

MAINE STATE BOARD OF NURSING

IN RE: Linda Lobacz, L.P.N.) DECISION AND ORDER
Licensure Disciplinary Action)

I. PROCEDURAL HISTORY

Pursuant to the authority found in 32 M.R.S.A. Sec. 2105-A(1-A)(D), et seq., 5 M.R.S.A. Sec. 9051, et seq. and 10 M.R.S.A. Sec. 8001, et seq., the Maine State Board of Nursing (Board) met in public session at the Board's offices located in Augusta, Maine on July 18, 2006. The purpose of the meeting was to hold an adjudicatory hearing to determine whether Linda Lobacz violated Board statutes and Rules while practicing as a licensed practical nurse and as more specifically stated in the Notice of Hearing dated June 15, 2006. A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Acting Chairman Richard Sheehan, M.S., R.N., Betty Kent-Conant, R.N., Diane Dalton, R.N., Karen Tripp (public representative), Dorothy Melanson, R.N., and Robin Brooks, (public representative). Jack Richards, Ass't. Attorney General, presented the State's case. Linda Lobacz did not appear and was not represented by legal counsel. James E. Smith, Esq. served as Presiding Officer.

The Board first determined that Ms. Lobacz was served with the Notice of Hearing by first class mail on or about June 19, 2006. The Board then found that none of the Board members had conflicts of interest which would bar them from participating in the hearing. The Board then took official notice of Board statutes and rules, and subsequent to the opening statement by counsel, State's Exhibits 1-3 were admitted into the Record. The Board then heard the testimony, reviewed the submission of exhibits and considered the State's closing argument after which it deliberated and made the following findings of fact by a preponderance of the credible evidence regarding the violations alleged in the Complaint.

II.

FINDINGS OF FACT

Linda Lobacz, 52 years of age, was first licensed as a Licensed Practical Nurse in the State of Maine on October 16, 1973. Her license lapsed on July 11, 2006. Ms. Lobacz was employed at New England Rehabilitation Hospital as a Licensed Practical Nurse during the summer of 2004. During that time, the hospital's pharmacy conducted a random audit regarding utilization of certain drugs. This audit revealed that Ms. Lobacz, among others, had a statistically higher utilization of Oxycodone than did other practitioners. The audit also revealed that Ms. Lobacz removed nearly one and one half times the amount of Oxycodone than the next highest user. This finding was reported to the Director of Nursing who undertook a further investigation.

Certain medications at New England Rehabilitation Hospital are dispensed, as they are in other hospitals, through the Pyxis System. This system requires that an individual who requests certain narcotics has to identify themselves through a series of procedures. Once that is done, a record is made of the dispensed drug, the person requesting the drug, and the patient to whom the drug is to be administered. The hospital's procedures also required that the administration of any drug be documented in the patient's medication administration record. Additionally, the protocol at New England Rehabilitation Hospital is for any waste drugs to be witnessed by at least one other individual. Nurse Lobacz had taken and passed the hospital's exam regarding policies concerning drug dispensing and record keeping.

The hospital's investigation concentrated on 21 patients who received care from Nurse Lobacz between June 22, 2004 and July 21, 2004. The patients, whose average age was 67, were receiving the narcotic Oxycodone for pain control. The investigation revealed that 81 doses of Oxycodone were not accounted for through documentation and six other doses were only partially accounted for. For example, one patient had 16 doses of Oxycodone which were dispensed by the Pyxis System but not documented as being administered by Nurse Lobacz to the patient. When confronted with the results of the investigation on July 17, 2004, the licensee admitted to poor documentation and was terminated by the hospital on that date for that reason.

On September 15, 2004, the Director of Nursing informed the Board that Ms. Lobacz had been terminated for insufficient documentation of narcotic administration. The Board requested additional information which was provided by the Director on October 18, 2004. On November 2,

2004, the Board's Executive Director forwarded to Nurse Lobacz a copy of the Director of Nursing's letter and attachments and also informed her that her actions had possibly violated various Board statutes. The letter further advised Ms. Lobacz that she had 30 days to respond to the contents of the correspondence in writing, or else she would be deemed to have violated 32 M.R.S.A Section 2105-A(1-A), which requires a response to a Board complaint. Ms. Lobacz did not respond to that correspondence and neither did she attend an informal conference which was scheduled to discuss the matter.

III. CONCLUSIONS OF LAW

The Board, by a vote of 6-0, and utilizing its expertise, training, and experience, concluded that Ms. Lobacz violated the following provisions of Maine law.

