted,



Nancy C. Perez
713 E. Greenville St – D220
Anderson, SC 29621
864-209-1509

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing "Certified Proof Of Service Of Summons " was delivered by mailing a copy thereof on this 29th day of August 2014 to:

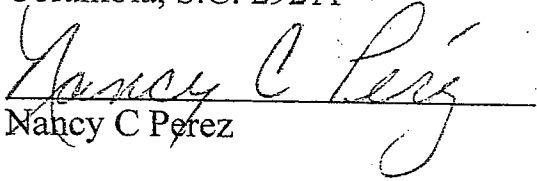
The Honorable Alan McCrory Wilson
Attorney General
P.O. Box 11549
Columbia, S.C. 29211

⁴ id

⁵ Phillips Petroleum Co. v. Shutts, 472 US 797, 805, 105 S.Ct. 2965, 86 L.Ed.2d 628 (1985); Mullane v. Central Hanover Bank & Trust Co., 339 US 306 (1950); Hospitality Management Associates, Inc. v. Shell Oil Co., 356 S.C. 644, 591 S.E.2d 611 (S.C. 01/12/2004); Blanton v. Stathos, 351 SC 534, 542, 570 SE 2d 565, 569 (2002)

South Carolina Department of Labor, Licensing and Regulation
110 Centerview Dr.
Columbia, S.C. 29210

South Carolina Board of Nursing
PO Box 12367
Columbia, S.C. 29211

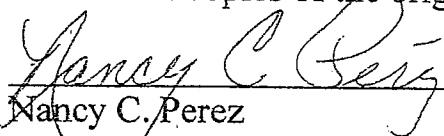

Nancy C Perez

NANCY C. PEREZ' AFFIDAVIT

State of South Carolina
County of Anderson

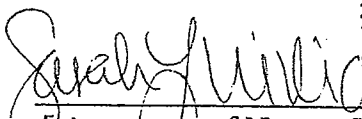
BEFORE ME, the undersigned Notary, personally appeared Nancy C. Perez, known to me to be a credible person and of lawful age, who being by me first duly sworn, on *her* oath, deposes and says under penalty of perjury that :

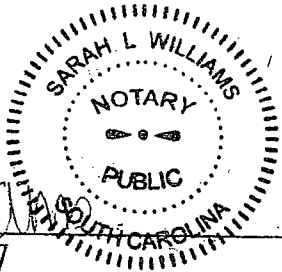
I have personal knowledge of the facts stated in the "Certified Proof Of Service Of Summons ". The facts are true and correct. The documents attached thereto are true and correct copies of the originals.


Nancy C. Perez

Subscribed and sworn to before me, this 28th [day of month] day
of August [month], 2014.

[Notary Seal:]


[signature of Notary]



Sarah L. Williams
[typed name of Notary]

NOTARY PUBLIC

My commission expires: 4-11, 2023.

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Columbia, SC 29211

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August 25, 2014 , 9:10 am	Out for Delivery	COLUMBIA, SC 29210
August 25, 2014 , 9:00 am	Sorting Complete	COLUMBIA, SC 29210
August 25, 2014 , 8:49 am	Arrived at Unit	COLUMBIA, SC 29210
August 22, 2014 , 3:08 am	Departed USPS Facility	COLUMBIA, SC 29201
August 21, 2014 , 12:38 pm	Arrived at USPS Facility	COLUMBIA, SC 29201
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00 Certified			\$3.30
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2.80 oz.			
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			\$1.40
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2.80 oz.			
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			\$1.40
Domestic Certificate of Mailing	1	\$1.30	\$1.30
Total:			=====
			\$12.80

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NANCY-C. PEREZ
713 East Greenville Street - D-220
Anderson, SC 29621-2367

GREENVILLE
SC 295

29 AUG 2014
PM 2:11



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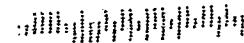
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South Carolina Board of Nursing
PO Box 12367
Columbia, S.C. 29211



