



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

PAUL R. LEPAGE
 GOVERNOR

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

IN RE: Michael Tetreault

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DECISION AND ORDER

License Application

I. PROCEDURAL HISTORY

Pursuant to the authority found in 5 M.R.S. § 9051 et seq., 10 M.R.S. § 8003 et seq., and 32 M.R.S. § 2105-A et seq., the Maine Board of Nursing (Board) met in public session at the Board offices in Augusta, Maine, on August 29, 2012. The purpose of the meeting was to conduct an adjudicatory hearing to determine whether Michael Tetreault had met the requirements of licensure as a registered professional nurse.

A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were public member Robin Brooks; Joanne Fortin, R.N.; Peggy Sonesson, R.N.; Elaine Duguay, L.P.N.; Susan Baltrus, M.S.N., R.N., C.; and Chair Carmen Christensen, R.N. Mr. Tetreault was not present and neither was he represented by legal counsel. John H. Richards, Esq., Assistant Attorney General, presented the State's case. Rebekah J. Smith, Esq. served as Presiding Officer.

The Board took administrative notice of its statutes and rules and admitted into evidence State's Exhibits 1-7. Following the State's opening statement, the Board's review of exhibits, and the State's closing argument, the Board deliberated and made the following findings of fact and conclusions of law by a preponderance of the credible evidence regarding the failure of Mr. Tetreault to meet the requirements of licensure.

II. FINDINGS OF FACT

Michael Francis Tetreault was first licensed in the State of Maine as a registered nurse on June 13, 1996 (State Exhibit #2). The licensee was granted multi-state privileges (MSP) by the State of Maine pursuant to the Nurse Licensure Compact based on his legal domicile being Maine. He used the MSP to practice in New Hampshire, which is also a Compact state (State Exhibits #2 & #7).

In June 2009, the Maine Board of Nursing addressed a complaint against Mr. Tetreault (State Exhibit #7). The Board had received a complaint from Jackie Brayton, Vice President of Human Resources



1
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at the Portsmouth Regional Hospital in Portsmouth, New Hampshire (State Exhibit #7). The complaint alleged possible violations of various statutes and rules enacted by the State of Maine including missing medications while Mr. Tetreault was on duty (State Exhibit #7). Mr. Tetreault did not appear at any of the three conferences scheduled to give him the opportunity to respond to the complaint (State Exhibit #7).

In simultaneous proceedings occurring before the New Hampshire Board of Nursing, and noted by the Maine Board in its June 2009 decision, the New Hampshire Board concluded that Mr. Tetreault ““had deviated from MAR practice standards on numerous occasions in January 2007 when he excessively wasted narcotics without obtaining the required counter-signatures or documenting their administration or otherwise accounting for the medication”” (State Exhibit #7). The New Hampshire Board also concluded that Mr. Tetreault ““deviated from practice standards during that same period of time when he removed medications from the narcotics dispenser, failed to sign the narcotics book and failed to administer the withdrawn medications”” (State Exhibit #7). In addition, the New Hampshire Board concluded that Mr. Tetreault ““on or about February 9, 2007 tested positive for a controlled or illegal substance for which he had no lawful prescription”” (State Exhibit #7). Finally, the New Hampshire Board concluded that Mr. Tetreault ““failed to cooperate with a Board investigation and provide information requested by the Board or its agents by not responding to telephone calls or correspondence from administrative staff”” (State Exhibit #7). In sum, the New Hampshire Board concluded that in addition to Mr. Tetreault’s failure to appear for the hearing, convincing testimony had been submitted with relation to alleged drug diversion, testing positive for controlled substances, multiple medication administration errors, failure to comply with professional medication administration standards, failure to record medication administration or otherwise account for waste, and unprofessional conduct (State Exhibit #7).

The New Hampshire Board sanctioned Mr. Tetreault by restricting his privilege to practice in New Hampshire on a Compact license (State Exhibit #7). The restriction was akin to a revocation in that if Mr. Tetreault were to apply for any New Hampshire license pursuant to that state’s Nurse Practice Act, he would have to demonstrate that he possessed sufficient knowledge, judgment, skills, abilities, and character qualifications to be licensed (State Exhibit #7).

