

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK  
MIDDLESEX, ss.

SUPERIOR COURT  
CIVIL ACTION NO. 18-1563F

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

MEDICAL PROFESSIONAL SERVICES, INC.  
d/b/a MEDICAL PROFESSIONAL INSTITUTE,

Defendant.

COMPLAINT

SUFFOLK SUPERIOR COURT  
2018 MAY 22 P 2:05  
MICHAEL JOSEPH DONOVAN  
CLERK / MAGISTRATE

**I. INTRODUCTION**

1. The Commonwealth of Massachusetts, by and through the Office of Attorney General Maura Healey, brings this enforcement action in the public interest pursuant to the Consumer Protection Act, G.L. c. 93A ("chapter 93A"), § 4. The Commonwealth alleges that the Defendant, a for-profit nursing school, engaged in unfair and deceptive acts and practices in soliciting and enrolling nursing students; failing to adequately maintain its nursing program or provide adequate instruction to students; and mishandling the process of closing its nursing program during the critical period from November 2015 to September 2016.

2. The Defendant, Medical Professional Services, Inc. d/b/a Medical Professional Institute ("MPI"), offered a practical nursing program from 2007 to 2016. However, on November 20, 2015, the Massachusetts Board of Registration in Nursing ("BORN") placed MPI's nursing program on "Approval with Warning" status due to numerous cited program deficiencies.

3. Even after learning of its “Approval with Warning” status, MPI accepted 35 new students into its nursing program for classes beginning in January 2016, and 30 new students for classes beginning in May 2016. In early December 2015, MPI sent a letter to all enrolled and prospective students stating that “all current students graduating from the Practical Nursing Program at MPI are eligible to write the [national board exam]” and that it was “tak[ing] all corrective actions to ensure a satisfactory response to [BORN’s] action by Spring of 2016.”

**Exhibit 1** (*December 2, 2015 Letter from MPI*, the “December Letter”).

4. Despite these assurances, MPI failed to correct the numerous deficiencies plaguing its nursing program. By June 6, 2016, BORN had withdrawn approval of the school’s nursing program, effectively shuttering the program as of September 2016. This had the additional effect of barring certain practical nursing students from taking the national board exam, which is required to become a practical nurse. On June 14, 2016, the state Division of Professional Licensure (“DPL”) followed suit, revoking its approval of the nursing program and barring MPI from continuing to provide any form of nursing instruction. In September, MPI shut down its nursing program entirely.

5. Students who enrolled in MPI’s practical nursing program in January or May 2016, along with approximately ten students who enrolled earlier,<sup>1</sup> were unable to complete their studies by the September 2016 deadline. In addition, these students are precluded from sitting for the national board exam and have been unable to transfer their credits to other schools. In short, their time at MPI has been nullified; unless they start anew at a different school, these students have no chance of becoming licensed practical nurses.

---

<sup>1</sup> MPI’s nursing program involved three semesters of study and could be completed in a year; however, some students took longer to finish (for example, if the student took a leave of absence or repeated a class). Approximately ten students who enrolled in August 2015 were unable to complete the program by September 2016.

6. The majority of MPI students incurred substantial federal student loan debt in order to finance their education. Yet the affected students are left with nothing to show for the debt they have incurred.

7. The Commonwealth is seeking a preliminary and permanent injunction prohibiting MPI from operating any form of nursing school or other secondary educational institution in Massachusetts, as well as restitution for affected students, civil penalties of \$5,000 per violation of chapter 93A, and attorney's fees and costs.

## II. JURISDICTION AND VENUE

8. The Attorney General is authorized to bring this action on behalf of the Commonwealth pursuant to chapter 93A, § 4.

9. This Court has subject matter jurisdiction over this action pursuant to chapter 93A, § 4, and personal jurisdiction over the Defendant pursuant to G.L. c. 223A, §§3(a) and (b). Finally, pursuant to G.L. c. 93A, § 4 and G.L. c. 223, § 5, venue is proper in Middlesex County.

## III. PARTIES

10. The Plaintiff is the Commonwealth of Massachusetts, represented by the Attorney General, who brings this action to halt and remedy MPI's unlawful conduct. The Attorney General's principal office is located at One Ashburton Place in Boston, Massachusetts 02108.