129

Pages 130-141

December 31st, 2014 Motion to Strike Or Suppress

A TRUE COPY

DEC 31 2014

Richard D. Smith
CLERK OF COURT

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT
ANDERSON COUNTY, SOUTH CAROLINA

NANCY C. PEREZ

Petitioner

Vs

SOUTH CAROLINA
DEPARTMENT OF LABOR, LICENSING AND REGULATION –
BOARD OF NURSING

Respondent

**NANCY C. PEREZ' REPLY TO THE DEFENDANTS'
OPPOSITION TO THE MOTIONS TO ADD AN INDISPENSABLE
PARTY AND TO ADJUDICATE NANCY C. PEREZ' FEDERAL CLAIMS**

AND

MOTION TO STRIKE OR SUPPRESS

Nancy C. Perez hereby replies to the Respondents' Opposition to Ms. Perez' Motion to add and indispensable party and to her Motion wherein she prayed that her federal claims be adjudicated by the trial court. As grounds therefore she shows:

**THE DEPARTMENT OF LABOR,
LICENSING AND REGULATION ADMINISTERS
ALL REGULATORY BOARDS AND OCCUPATIONAL LICENSES**

- 1- The Defendants claim that Ms. Holly Pisarik is not a proper nor a necessary party pursuant to 42 USC § 1983 because she had no involvement or authority regarding the denial of Mrs. Perez' right to be gainfully employed as a nurse¹. Ms. Perez respectfully, but adamantly objects.
- 2- South Carolina statute Section 40-1-40 states that the General Assembly created the South Carolina Department of Labor, Licensing and Regulation, in order to protect the public through the regulation of professional and occupational licensees and the administration of boards charged with the regulation of professional and occupational practitioners. Subsection (B) states that the [Board of Nursing] and the occupations it licenses or otherwise regulates must be administered by the Department of Labor, Licensing and Regulation pursuant to this article. Accordingly, Ms. Perez respectfully submits that the defendant's position is meritless.

¹ Defendants' Motion PP 1-2

II

**DEFENDANT PISARIK FAILED OR REFUSED
TO CLAIM THAT SHE WAS UNAWARE
THAT SOUTH CAROLINA STATUTE 40-1-10,
INTER ALIA, PROTECTS MS. PEREZ' PROPERTY INTEREST
TO ENGAGE IN A LAWFUL PROFESSION OR TRADE**

- 3- The defendants also claim that Ms. Pisarik has qualified immunity. Ms. Perez respectfully but adamantly objects.
- 4- The doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known².
- 5- Ms. Pisarik did not , and could not, claim that she was not aware that South Carolina Statute Section 40-1-10 protects Ms. Perez' right – her property interest - to engage in a lawful profession, trade, or occupation of choice.
- 6- Ms. Pisarik did not , and could not, claim that she was not aware that Ms. Perez' right to engage in a lawful profession, trade, or occupation of choice is protected by South Carolina Statute 40-1-10 , and can only be

² Messerschmidt v. Millender, 132 S.Ct. 1235, 182 L.Ed.2d 47 (U.S. 02/22/2012) citing Pearson v. Callahan, 555 U. S. 223, 231 (2009)

abridged when it is clearly found that abridgement is necessary for the preservation of the health, safety, and welfare of the public³.

- 7- The Defendants failed or refused to claim that they have the right to ignore or disregard material evidence which shows that Ms. Perez held a Texas License since 1996. She worked there for Eighteen years and **the State of Texas had nothing derogatory to report⁴.**
- 8- Ms. Perez respectfully emphasizes that this is not about a "long lapse occupational license" – the relevant statute - SECTION 40-1-10 protects an individual's right – the property interest - **to engage in a lawful profession, trade, or occupation of choice.** Section 40-1-10 codified the rights secured by the Fourteenth Amendment⁵.

