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GOVERNOR

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

MYRA A. BROADWAY, J.D., M.S., R.N.
EXECUTIVE DIRECTOR

IN RE: THERESA DAY
of Portland, ME
License No. LPN7986

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CONSENT AGREEMENT TO
SURRENDER LICENSE

Complaint 2013-115

INTRODUCTION

This document is a Consent Agreement ("Agreement") regarding Theresa Day's license as a licensed practical nurse ("LPN") in the State of Maine. The parties to this Agreement are Theresa Day ("Ms. Day" or "Licensee"), the Maine State Board of Nursing ("the Board"), and the Office of the Attorney General, State of Maine. The parties enter into this Agreement pursuant to 32 M.R.S. § 2105-A (1-A) (C) and 10 M.R.S. § 8003(5) (B) in order to resolve Complaint 2013-115.

FACTS

1. Ms. Day was first licensed to practice in Maine as an LPN on November 21, 1983.
2. Ms. Day has a history of substance abuse which has resulted in prior discipline by the Board. On February 11, 1991, Ms. Day entered into a Consent Agreement with the Board to indefinitely surrender her nursing license due to drug diversion and substance abuse. The Board reinstated her nursing license on March 17, 1992 and placed it on probation for two years. Ms. Day successfully complied with the terms and her probation was terminated on February 18, 1994. On September 4, 1997, Ms. Day entered into a Consent Agreement with the Board surrendering her nursing license as a result of incompetent nursing practice and substance abuse. On January 21, 2010, the Board reinstated her nursing license and imposed a five-year probation and various conditions. The January 21, 2010 Consent Agreement and its exhibits are incorporated herein, attached hereto, and marked as Exhibit A.
3. At all times relevant to this matter, Ms. Day was employed as an LPN at South Portland Nursing Home ("the nursing home") in South Portland, Maine.
4. On June 5, 2013, the Board received a provider report from the nursing home explaining that it had discharged Ms. Day from employment following an investigation into drug diversion. Beginning April 6, 2013, the nursing home experienced several instances of missing duragesic patches. The patches were missing from residents and from a box used to store medication slated for disposal. The nursing home contacted the South Portland Police Department to assist in the investigation and tightened its security. Ms. Day was given a polygraph test as part of the police investigation, which she failed. On May 31, 2013, between the hours of 10:00 a.m. and 3:00 p.m., another duragesic patch went missing. Ms. Day was working during this period and reportedly went several times to the unit where it was discovered that a patch was missing, even though she had not been assigned to that unit.



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On Monday, June 3, 2013, Ms. Day was asked to provide a urine sample. This request was made after another nurse reported that she had gone with Ms. Day to dispose of a patch, did not see the patch go down the flush, and thought she saw Ms. Day put something in her pocket. According to the South Portland Police Department, the result of the urine test showed that Ms. Day's urine tested positive for Suboxone and another medication.

5. Ms. Day admits that she does not have a prescription for Suboxone.
6. Pursuant to paragraphs 4(a) and 6 of her January 21, 2010 Consent Agreement, Ms. Day agreed as follows:

4.a. Theresa A. Day will abstain completely from the use of alcohol or drugs, with the exception of substances used in accordance with a valid prescription from her health care providers who are aware of her substance abuse history.

6. [I]f any member of the Board or the Board's Executive Director 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 or its Executive Director receives such information, it will be immediately forwarded to Ms. Day for response. She understands and agrees that in such event, her license shall remain suspended pending a hearing.

7. On June 12, 2013, the Board voted to suspend Ms. Day's nursing license in accordance with paragraphs 4(a) and 6 of her January 21, 2010 Consent Agreement. The Board's decision was based upon the reasonably reliable information received from South Portland Nursing Home that Ms. Day had tested positive for Suboxone, a drug for which she did not have a prescription.
8. Ms. Day has offered to surrender her LPN license based upon the above-stated facts and thereby waives her rights to an adjudicatory hearing.