11. Defendant MPI is a Massachusetts for-profit corporation with a principal place of business at 380 Pleasant Street in Malden, Massachusetts 02148.<sup>2</sup>

---

<sup>2</sup> On November 24, 2017, MPI filed for bankruptcy protection under chapter 7 of the U.S. Bankruptcy Code, case number 17-14377 (BR D-MA). As an action commenced "by a governmental unit ... to enforce such governmental unit's ... police and regulatory power," the present lawsuit is exempted from the bankruptcy code's automatic stay. *See* 11 U.S.C. §362(b)(4).

#### **IV. STATEMENT OF FACTS**

##### **A. Regulatory Approval of MPI's Nursing Program**

12. In Massachusetts, nurses may be licensed either as registered nurses or practical nurses. MPI's program was for practical nursing, thus its students sought to become practical nurses.

13. BORN regulates the practice of nursing and nursing programs in Massachusetts. G. L. c. 13, §§ 13 – 15D; G. L. c. 112, §§ 74 – 81C. BORN's responsibilities include the licensing of practical nurses and the inspection, oversight and approval of practical nursing programs.

14. Practical nurses in Massachusetts must maintain a valid and current Massachusetts practical nursing license. One prerequisite to becoming licensed is passing the national board exam, which is called the "NCLEX-PN". Only graduates of BORN-approved practical nursing programs are eligible to sit for this exam.<sup>3</sup> G. L. c. 112, § 74A.

15. Before withdrawing approval of a practical nursing program, BORN first provides notice of any deficiencies to the school and places the subject nursing program on "Approval with Warning" status. 244 CMR 6.08(2) and (3). The school is then given an opportunity to correct the cited deficiencies. Once the period for correction has expired, BORN conducts an onsite visit to determine the viability of the nursing program. If the program is still deficient, only then is BORN authorized to withdraw its approval entirely. 244 CMR 6.08(3).

---

<sup>3</sup> Some exceptions apply for students who withdraw, in good standing, from registered nursing programs after having completed the coursework required to graduate from a practical nursing program and/or for practical nurses first licensed in other states. Moreover, so long as the program is approved when a student graduates, he or she is eligible to sit for the NCLEX-PN, regardless of whether approval is later revoked.

16. BORN first placed MPI's nursing program on "Approval with Warning" status on November 20, 2015, citing numerous program deficiencies. Upon being notified of this status change, MPI knew or should have known that its nursing program was at risk and that revocation of approval would preclude current students from either sitting for the NCLEX-PN or becoming licensed practical nurses at all, unless they started over elsewhere and incurred thousands of dollars in additional student loan debt.

**B. BORN's Numerous Concerns with MPI's Nursing Program**

17. On March 11, 2015, BORN reviewed the NCLEX-PN pass rate for MPI graduates sitting for the exam for the first time. For the third consecutive year, the pass rate for these graduates was below the minimum acceptable threshold. This "three strikes" failure is grounds for BORN to review a practical nursing program's approval status. 244 CMR 6.08(1)(h).

18. In addition to this problematic pass rate, by November 20, 2015, BORN determined that MPI had failed to provide satisfactory evidence of compliance with over a dozen different regulations. These deficiencies were broad-ranging and involved nearly all aspects of MPI's nursing program, including record-keeping, faculty experience and development, admissions criteria, and the scope of the school's curriculum. **Exhibit 2** (*November 20, 2015 Letter from BORN's Kathleen Ashe to MPI*).

19. BORN also determined that MPI lacked a qualified administrator to oversee its nursing program. Practical nursing programs are required to have at least one administrator who is a licensed registered nurse, has a master's degree or entry level doctorate degree in nursing, has at least five years of full-time nursing experience, has at least three years' experience in nursing education, and has expertise regarding administrative responsibilities. 244 CMR 6.04(2)(a).

20. Indeed, since the inception of its nursing program, MPI was unable to retain a qualified program administrator for a suitable length of time, rotating through at least eight different people in an eight-year period. Given this experience, MPI knew or should have known that it would not be able to comply with the administrator requirements set forth in 244 CMR 6.04(2)(a).

21. BORN expressed its concerns about MPI's inability to retain a qualified program administrator in a January 25, 2016 letter approving the appointment of Mary Ellen Morrissey as MPI's new Director of Nursing. In the letter, BORN highlighted the school's high turnover rate, noting that "Dr. Morrissey's appointment is the eighth Program Administrator appointment since 2007 when the program was [first approved]", adding that MPI "has demonstrated ongoing difficulty retaining qualified administrators which further serves as grounds for [BORN's] review of the Program's approval status." **Exhibit 3** (*January 25, 2016 Letter from BORN's Kathleen Ashe to MPI*). Dr. Morrissey soon followed suit, notifying BORN of her resignation from MPI on or around April 13, 2016.