III

MS. PEREZ' FEDERAL CLAIMS ARE PROPERLY THE COURT BECAUSE (a) SHE HAS BEEN INJURED BY STATE AGENCY ACTION, (b) THE STATE AGENCY HAS TAKEN OR SEIZED PROPERTY WITHOUT PAYING FOR IT AND (c) A STATE REGULATION HAS DEPRIVED HER OF ALL ECONOMICALLY BENEFICIAL USE OF HER PROPERTY

³ South Carolina Statute 40-1-10

⁴ Under Rule 403 SCRE, the issue is whether there is a danger of **unfair** prejudice that **substantially** outweighs the probative value of the evidence, The State vs Collins, Opinion No. 27439 (SC- August 20, 2014)

⁵ "No State shall ... deprive any person of life, liberty, or property, without due process of law." U. S. Const., Amdt. 14, §1; accord Amdt. 5. This Clause imposes procedural limitations on a State's power to take away protected entitlements. See, e.g., Jones v. Flowers, 547 US 220, 226-239 (2006); Board of Regents of State Colleges v. Roth, 408 US 564, 570-571 (1972); Olim v. Wakinekona, 461 US 238, 250-251 (1983)

9- The US Supreme Court has ruled that a Fifth Amendment claim is ripe where the Plaintiff pleads the elements of the claim : (a) she has been injured by a final state agency action ⁶. (b) the state agency has taken or seized private property without paying for it⁷ and that a state regulation deprives him of all economically beneficial use of his property⁸.

10- Ms Perez respectfully emphasizes that nursing as a profession existed at common law –, specifically , it was not created by statute⁹.

Accordingly, Ms. Perez has a vested common law right rooted in state law to practice her nursing profession¹⁰.

11- Assuming , arguendo, that there is no final state agency decision, the Fifth Amendment requires payment for the partial or temporary taking¹¹.

⁶ *Horne v. Department of Agriculture*, 12-123 (U.S. 06/10/2013), *supra*, citing *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 US 172 (1985).

⁷ *Horne v. Department of Agriculture*, 12-123 (U.S. 06/10/2013) FN 6 , *supra*, citing

⁸ *Stop the Beach Renourishment, Inc. v. Florida Dep't of Environmental Protection*, No. 08-1151 (U.S. 06/17/2010) citing *Lucas v. South Carolina Coastal Council*, 505 US 1003, 1019 (1992).

⁹ *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450 (1988). "The Kadrmas Court addressed a scenario where a student challenged a North Dakota statute which permitted some school districts to charge a user fee for bus service. Before challenging the statute on constitutional grounds, the student partially paid the fee and regularly took the bus to school. The defendants argued that this acceptance of the benefit of bus service estopped the student from challenging the statute's constitutionality. *Id.* at 456. Rejecting this argument, the Court distinguished the *Fahey* decision because the students did not owe their existence to a statute. *Id.* The Court continued, "and we doubt that plaintiffs are generally forbidden to challenge a statute simply because they are deriving some benefit from it." *Id.* at 456-57."

¹⁰ *Scott v. Greenville County C. Daniel Riddle*, 716 F.2d 1409 (4th Cir. 09/14/1983)

¹¹ *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 122 S.Ct. 1465, 152 L.Ed.2d 517 (U.S. 04/23/2002) citing *Lucas v. South Carolina Coastal Council*, 505 US 1003 (1992); *Shoshone Tribe Indians vs US*, 299 U.S. 476 (U.S. 01/04/1937) citing *Jacobs vs US*, 290 US 13 (U.S. 11/06/1933)

- 12- The Defendants have decided to prevent Ms. Perez from exercising her right to engage in her lawful profession; the defendants have failed or refused to compensate her for taking or seizing her property and the defendants decision has deprived Ms. Perez of all economic beneficial use.
- 13- The *Williamson County* ripeness doctrine "does not preclude state courts from hearing simultaneously a plaintiff's request for compensation under state law and a claim that, in the alternative, the denial of compensation would violate the Fourth and Fifth Amendment of the Federal Constitution."¹²

