



STATE OF MAINE
 BOARD OF NURSING
 158 STATE HOUSE STATION
 AUGUSTA, MAINE
 04333-0158

PAUL R. LEPAGE
 GOVERNOR

KIM ESQUIBEL, PhD, M.S.N., R.N.
 EXECUTIVE DIRECTOR

IN RE: LISA D. AUSTIN, RN
 of Sanford, ME
 License No. RN67052

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CONSENT AGREEMENT
 FOR REPRIMAND, FINE
 & PROBATION

Complaint 2015-287

INTRODUCTION

Pursuant to Title 32, Chapter 31, the Maine State Legislature endowed the Board with the power and duty to regulate the practice of nurses licensed by the Board, including issuing licenses and investigating complaints. Pursuant to 10 M.R.S. §8008, the Legislature provided that the sole purpose of the Board is to “protect the public health and welfare” and that “other goals or objectives may not supersede this purpose.”

This document is a Consent Agreement (“Agreement”) regarding Lisa D. Austin’s license as a Registered Professional Nurse (“RN”) in the State of Maine. The parties to this Agreement are Lisa D. Austin (“Ms. Austin”), the Maine State Board of Nursing (“the Board”), and the Office of the Attorney General, State of Maine (“Attorney General’s Office”). The parties enter into this Agreement pursuant to 32 M.R.S. § 2105-A(1-A)(A) and (1-A)(B) and 10 M.R.S. § 8003(5)(A-1)(1), (5)(A-1)(3), (5)(A-1)(4), and (5)(B) in order to resolve Complaint 2015-287.

FACTS

1. Lisa D. Austin was first licensed to practice as an RN in Maine by endorsement on August 31, 2015.
2. The State of Maine and the State of New Hampshire are “party states” that have adopted the Nurse Licensure Compact (“Compact”), which is set out in Chapter 11 of the Board Rules. The State of Maine is Ms. Austin’s “home state” of licensure and primary state of residence, which means that she has declared the State of Maine as her fixed permanent and principal home for legal purposes relating to her domicile. At all times relevant herein, Ms. Austin was using her multi-state privilege to practice under the Compact in New Hampshire.
3. On December 17, 2015, the Board received a report from Portsmouth Regional Hospital alleging that Ms. Austin was impaired while working on December 10, 2015. Ms. Austin told the hospital’s service line supervisor that she had taken her prescribed 1 mg dose of Ativan (lorazepam) prior to reporting for work that day. The hospital staff reported finding an open can of hard cider in the locker behind where Ms. Austin’s belongings were located. Ms. Austin admitted to her supervisor that she had been drinking the hard cider. Portsmouth Regional Hospital gave Ms. Austin two breathalyzer tests. Her alcohol level was 0.052 percent at 11:51 p.m. on December 10, 2015. Her alcohol level was 0.050 percent at 12:08 a.m. on December 11, 2015. Under the hospital’s policy on substance use in the workplace, an employee is presumed to be under the influence of alcohol if he or she has a blood alcohol level of 0.040 or more.

There was no evidence or allegation of harm to any patient resulting from this incident.

As a result of receiving this information, the Board initiated a complaint against Ms. Austin’s Maine nursing license; Board staff docketed the Complaint as 2015-287.

4. On February 22, 2016, the New Hampshire Board of Nursing disciplined Ms. Austin on the basis that she took Ativan prior to reporting for work at Portsmouth Regional Hospital and consumed alcohol while working on December 10, 2015.
5. On March 23, 2016, the Board met and summarily suspended Ms. Austin’s license to practice as an RN as a result of Board Complaint 2015-287, as referenced in the “Order of Immediate Suspension of License as a Registered Professional Nurse,” effective March 23, 2016.



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OFFICES LOCATED AT: 161 CAPITOL ST., AUGUSTA, ME
<http://www.maine.gov/boardofnursing/>

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6. On May 23, 2016, Ms. Austin entered into an Interim Consent Agreement with the Board, in which she agreed to temporarily suspend her Maine nursing license for two (2) months.
7. In a letter dated May 26, 2016, Ms. Austin informed the Board that she was arrested for Operating Under the Influence (Class D) on February 4, 2016. She said she has remained abstinent from alcohol since that date. In March, she enrolled in the Maine Medical Association's Medical Professionals Health Program ("MPHP") and signed a monitoring agreement on April 1, 2016. Her contract with MPHP requires her to submit to daily breathalyzer testing and random urine screening. She also reported that she regularly attends Alcoholics Anonymous meetings and meets with her therapist.
8. The Board met with Ms. Austin on June 8, 2016 in an informal conference. Following the informal conference, the Board voted to offer Ms. Austin a consent agreement.
9. Absent Ms. Austin's acceptance of this Agreement by signing, dating, and returning it to the Maine State Board of Nursing, 158 State House Station, Augusta, Maine 04333-0158 on or **before August 8, 2016**, the Board may take further action. In the absence of an agreement, the Board could impose, subsequent to adjudicatory proceedings, greater adverse action in this matter including fines or the suspension or revocation of Ms. Austin's license.