In its decision, the Maine Board concluded that Mr. Tetreault had violated several Maine statutes, including:

1. 32 M.R.S. § 2105-A(A) (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)

2. 32 M.R.S. § 2105-A(2)(B) (habitual substance abuse that has resulted in or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of patients)
3. 32 M.R.S. § 2105-A(2)(E) (incompetent conduct, characterized by engaging in conduct that evidences a lack of ability or fitness to discharge the duty owed by a licensee to a client or patient or the general public and by engaging in conduct that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which the licensee is licensed)
4. 32 M.R.S. § 2015-A(2)(F) (unprofessional conduct by violating a standard of professional behavior that has been established for the practice for which the licensee is licensed)
5. 32 M.R.S. § 2105-A(2)(H) (any violation of this chapter or rule adopted by the Board)

The Maine Board also found that Mr. Tetreault had violated the following Board rules:

1. Chapter 4, 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)
2. Chapter 4, Section 1.A.(2) (habitual intemperance in the use of alcohol or the habitual use of narcotic or hypnotic or other substances the use of which has resulted or may result in the licensee performing his duties in a manner which endangers the health or safety of his patients)
3. Chapter 4, Section 1.A.(5) (incompetency in the practice for which he is licensed)
4. Chapter 4, Section 1.A.(6) (unprofessional conduct)
5. Chapter 4, Section 3.(K) , (O), (P) & (Q) (nursing behavior which fails to conform to legal standards and accepted standards of the nursing profession, and which could reflect adversely on the health and welfare of the public shall constitute unprofessional conduct and shall include the following: inaccurate recording, falsifying or altering a patient or health care provider record; practicing nursing when physical or mental ability to practice is impaired by alcohol or drugs; diverting drugs, supplies or property of patients or health care provider; and possessing, obtaining, furnishing or administering prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs)

As a sanction, the Maine Board revoked Mr. Tetreault's registered professional nurse license effective June 4, 2009 (State Exhibit #7). The Board reasoned that Mr. Tetreault's nursing practices constituted a serious threat of harm to the public, noting that Mr. Tetreault did not appear at any of the

informal conferences or adjudicatory hearing, serving to demonstrate a total lack of interest in matters affecting the public health and welfare as well as his license (State Exhibit #7).

On October 23, 2009, Mr. Tetreault applied for relicensure (State Exhibit #7). On April 15, 2010, Mr. Tetreault was informed that he was under investigation by the Massachusetts Board of Nursing, which had licensed him on the basis of reciprocity, due to his failure to inform the Massachusetts Board of his violations in other states (State Exhibit #7). Mr. Tetreault passed the National Council Licensure Examination for Maine on August 10, 2010 (State Exhibit #7). At the November 5, 2010 hearing on his appeal of the Maine Board's preliminary denial of his request for relicensure, Mr. Tetreault testified that he had "probably" been impaired at times while treating patients at the Portsmouth Regional Hospital before his termination there (State Exhibit #7). He further stated that he had maintained sobriety for 16 months and had refrained from using Percocet, "his drug of choice," and alcohol (State Exhibit #7). Mr. Tetreault had successfully completed an intensive outpatient program at York Hospital from July 20, 2009 until August 28, 2009, and had taken part in an aftercare program from September 1, 2009, until April 6, 2010 (State Exhibit #7).

The Board concluded that despite his progress towards reconstruction of his reputation and dealing with his abuse problem, in obtaining a position as a clinical support manager for a pharmaceutical company in November 2009, Mr. Tetreault stated to the employer that he was currently a registered nurse, approved his business cards to be printed including an "R.N." designation, and held himself out as a registered nurse to the company and the clinical staff he trained in his position (State Exhibit #7). The company terminated Mr. Tetreault in June 2010 when it discovered that his license had been revoked in Maine (State Exhibit #7).

The Board concluded that Mr. Tetreault had not met his burden of proof to demonstrate by a preponderance of the evidence that he was competent, had earned the public trust, and did not pose a threat of harm to the public (State Exhibit #7). The Board reasoned that Mr. Tetreault's lack of candor regarding his failure to divulge the Maine complaint on his Massachusetts license application and during his subsequent employment were cause for concern as to Mr. Tetreault's trustworthiness (State Exhibit #7). Further, in his position with the pharmaceutical company, Mr. Tetreault could have had access to patients and their drugs in the event that he ended his sobriety, thereby posing a threat of harm to the public (State Exhibit #7). In addition, the Board found that Mr. Tetreault was in the early stages of recovery and had not been evaluated by the Maine Professionals Health Program to determine the necessity for substance screening, monitoring, and additional safeguards to protect the public (State Exhibit #7). The Board also noted that Mr. Tetreault had not practiced bedside nursing for several years (State Exhibit #7).

Finally, the Board concluded that Mr. Tetreault had not shown an appropriate level of remorse for his actions (State Exhibit #7).

The Board indicated that it would not entertain an application for licensure until at least December 2, 2011, at which time Mr. Tetreault should be prepared to support his application with records from the Maine Professionals Health Program and proof of successful completion of a Board-approved refresher course with an emphasis on direct patient nursing (State Exhibit #7).

In March 2011, Mr. Tetreault was convicted, after pleading guilty, of driving to endanger based on events of July 8, 2009, in Sanford, Maine, that led to an initial charge of operating under the influence (State Exhibit #6).