IV

**DEFENDANTS' EXHIBIT "A" OUGHT TO BE STRIKEN
PURSUANT TO, INTER ALIA, RULES 401, 609, SCRE, AND
THE FIRST AND FIFTH AMENDMENTS US CONSTITUTION**

- 14- Ms. Perez respectfully submits that Defendants' Exhibit "A" which was attached to their motion ought to be stricken or suppressed. As grounds therefore she shows:
- 15- 'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the

¹² Town of Nags Head v. Toloczko, 12-1537 (4th Cir. 08/27/2013) citing San Remo Hotel, L.P. v. City & Cnty. of S.F., Cal., 545 US 323, 346 (2005).

action more probable or less probable than it would be without the evidence¹³. The defendants did not, and could not, allege that exhibit "A" shows that Ms. Perez' right to be gainfully employed can be abridged because it was clearly found that abridgement is necessary for the preservation of the health, safety, and welfare of the public¹⁴. Consequently, the exhibit ought to be stricken or suppressed pursuant to Rule 401, SCRE.

16- The defendants claim that Ms. Perez provided "false answers on her application regarding with respect to criminal background"¹⁵. Ms. Perez objects.

17- Firstly, , assuming arguendo, that Ms. Perez' judgment of conviction is properly before the Court¹⁶ , Ms. Perez objects because Section 40-1-140¹⁷ of the South Carolina Code precludes sanctions for crimes

¹³ State v. Lyles, 665 S.E.2d 201, 379 S.C. 328 (S.C.App. 06/06/2008) Citing Rule 401, SCRE.

¹⁴ South Carolina Statute 40-1-10

¹⁵ Defendants' Motion P2, paragraph 1, Line 6, et seq.

¹⁶ Infra, see also Please see Nancy C Perez' Motion To Strike 12 (f) **SCRCP Motion to Strike**.

Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

¹⁷ **SECTION 40-1-140.** Effect of prior criminal convictions. **A person may not be refused an authorization to practice, pursue, or engage in a regulated profession or occupation solely because of a prior criminal conviction unless the criminal conviction directly relates to the profession or occupation for which the authorization to practice is sought.** However, a board may refuse an authorization to practice if, based upon all information available, including the applicant's record of prior convictions, it finds that the applicant is unfit or unsuited to engage in the profession or occupation.

unrelated to the practice of nursing. The Defendants have failed or refused to claim that they have the constitutional or statutory **to refuse an authorization to practice, pursue, or engage in a regulated profession or occupation solely because of a prior criminal conviction unless the criminal conviction directly relates to the profession or occupation for which the authorization to practice is sought.**

18- Secondly, the defendants have failed or refused to claim that Ms.

Perez has engaged in any criminal act within the past ten years. Any alleged criminal act that occurred over 10 years ago, prior to the year 2004, is irrelevant pursuant to Rules 401 and 609¹⁸, SCRE.

19- Thirdly, the question whether or not Ms. Perez has been convicted of a crime is eliciting a conclusion of law¹⁹. Our Supreme Court has ruled

¹⁸ State v. Young, 661 S.E.2d 387, 378 S.C. 101 (S.C. 05/19/2008) ; Green v. Hewett, 305 S.C. 238, 242, 407 SE 2d 651, 653 (1991)

¹⁹ Parker v State Highway Department , 224 S.C. 263, 78 S.E.2d 382 (S.C. 11/05/1953) (**The difficulty in determining the question before us arises from the fact that the word "convicted" has no fixed and inflexible meaning.** As applied to criminal offenses, it is used in varied senses. In Commonwealth v. Lockwood, 109 Mass. 323, it is said: "The ordinary legal meaning of 'conviction,' when used to designate a particular stage of a criminal prosecution triable by a jury, is the confession of the accused in open court, or the verdict returned against him by the jury, which ascertains and publishes the fact of his guilt; while 'judgment' or 'sentence' is the appropriate word to denote the action of the court before which the trial is had, declaring the consequences to the convict of the fact thus ascertained." But the word is also often used as including both the ascertainment of the guilt of the accused and the judgment thereon by the Court. We had occasion to quote several definitions of the word "conviction" in Smith v. Todd, 155 S.C. 323, 152 S.E. 506, 50 A.L.R. 1529. Also, see South Carolina State Board of Dental Examiners v. Breeland, 208 S.C. 469, 38 S.E.2d 644, 167 A.L.R. 221. Various meanings of this word are discussed at length in the following cases: Snodgrass v. State of Texas, 67 Tex.Crim. R., 150 S.W. 162, 41 L.R.A., N.S., 1144; State ex rel. Scott v. Cox, Mo., 243 S.W.