AGREEMENT

10. Lisa D. Austin admits to the Facts as stated above and admits that such conduct constitutes grounds for the Board to impose discipline against her Maine nursing license under the following laws and regulations:

32 M.R.S. §2105-A (2)(B), for the misuse of alcohol, drugs, or other substances that may result in the licensee performing services in a manner that endangers the health or safety of patients;

32 M.R.S. § 2105-A(2)(F) & (H), for engaging in unprofessional conduct as defined by the Board and violating a rule of the Board by practicing nursing when unfit to perform procedures and make decisions in accordance with the license held because of a physical, psychological, or mental impediment (Board Rules Ch. 4, § 3(N)); and

32 M.R.S. § 2105-A(2)(F) & (H), for engaging in unprofessional conduct as defined by the Board and violating a rule of the Board by practicing nursing when the licensee's physical or mental ability was impaired by alcohol or drugs (Board Rules Ch. 4, § 3(O)).

11. As discipline for the violations admitted to in paragraph 10 above, Ms. Austin agrees that she will receive a **REPRIMAND and a FINE of \$1,000.00** related to the above stated violations. Within thirty (30) days following execution of this agreement, said fine shall be submitted to the attention of Amanda Scott, Probation/Compliance Officer, 158 State House Station, Augusta ME 04330-0158. The fine shall be paid by bank check or money order to the order of "Treasurer State of Maine."
12. Ms. Austin further agrees that, unless this Agreement is modified in writing by all of the parties hereto, following the execution of this Agreement **her license to practice as a Registered Professional Nurse shall be probationary until she completes at least five (5) years of active nursing practice and/or active enrollment in a nursing education program. During the period of probation, her license** shall be subject to the following conditions:
 - a) **Nurse Supervisor**. During the period of probation, Ms. Austin is restricted to employment in structured settings with on-site supervision by another registered professional nurse. Structured settings shall not include assignments from temporary employment agencies, home health care, school nursing, work as a travel nurse, or within the correctional system.

The nurse supervisor must be in direct contact with Ms. Austin (i.e., physically on site) and be able to observe her nursing performance. The nurse supervisor shall inform the Board if Ms. Austin demonstrates

any issues with regard to attendance; inability to concentrate, inappropriate decision-making, medication administration/documentation, or any other concerns. The supervising nurse shall report such information to the Board in writing within 24 hours or as soon thereafter as possible. In addition, the nurse supervisor shall provide the Board with a written report regarding Ms. Austin's nursing performance every three (3) months following the execution of this Agreement. It is **Ms. Austin's responsibility** to ensure that these reports are provided to the Board in a timely manner.

- b) Maine Medical Professionals Health Program ("MPHP"). Ms. Austin shall comply with all requirements of her MPHP monitoring contract at all times. Ms. Austin understands and agrees that the monitoring contract will be in effect even during periods when she is not employed in the practice of nursing.
- c) Treatment Provider Reports. Ms. Austin will completely abstain from the use of alcohol or drugs with the exception of substances used in accordance with a valid prescription from her health care treatment providers who are aware of her history. In addition, she will arrange for and ensure the submission of quarterly reports to the Board by her treatment provider(s), and such reports shall continue until her probation is terminated. If treatment is terminated during her probation, she shall notify the Board and provide written documentation from her treatment provider(s).
- d) Notification to Nursing Employer(s)/Potential Employers/Licensing Jurisdictions. During the period of probation, Ms. Austin shall provide a copy of this Agreement to any nursing employers or potential nursing employers, and to any jurisdiction in which she holds or seeks a nursing license. Ms. Austin shall also notify any nursing employers or potential nursing employers of her substance abuse history.
- e) Current Contact Address/Change of Contact Address – Notification Requirement. During the period of probation, Ms. Austin shall provide the Board with a current address at which she may be contacted by the Board. Ms. Austin shall inform the Board **in writing within 15 days** of any change of her contact address/information.
- f) Employment Change – Notification Requirement. During the period of probation, Ms. Austin will notify the Board **in writing within five (5) business days** of any change in her nursing employment and/or enrollment in a nursing education program. Notice under this section shall include the name and location of the employer and the position accepted, and/or the name and location of the nursing educational program and the course of study.
- g) Privilege to Practice Restrictions. The State of Maine is a "party state" that has adopted the Nurse Licensure Compact ("Compact"), which is set out in Chapter 11 of the Board Rules. Ms. Austin understands and agrees that this Agreement is applicable to her multi-state licensure privilege, if any, to practice nursing in Compact states.

IT IS FURTHER AGREED that while Ms. Austin's license is subject to this Agreement, she may not work outside the State of Maine pursuant to a multi-state privilege without the written permission of the Maine State Board of Nursing and the Board of Nursing in the party state in which she wishes to work.