22. In a letter dated March 28, 2016, BORN notified MPI that its NCLEX-PN pass rate for first-time exam takers not only remained below the minimum acceptable threshold, but had in fact dropped to 63%.

23. In light of the problems detailed above, BORN was prompted to conduct an onsite visit and inspection of MPI's nursing program. Afterwards, BORN notified MPI of the following ongoing deficiencies (see **Exhibit 4**, *April 22, 2016 Compliance Report from BORN re: MPI's Practical Nursing Program*):

- a. In violation of 244 CMR 6.04(1)(b), MPI's bylaws failed to clearly define how faculty, administrators, and students would participate in governance of the school's nursing program;



- b. In violation of 244 CMR 6.04(1)(e), MPI lacked a coherent plan for the systematic evaluation of the components of its nursing program, and its nursing faculty had little to no experience in developing such plans;
- c. In violation of 244 CMR 6.04(1)(g), MPI lacked a suitable policy for the maintenance, retention, and disposal of school, student, and faculty records;
- d. In violation of 244 CMR 6.04(2)(b)(5), the school's faculty was comprised of inexperienced educators, with only three having "previous nursing education experience" (Exh. 4 at 8), while MPI's five-year budget failed to provide sufficient allocations for faculty development;
- e. In violation of 244 CMR 6.04(3)(a)2, MPI maintained varying and inadequately stringent admissions criteria, which resulted in the loss of up to two-thirds of each class prior to graduation;
- f. In violation of 244 CMR 6.04(4)(a) and (b)3-5, MPI's nursing curriculum did not include the full array of subjects tested on the NCLEX-PN, yet it included 225 hours of inadequately supervised "outside work," for which MPI (i) failed to record or explain its grading methods, and (ii) failed to provide evidence or explanation as to how these hours contributed to improved NCLEX-PN outcomes;
- g. In violation of 244 CMR 6.04(5)(a), MPI failed to provide sufficient evidence from which BORN could determine the number of full-time faculty on staff; and
- h. In violation of 244 CMR 6.04(5)(c), "[s]tudent and faculty library learning resources contained dated textbooks and no current nurse educator journal or nursing periodicals" (Exh. 4 at 15).

24. Based on MPI's failure to correct the many deficiencies in its nursing program, in June 2016, BORN withdrew its approval of the program, effective September 2016.

25. While BORN's approval is necessary for nursing graduates to sit for the NCLEX-PN, only DPL is empowered to shut down a school entirely. However, the decisions of these two agencies are necessarily related, thus shortly after BORN announced its decision, DPL followed suit, revoking MPI's license to provide nursing instruction.

**C. Deception and Omissions: MPI's Conduct with Students**

26. At least as early as November 2015, MPI was made aware of BORN's numerous concerns with its nursing program. In addition, MPI was well aware of how extensive these problems were and that many were long-standing, defying MPI's suggestion that its nursing program could quickly or easily regain full operational status.

27. Starting in early December 2015, MPI began notifying current and prospective students that, given the school's "ongoing NCLEX less than 80% for first time writers pass rate", its nursing program was formally under review. *See* December 2, 2015 Letter (the "December Letter"). However, the December Letter went on to provide false assurances, stating that MPI had "immediately started to take all corrective actions to ensure a satisfactory response to [BORN's] action" and "all current students graduating from the Practical Nursing Program ... are eligible to write the NCLEX-PN". **Exh. 1.**

28. Other than referencing the NCLEX-PN pass rate, nowhere in the December Letter did MPI discuss the numerous other program deficiencies cited by BORN. This gave students the false and notably incomplete impression that the nursing program could regain full approval merely by improving its NCLEX-PN pass rate.

29. The December Letter also failed to inform students of the distinct possibility that BORN could withdraw its approval entirely and what that would mean for students who had not yet graduated. Students had a right to know that if approval was withdrawn, they would have no choice but to start a new nursing program elsewhere in order to sit for the NCLEX-PN and, ultimately, become licensed practical nurses.