that issues describing **legal status**, condition, or legal offense are conclusions of law²⁰. The adjudication process implies a hearing by a court at which the court will make a determination after considering the evidence and the law²¹. A "determination" means a judgment, decree, or other order of a court²².

20- Ms. Perez has a federal and state right to consider the evidence and the law and draw her own conclusions²³. Her conclusions may be wrong but not false²⁴.

144; Quintard v. Knoedler, 53 Conn. 485, 2 A. 752. Also, see 13 C.J. 905, 18 C.J.S., Conviction, p. 97.

²⁰ Stroud v. Riddle, 260 S.C. 99, 194 S.E.2d 236 (S.C. 01/31/1973) quoting State v. Stillwater County, 66 P.2d 788 (1937) which cited Reed v. Woodmen of the World, 22 P.2d 819 (Mont. 06/02/1933)

²¹ Michael J. L. v. State, 174 Wis. 2d 131, 139-40, 496 NW 2d 758 (Ct. App. 1993).

²² Doe v. Baby Girl, 657 S.E.2d 455, 376 S.C. 267 (S.C. 01/28/2008)

²³ Her freedom of speech is protected by the First Amendment of the United States Constitution and Article I, Section 2 of the South Carolina Constitution. The freedom of speech found in the First Amendment is a fundamental right, and thus, the First Amendment's prohibition against laws abridging the freedom of speech applies against the states through the Fourteenth Amendment. Thornhill v. Alabama, 310 US 88, 95, 60 S. Ct. 736, 84 L. Ed. 1093 (1940). The freedom of association implicit in the First Amendment is a fundamental right, and thus, like the freedom of speech, the First Amendment's protection against the abridgement of the freedom of association applies against the states through the Fourteenth Amendment. See NAACP v. Alabama ex rel. Patterson, 357 US 449, 460-66, (1958).

²⁴ NBC Subsidiary (KCNC-TV), Inc. v. Living Will Center, 879 P.2d 6 (Colo. 07/11/1994) (These words were widely regarded as establishing the principle that statements of "pure" opinion are constitutionally privileged and thus, not actionable in a defamation case. See, e.g., Potomac Valve & Fitting Inc. v. Crawford Fitting Co. 829 F.2d 1280 (4th Cir.1987); Janklow v. Newsweek, Inc., 788 F.2d 1300 (8th Cir.), cert. denied, 479 US, 883, (1986); Burns v. McGraw-Hill Broadcasting Co., 659 P. 2d 1351 (Colo.1983). See also Ollman v. Evans, 750 F.2d 970, 974 n. 6 (D.C.Cir.1984) (citing federal cases recognizing an opinion privilege), cert. denied, 471 US 1127 (1985); Jeffrey E. Thomas, Comment, Statements of Fact, Statements of Opinion, and the First Amendment, 74 Calif. L. Rev. 1001, 1009 n. 52 (1984) (listing state cases recognizing an opinion privilege)) Walker v. State, 67 So. 94, 68 Fla. 278 (Fla. 11/17/1914)

IV

**THE FIFTH AND FOURTEENTH AMENDMENTS
TO THE US CONSTITUTION PREVENT
THE DEFENDANTS FROM COERCING MS. PEREZ TO
PROVIDE TESTIMONY WHICH MAY BE USED AGAINST HER.**

The Fifth and 14th Amendments of the US Constitution prevent the SCBON from coercing Ms. Perez into providing testimony which may be used against her

21- Defendant Holly Pisarik has stated that she will not permit Ms. Perez to earn a living until such time as Ms. Perez travels down to Columbia and testifies before the SCBON²⁵.