On January 26, 2012, Lani Graham, M.D., M.P.H., Medical Director of the Maine Professionals Health Program, reported to the Board that Mr. Tetreault, who was taking part in the program, tested positive for alcohol metabolites on January 17, 2012 (State Exhibit #5). At that time, Dr. Graham provided Mr. Tetreault with a monitoring interruption from the program so that he could obtain comprehensive treatment (State Exhibit #5). Dr. Graham noted that Mr. Tetreault's poor finances made it impossible for him to remain in the program while obtaining the treatment he needed (State Exhibit #5). Dr. Graham noted that if Mr. Tetreault were unable to return to the program within three months, he would be placed on inactive status (State Exhibit #5). Mr. Tetreault agreed to present a plan as to how the monitoring interruption would be used to support his recovery (State Exhibit #5).

On March 12, 2012, Dr. Graham reported that she had not heard from Mr. Tetreault since the monitoring interruption began and she noted that she would be discharging him from the program on March 21 if he had not responded to her (State Exhibit #5). Dr. Graham noted that she believed that the biggest barrier to Mr. Tetreault's treatment was financial (State Exhibit #5).

On April 11, 2012, Mr. Tetreault submitted to the Board an application for examination and license as a registered professional nurse (State Exhibit #3).

On June 11, 2012, the Board preliminarily denied Mr. Tetreault's application to be relicensed (State Exhibit #3). The Board denied Mr. Tetreault's application on the basis of his disciplinary history as a registered professional nurse and his failure to provide sufficient evidence to demonstrate that he was rehabilitated to warrant the public trust (State Exhibit #3). The Board cited 32 M.R.S. § 2105-A(2)(B), engagement in habitual substance abuse that has resulted in and is foreseeably likely to result in performance of services in a manner that endangers the health or safety of patients (State Exhibit #3).

On June 19, 2012, Mr. Tetreault requested a hearing regarding the preliminary denial of his license request (State Exhibit #3). He reported that he attended AA on a regular basis, had finished the twelve

steps of AA, had left the Maine Professionals Health Program due to cost, and had met the requirements for relicensure (State Exhibit #3).

On August 4, 2012, by certified mail, Mr. Tetreault was notified of the hearing on his relicensure denial on August 29, 2012 (State Exhibit #1).

At 6:23 a.m. on the morning of August 29, 2012, Mr. Tetreault, by email, requested a continuance of the hearing because was "[n]ot feeling well" (8/29/12 email correspondence from Michael Tetreault to Jayne Winters). At 8:15 a.m., upon receiving the email, Jayne Winters, Probation/Compliance Officer at the Board of Nursing, responded by email to Mr. Tetreault indicating that the hearing would be held pending a decision of the hearing officer on Mr. Tetreault's request for a continuance (8/29/12 email correspondence from Jayne Winters to Michael Tetreault). At 8:30 a.m., Ms. Winters emailed Mr. Tetreault again, informing him that the hearing officer had not granted the continuance and inquiring whether he would like to participate in the hearing by telephone (8/29/12 email correspondence from Jayne Winters to Michael Tetreault). The Board voted to uphold the hearing officer's decision to deny Mr. Tetreault's continuance request. Throughout the course of the hearing, Mr. Tetreault did not respond to Ms. Winters' emails or otherwise attempt to reach the Board.

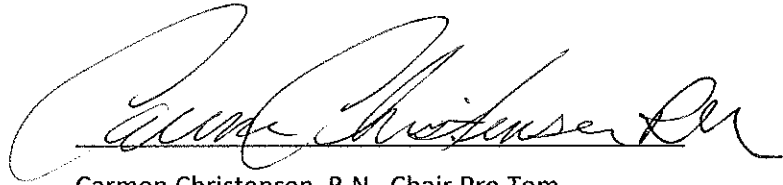
III.

CONCLUSIONS OF LAW AND SANCTIONS

1. Pursuant to 10 M.R.S. § 8008, "the sole purpose of an occupational and professional regulatory board is to protect the public health and welfare. A board carries out this purpose by ensuring that the public is served by competent and honest practitioners and by establishing minimum standards of proficiency in the regulated professions by examining, licensing, regulating and disciplining practitioners of those regulated professions."
2. The Board, by a vote of 6-0, denied Michael Tetreault's application for relicensing on the basis of violation of 32 M.R.S. § 2105-A(2)(B), exhibition of habitual substance abuse that resulted or was foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of patients.
3. The Board, by a vote of 6-0, held that in the event that Michael Tetreault reapplies for licensure, the Board would recommend against same unless Mr. Tetreault provides objective evidence of sobriety for one year by participation in a Board-approved program.

So Ordered.

Dated: September 19 , 2012



Carmen Christensen, R.N., Chair Pro Tem
Maine Board of Nursing

IV.

APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S. § 10051 and 10 M.R.S. § 8003, any party that appeals this Decision and Order must file a Petition for Review in the Maine Superior Court within 30 days of receipt of this Order.

The petition shall specify the person seeking review, the manner in which s/he is aggrieved and the final agency action which s/he wishes 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 Attorney General.