30. MPI continued to enroll new students through May 2016, even though its status was conditional and despite the slew of issues cited by BORN. Not only did the school continue



to take on new students, but it failed to provide updates regarding the continuing nature of the issues and concerns raised by BORN.

31. Throughout the relevant period, MPI misled and deceived students, both in its affirmative statements and by omitting material information, thereby inducing new students to enroll and current students to remain at the school. In so doing, MPI enriched itself in the form of ongoing payments for tuition, fees and other nursing program costs.

32. Based on MPI's false assertion that it would "ensure a satisfactory response to [BORN's] action," and that graduates would thus be able to sit for the NCLEX-PN exam, students remained (or newly enrolled) in MPI's nursing program, incurring substantial student loan debt and using their own funds to pay tuition and other school costs.<sup>4</sup>

33. Students who were in their first or second semester when MPI shut down its nursing program in September 2016 had no chance to complete their studies. Thus, even though these students can neither take the NCLEX-PN exam nor transfer their course credits to other nursing schools, they remain saddled with student loan debt. In short, they have nothing whatsoever to show for the money paid and substantial debt incurred.

34. As borrowers of so-called Title IV federal funds, students with federal student loans are statutorily precluded from seeking relief through bankruptcy protection. Instead, they are subject to the federal government's expansive authority to collect on student loans. Should these students default on their loans, not only will their credit be severely impaired, but their future wages and tax refunds will be subject to automatic garnishment and they will become prey to the aggressive and often unscrupulous practices of debt collectors.

---

<sup>4</sup> MPI has provided partial refunds to students for their "out of pocket" payments only.

35. Because the affected students incurred their student loan debt and paid tuition and other school costs based on MPI's knowing and willful misrepresentations and omissions, it is MPI who should make them whole by eliminating their debt and repaying them in full for all tuition, fees and other costs incurred.

**V. CAUSE OF ACTION**  
**Count One**  
**(Violations of Chapter 93A, § 2)**

36. The Commonwealth repeats and re-alleges paragraphs 1 through 35 of the Complaint.

37. MPI is a "person" as defined by section 1 of chapter 93A, and was conducting "trade or commerce" pursuant to section 2 of chapter 93A.

38. By misleading or deceiving Massachusetts consumers, including current and prospective MPI students, and/or by omitting material information in communications concerning the status of its nursing program, MPI engaged in unfair or deceptive acts or practices in violation of section 2 of chapter 93A.

39. MPI's misrepresentations to Massachusetts consumers, including current and prospective MPI students, were material and had the tendency or capacity to deceive and/or mislead, or did in fact deceive and/or mislead, said consumers.

40. MPI knew or should have known that it was making misleading or deceptive representations, and/or that it was omitting material information, in its communications with Massachusetts consumers, including current and prospective MPI students, in violation of section 2 of chapter 93A.

41. MPI was paid significant amounts of money in tuition, fees and other program costs as a result of its unfair or deceptive acts and practices. MPI's conduct induced

Massachusetts consumers, including current and prospective MPI students, to suffer an ascertainable financial loss by paying said tuition, fees and other costs to attend MPI's nursing program. Said financial loss is estimated to be at least \$454,000.


## **VI. PRAYER FOR RELIEF**

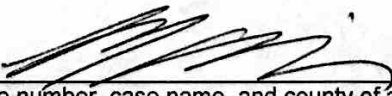

WHEREFORE, the Commonwealth requests that this Court, pursuant to section 4 of chapter 93A:

- A. Enter judgment in its favor, and against MPI, for MPI's violations of section 2 of chapter 93A;
- B. Issue a preliminary and permanent injunction enjoining MPI from engaging in any trade or business directly or indirectly involving education, whether concerning nursing or any other subject matter, in Massachusetts;
- C. Order MPI to pay civil penalties of \$5,000 for each violation of section 2 of chapter 93A;
- D. Order MPI to pay damages in the form of full and complete restitution to all affected Massachusetts consumers, including those MPI students who were unable to complete their studies and/or sit for the NCLEX-PN exam, such restitution to include without limit all tuition, fees and other costs paid or incurred in connection with MPI's practical nursing program;
- E. Order MPI to pay attorney's fees and costs incurred by the Commonwealth in the investigation and prosecution of this matter; and
- F. Grant such other and further relief as the Court deems equitable and proper.