1. 32 M.R.S. A. Section 2105-A(1-A) which requires the Board to notify the licensee of the content of a complaint, and in connection therewith, "the licensee shall respond within 30 days." Disciplinary action is authorized by 32 M.R.S.A. Section 2105-A.2.h. which provides for sanctions for a violation of "this chapter or a rule adopted by the Board."

As stated above, Nurse Lobacz violated this section by her failure to respond to the Board's complaint.

2. 32 M.R.S.A. Section 2105-A.2.A. states the following as grounds for disciplinary action by the Board:

"The practice of fraud or deceit in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued."

Nurse Lobacz violated this section when she acted deceitfully in utilizing the Pyxis program, but intentionally did not document subsequent activity as required.

3. 32 M.R.S.A. Section 2105-A.2.E. states the following as grounds for disciplinary action by the Board: "Incompetence in the practice for which the licensee is licensed. A licensee is considered incompetent in the practice if the licensee has:

(1) engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public;”

Nurse Lobacz violated this section by failing to document drugs which were prescribed for various patients.

4. 32 M.R.S.A. Section 2105-A.2.F. states the following as grounds for disciplinary action by the Board: “Unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a standard of professional behavior that has been established in the practice for which the licensee is licensed.”

Ms. Lobacz violated this section by falsifying records in that she failed to document either the administration of or lack of administration of the prescribed drugs. Additionally, she diverted these missing medications either for her own or others’ use.

5. Rules and regulations of the Maine State Board of Nursing, Chapter 4, “Disciplinary Violations of Law”:

a. Section 1.A.(1) the practice of fraud or deceit in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued. (See A.2.A. above)

b. Section 1.A.(5) Incompetency in the practice for which he is licensed. A licensee is considered incompetent in the practice if the licensee has: (1) engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public. (See A.2.E. above)

c. Section 1.A.(6) unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the license violates a standard of professional behavior that has been established in the practice for which the licensee is licensed. (See A.2.F. above) Those standards are:

1. Section 3.(F): failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.

Nurse Lobacz failed to follow the New England Rehabilitation Hospital's protocols and policies regarding proper documentation of drugs.

2. Section 3.(K): inaccurate recording, falsifying or altering a patient or healthcare provider record.

Ms. Lobacz inaccurately recorded the administered drug regarding several patients and failed to record same for the other patients.

3. Section 3.(P): diverting drugs, supplies or property of patients or healthcare provider. Nurse Lobacz diverted drugs which were the property of the healthcare provider.

4. Section 3. (Q): 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. Section 1.A.(8): "Any violation of this chapter or any similar rule adopted by the Board of Nursing."

The Board finds that Nurse Lobacz both obtained and possessed prescription drugs which were not lawfully prescribed to her.

IV.

SANCTIONS

The Board, by a vote of 6-0, and utilizing its experience, training and expertise, hereby orders that:

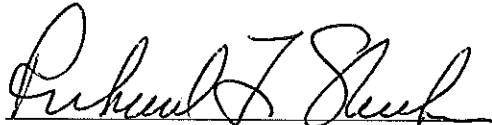
1. Linda Lobacz's **license to practice practical nursing is hereby Revoked**. The Board considers her actions to be among the most serious of violations which place the health and safety of the patient populace at great risk and are compounded by her refusal to respond to the allegations.

2. Linda Lobacz is hereby ordered to **pay the costs of the hearing not to exceed \$1,500**. She shall also be responsible for any all transcription costs if she appeals this decision. Said costs shall

be paid by the date that Ms. Lobacz applies for relicensure. The Treasurer's check or money order shall be made payable to: "Maine State Board of Nursing" and mailed to Myra Broadway, Exec. Director, 158 State House Station, Augusta, Maine 04333-0158. The hearing costs are ordered due to the fact that Nurse Lobacz failed to respond to the Board's complaint, which response may have resulted in a Consent Agreement thereby removing the need for this hearing. Moreover, the ordering of costs is consistent with past Board practices in similar situations and the Board's policy that those members of the profession who obey Board statutes and rules should not be held responsible for payment of the costs of those who do not obey such laws. (6-0)

SO ORDERED.

error VLS
Dated: ~~September 22, 2006~~

 10/10/06
Richard Sheehan, M.S., R.N., Acting Board Chairman
Maine State Board of Nursing

V.

APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S.A. Sec. 10051.3, any party that decides to appeal this Decision and Order must file a Petition for Review within 30 days of the date of receipt of this Order with the District Court having jurisdiction. The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the Maine State Board of Nursing, all parties to the agency proceedings, and the Maine Attorney General.