- 13. Ms. Austin agrees and understands that her license is on probationary status and is subject to the terms of this Agreement until and unless the Board, at her written request, votes to terminate her probation. When considering whether to terminate the probation, the Board will consider the extent to which she has complied with the provisions of this Agreement.
- 14. Violation of any of the terms or conditions of this Agreement by Ms. Austin shall constitute unprofessional conduct and shall be grounds for discipline, including but not limited to modification, suspension, or revocation of licensure or the denial of licensure renewal.
- 15. Ms. Austin understands and agrees that if any member of the Board, the Board's Executive Director, or the Attorney General's Office receives reasonably reliable information suggesting that she has not remained substance-free in accordance with this Agreement, **her license will be immediately and automatically suspended pending further review by the Board**. In the event any member of the Board, the Board's

Executive Director, or the Attorney General's Office receives such information, it will be immediately forwarded to Ms. Austin for response. She understands and agrees that in such an event, her license shall remain suspended pending a hearing, which will be held within 60 days of the automatic suspension unless both Ms. Austin and the Board agree to hold the hearing at a later date, or the Executive Director and/or Attorney General's Office earlier determine that such information is without merit. If the information received is proven to be inaccurate or incorrect, either through hearing or determination by the Executive Director and/or Attorney General's Office, Ms. Austin's license will be immediately reinstated retroactive to the date of the suspension.

16. In the event that Ms. Austin is alleged to have violated any condition of her probation, the Board will give written notice to her regarding her failure to comply, sent to the last known address that is on file with the Board. Ms. Austin shall, within 30 days from receipt of this notification, submit a written response to the Board regarding the alleged violation. The Board will review Ms. Austin's response to determine what action, if any, it will take. **If Ms. Austin fails to timely respond to the Board's notification regarding noncompliance, her license may be immediately suspended** pending a hearing at the next scheduled Board meeting. If after notice and hearing, the Board finds that Ms. Austin has failed to meet probationary conditions, the Board may take any disciplinary action that it deems appropriate and impose any of the sanctions including, but not limited to, those found in 10 M.R.S. § 8003 and 32 M.R.S. § 2105-A.
17. Ms. Austin agrees to waive her right to an adjudicatory hearing before the Board concerning the Board's March 23, 2016 Order of Immediate Suspension of License as a Registered Professional Nurse.
18. This Agreement is not appealable and is effective until modified or rescinded by the parties to this Agreement. This Agreement cannot be modified orally. It can be modified only in writing and only if signed by all of the parties to the Agreement and approved by the Attorney General's Office. Ms. Austin may file a written request, together with any supporting documentation, to modify the terms and conditions of this Agreement. The Board retains the sole discretion to: (a) deny Ms. Austin's request; (b) grant Ms. Austin's request; and/or (c) grant Ms. Austin's request in part as it deems appropriate to ensure the protection of the public. Any decision by the Board as a result of Ms. Austin's request to modify this Agreement need not be made pursuant to a hearing and is not appealable to any court.
19. The Board and the Attorney General's Office may communicate and cooperate regarding Ms. Austin's practice or any other matter relating to this Agreement.
20. This Agreement is a public record within the meaning of 1 M.R.S. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408-A.
21. This Agreement constitutes adverse action and is reportable to the National Practitioner Data Bank (NPDB).
22. Nothing in this Agreement shall be construed to affect any right or interest of any person not a party hereto.
23. For the purposes of this Agreement, the term "execution" means that date on which the final signature is affixed to this Agreement.
24. Ms. Austin acknowledges by her signature hereto that she has read this Agreement, that she has had an opportunity to consult with an attorney before executing this Agreement, that she has executed this Agreement of her own free will, and that she agrees to abide by all the terms and conditions set forth in this Agreement.
25. Upon final execution of this Agreement, Ms. Austin's suspension under her May 23, 2016 Interim Consent Agreement with the Board shall terminate, and her RN license shall be reinstated.

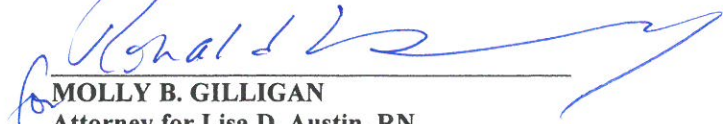
[Signature Page to Follow]

DATED: 8/12/16



LICENSEE LISA D. AUSTIN, RN


DATED: 8/15/16



MOLLY B. GILLIGAN
Attorney for Lisa D. Austin, RN

FOR THE MAINE STATE BOARD OF NURSING

DATED: 8/22/16



KIM ESQUIBEL, PhD, MSN, RN
Executive Director

FOR THE OFFICE OF THE ATTORNEY GENERAL

DATED: 8/23/16



KATIE W. JOHNSON
Assistant Attorney General