COMMONWEALTH OF MASSACHUSETTS  
MAURA HEALEY, ATTORNEY GENERAL

Date: May 22, 2018

  
M. Claire Masinton, BBO No. 646718  
Assistant Attorney General  
Office of the Attorney General  
One Ashburton Place, 18<sup>th</sup> Floor  
Boston, MA 02108  
(617) 963-2454  
Claire.Masinton@state.ma.us

CIVIL ACTION COVER SHEET		DOCKET NUMBER <b>18-1563F</b>	Trial Court of Massachusetts The Superior Court																			
<b>PLAINTIFF(S):</b> Commonwealth of Massachusetts <b>ADDRESS:</b> Office of the MA Attorney General One Ashburton Place, 18th Floor Boston, MA 02108 <b>ATTORNEY:</b> M. Claire Masinton <b>ADDRESS:</b> Office of the MA Attorney General One Ashburton Place, 18th Floor Boston, MA 02108 <b>BBO:</b> 646718			<b>COUNTY</b> Suffolk <b>DEFENDANT(S):</b> Medical Professional Services, Inc. d/b/a Medical Professional Institute c/o Harold B. Murphy, Chapter 7 Trustee <b>ADDRESS:</b> Murphy & King, P.C. 1 Beacon Street Boston, MA 02108 326610																			
<b>TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)</b>																						
<b>CODE NO.</b> E99	<b>TYPE OF ACTION (specify)</b> Other Administrative Action	<b>TRACK</b> X	<b>HAS A JURY CLAIM BEEN MADE?</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO																			
<b>*If "Other" please describe:</b> Complaint by Commonwealth of MA for violations of M.G.L. c. 93A, section 2																						
<b>STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A</b>																						
The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.																						
<b>TORT CLAIMS</b> (attach additional sheets as necessary)																						
<b>A. Documented medical expenses to date:</b> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">1. Total hospital expenses .....</td> <td style="width: 10%; text-align: right;">\$</td> <td style="width: 10%; text-align: right;">n/a</td> </tr> <tr> <td>2. Total doctor expenses .....</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">n/a</td> </tr> <tr> <td>3. Total chiropractic expenses .....</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">n/a</td> </tr> <tr> <td>4. Total physical therapy expenses .....</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">n/a</td> </tr> <tr> <td>5. Total other expenses (describe below) .....</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">n/a</td> </tr> <tr> <td colspan="2" style="text-align: right;"><b>Subtotal (A):</b></td> <td style="text-align: right;">\$ n/a</td> </tr> </table>					1. Total hospital expenses .....	\$	n/a	2. Total doctor expenses .....	\$	n/a	3. Total chiropractic expenses .....	\$	n/a	4. Total physical therapy expenses .....	\$	n/a	5. Total other expenses (describe below) .....	\$	n/a	<b>Subtotal (A):</b>		\$ n/a
1. Total hospital expenses .....	\$	n/a																				
2. Total doctor expenses .....	\$	n/a																				
3. Total chiropractic expenses .....	\$	n/a																				
4. Total physical therapy expenses .....	\$	n/a																				
5. Total other expenses (describe below) .....	\$	n/a																				
<b>Subtotal (A):</b>		\$ n/a																				
<b>B. Documented lost wages and compensation to date .....</b> \$ n/a <b>C. Documented property damages to dated .....</b> \$ n/a <b>D. Reasonably anticipated future medical and hospital expenses .....</b> \$ n/a <b>E. Reasonably anticipated lost wages .....</b> \$ n/a <b>F. Other documented items of damages (describe below) .....</b> \$ n/a <b>G. Briefly describe plaintiff's injury, including the nature and extent of injury:</b> n/a																						
<b>TOTAL (A-F):</b>				\$ n/a																		
<b>CONTRACT CLAIMS</b> (attach additional sheets as necessary)																						
Provide a detailed description of claims(s): n/a																						
<b>TOTAL:</b>				\$ n/a																		
<b>Signature of Attorney/Pro Se Plaintiff:</b> X 			<b>Date:</b> May 22, 2018																			
<b>RELATED ACTIONS:</b> Please provide the case number, case name, and county of any related actions pending in the Superior Court. none																						
<b>CERTIFICATION PURSUANT TO SJC RULE 1:18</b>																						
I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.																						
<b>Signature of Attorney of Record:</b> X 			<b>Date:</b> May 22, 2018																			