AGREEMENT

9. The Maine State Board of Nursing accepts Theresa A. Day's offer to voluntarily surrender her LPN license, LPN7986.
10. Ms. Day admits to the above-stated facts and understands that this document imposes discipline regarding her LPN license in the State of Maine. The grounds for discipline are violations under 10 M.R.S. § 8003(5)(A-1)(4) and 32 M.R.S. § 2105-A(2)(B), (F), and (H), and under Chapter 4, Sections 1(A)(2), 1(A)(6), 1(A)(8) and 3(Q) of the Rules and Regulations of the Maine State Board of Nursing ("Board Rule"). Specifically, the violations are:
 - a. 10 M.R.S. § 8003(5)(A-1)(4). Failure to comply with the conditions of probation. Ms. Day failed to comply with the probationary conditions of the January 21, 2010 Consent Agreement.

- b. 32 M.R.S. § 2105-A (2) (B). Habitual substance abuse that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of patients. See also: Board Rule Chapter 4, Section 1.A.2.
 - c. 32 M.R.S. § 2105-A(2)(F). Unprofessional Conduct. Ms. Day engaged in unprofessional conduct because she violated a standard of professional behavior established in the practice for which she is licensed. See also: Board Rule Chapter 4, Section 1.A.6. The standard violated is found in Board Rule Chapter 4, Section 3(Q), which defines unprofessional conduct to include “possessing, obtaining, furnishing or administering prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs.”
 - d. 32 M.R.S. § 2105-A (2) (H). Ms. Day violated Title 32, Chapter 31 and a rule adopted by the Board. See also: Board Rule Chapter 4, Section 1.A.8.
 - e. Board Rule: Chapter 4, Section 3 defines “Unprofessional Conduct” as *nursing behavior which fails to conform to legal standards and accepted standards of the nursing profession, which could reflect adversely on the health and welfare of the public.*
11. Ms. Day understands and agrees that as a result of surrendering her license, she no longer has a nursing license and is subject to the terms of this Agreement until and unless the Board, at her written request, votes to reinstate her license. Ms. Day understands and agrees that upon receiving a request from her to reinstate her Maine LPN license, the Board shall have the sole discretion to grant or deny such a request or to grant her a license with probation and conditions as it determines appropriate to protect the public.
12. The State of Maine is a “party state” that has adopted the Nurse Licensure Compact (“the Compact”), which is set out in Chapter 11 of the Rules of the Maine State Board of Nursing. The State of Maine is Ms. Day’s “home state” of licensure and primary state of residence, which means that she has declared Maine as her fixed permanent and principal home for legal purposes; her domicile. Other party states in the Compact are referred to as “remote states,” which means party states other than the home state that have adopted the Compact. Ms. Day understands this Agreement is subject to the Compact.
13. Ms. Day understands that she does not have to execute this Agreement and has the right to consult with an attorney before entering into the Agreement.
14. Ms. Day shall not work or volunteer in any capacity for a health care provider as defined by Title 24 M.R.S. § 2502(2) or in any position holding herself out as a licensed practical nurse or with the designation “LPN” while she does not hold a nursing license. She shall not seek any employment where the handling or dispensing of drugs is part of the job responsibility.
15. 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.
16. This Agreement constitutes a final adverse licensing action that is reportable to the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB) pursuant to Section 1128E of the Social Security Act and 45 C.F.R. Part 61.

17. Modification of this Agreement must be in writing and signed by all parties.
16. This Agreement is not subject to review or appeal by the Licensee, but may be enforced by an action in the Superior Court.
17. Ms. Day affirms that she executes this Agreement of her own free will.
18. This Agreement becomes effective upon the date of the last necessary signature below.

I, THERESA A. DAY, HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING IT, I WAIVE CERTAIN RIGHTS. I UNDERSTAND THE EFFECT IT WILL HAVE ON MY NURSING LICENSE. I SIGN IT VOLUNTARILY, KNOWINGLY, AND INTELLIGENTLY AND AGREE TO BE BOUND BY THIS AGREEMENT. I UNDERSTAND THAT THIS CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND.

Dated: 11/22/13

Theresa A Day
THERESA A. DAY

FOR THE MAINE STATE BOARD OF NURSING

Dated: 11/25/13

Myra Broadway
MYRA A. BROADWAY, JD, MS, RN
Executive Director

FOR THE OFFICE OF THE ATTORNEY GENERAL

Dated: 11-27-13

Lauren F. LaRoche
LAUREN F. LAROCHELLE
Assistant Attorney General