22- But the Fifth and 14th Amendments of the US Constitution prevent the SCBON from coercing Ms. Perez into providing testimony which may be used against her²⁶. The protection applies to criminal, civil and administrative proceedings²⁷. The Fifth Amendment prevents the

²⁵ Ms. Perez' Petition ¶ 8, admitted as true, pursuant to Rules 12(b)(6) and 8(b) SCRP; see also Defendants Exhibit "A", pp 4

²⁶ Lefkowitz vs Turley, et al, 414 US 70, 77 (U.S. 11/19/1973) (The Amendment not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings] citing McCarthy v. Arndstein, 266 US 34, 40 (1924), Jackson v. Denno, 378 S 368 (1964), Accord : State v. Hook, 348 S.C. 401, 559 S.E.2d 856 (S.C.App. 12/17/2001) citing S.C. Const. Art. I, § 12, affirmed, State v. Hook, 356 S.C. 421, 590 S.E.2d 25 (S.C. 11/24/2003)

²⁷ id

SCBON from penalizing Ms. Perez' for her refusal to testify by preventing her from becoming gainfully employed²⁸. The SCBON is an administrative agency hence its officers have no statutory or Constitutional authority to declare and/or rule upon any objection interpose by Ms. Perez during her proposed interrogation²⁹. Accordingly, Ms. Perez object to any information she was previously coerced to provide and any future testimony the SCBON demands.

WHEREFORE, Ms Perez respectfully request that the Respondent's Motion ought to be denied.

Respectfully Submitted,


Nancy C Perez
713 E. Greenville St - D220
Anderson, SC 29621
864-209-1509

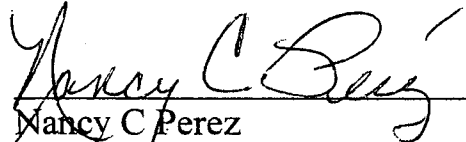
CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing "Nancy C Perez Reply To The Defendants' opposition to the motions to add an indispensable party and to adjudicate Nancy C Perez federal claims " and "Motion to strike or suppress" was delivered by mailing a copy thereof on this 31st day of December 2014 to:

²⁸ Gardner v Broderick, 392 US 273, 279 (U.S. 06/10/1968) ; Accord : State v. Hook, 348 S.C. 401, 559 S.E.2d 856 (S.C.App. 12/17/2001) citing S.C. Const. Art. I, § 12, State v. Hook, 356 S.C. 421, 590 S.E.2d 25 (S.C. 11/24/2003)

²⁹ Rainey v. Haley, 27269 (S.C. 06/12/2013) Citing S.C. Code Ann. § 15-53-20 (2005) and Rule 57, SCRCP .

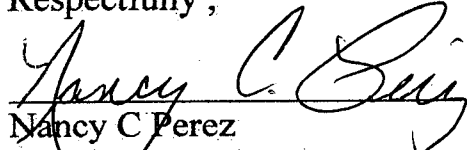
Darra James Coleman, Esq
Chief Counsel - DLLR
PO Box 11329
Columbia, SC 29211-1329


Nancy C Perez

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully ,



Nancy C Perez
713 E. Greenville St - D220
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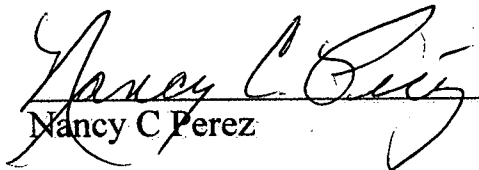
MAR 24 2016

SC Court of Appeals

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing "Record On Appeal" was delivered by mailing a copy thereof on March, 21 51 2016 to :

Donnell G. Jennings , Esq
South Carolina Department of Labor , Licensing
And Regulation
PO Box 11329
Columbia, SC 29211-1329



Nancy C Perez

