



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

JOHN ELIAS BALDACCIO
 GOVERNOR

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

IN RE: Robert W. Cavner, L.P.N.) DECISION
Licensure Disciplinary Action) AND ORDER

I. PROCEDURAL HISTORY

Pursuant to the authority found in 32 M.R.S. Sec. 2105-A(1-A)(D), *et seq.*, 5 M.R.S. Sec. 9051, *et seq.* and 10 M.R.S. Sec. 8003, *et seq.*, the Maine State Board of Nursing (“Board”) met in public session at the Board’s office located in Augusta, Maine at 11:00 a.m. on March 4, 2010. The purpose of the meeting was to conduct an adjudicatory hearing to determine whether Robert W. Cavner, L.P.N. violated Board statutes and Rules as a licensed practical nurse. A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Chair Pro Tem Dorothy Melanson, R.N.; Robin Brooks (public representative); Carmen Christensen, R.N.; Lynn F. Turnbull, R.N.; Susan C. Baltrus, M.S.N., R.N.C.; Margaret Hourigan, R.N., Ed. D., C.N.A.A., B.C.; and Elaine A. Duguay, L.P.N. Judith Peters, Assistant Attorney General, presented the State’s case. Robert Cavner was neither present nor represented by legal counsel. James E. Smith, Esq. served as Presiding Officer.

The Board first found that Robert Cavner had been duly served with the Notice of Hearing by deputy sheriff on February 9, 2010. The Board subsequently 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 its statutes and Rules, and subsequent to the opening statement by the State, 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 alleged violations.



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II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Failure to Respond Within 30 Days to a Board Complaint

Robert W. Cavner, 47 years of age, was first licensed as a licensed practical nurse in the State of Maine on January 27, 1988. His current license expires on May 15, 2010.

The Board received a complaint regarding Nurse Cavner from the Maine Department of Health and Human Services ("DHHS") in July 2006. A copy of the complaint was then sent by certified mail to Robert Cavner on July 27, 2006 and signed for on July 28 of that year. A second complaint was received by the Board on or about December 9, 2006. Attempts to deliver that complaint were finally successful on or about January 31, 2009. Despite several efforts to remind the licensee of his responsibility to respond to the complaints, no responses were forthcoming. He was then served with Notice of Hearing on February 9, 2010, but has not responded to any of the above mailings.

Title 32 M.R.S. Sec. 2105-A(1)(A) and Board Rule Chapter 4, Sec. 1.B.(3) require that the Board notify the licensee of the content of a complaint filed against the licensee as soon as possible, but not later than 60 days from receipt of this information. The licensee then is mandated to respond within 30 days. Since Mr. Cavner neglected to respond, the Board voted 7-0 to find him in violation of these provisions.

B. Substance Abuse and Diversion of Drugs

The above complaint from DHHS involved an investigation by that department into the February 18, 2006 allegation that 30 Oxycodone 15mg tablets of a pack of 60 were missing from Fieldcrest Manor, a nursing home located in Waldoboro, ME. Nurse Cavner was on duty during the time frame on February 11, 2006 when the drugs first were missing. He went on emergency mental health leave of absence as of February 12, 2006 and was therefore unavailable to be interviewed at that time. Subsequently, he was questioned and stated that he had completed filling out a 30 entry drug record which is necessary to record the dispensing of 30 of the tablets. The licensee then proceeded to begin entering on a new sheet his dispensing of some of the remaining 30 tablets. The

concern with this procedure is that the total amount of Oxycodone prescribed for the facility's patients was less than 30 tablets at the time when Nurse Cavner began filling out the new sheet. Although he stated that he had placed the old sheet into the resident's medical file, none was discovered. The DHHS investigator felt that Nurse Cavner diverted the drugs. When he completed the old form, he at least should have had some suspicion that the drugs were missing and brought it to the attention of the administration.

Thereafter, on December 6, 2006, a former landlady of Nurse Cavner wrote that "Robert Cavner, LPN verbally confessed around Thanksgiving time that he stole Oxycodone from Fieldcrest N[ursing] H[ome] while employed there on the 3-11 shift, February 2006..." and that "Robert Cavner told me he has been addicted to and stealing Oxycodone and Vicodin for 3 years." These allegations were part of the complaint package received by Nurse Cavner on or about January 31, 2009. As previously found, the licensee did not choose to defend himself against the allegations.

Based on the above facts, the Board voted 7-0 to find Robert Cavner in violation of 32 M.R.S. Sec. 2105-A(2)(B)¹ and Board Rule Chapter 4, Sec. 1.A.(2),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.

The Board, by the same vote, further concluded that the licensee, by diverting the Oxycodone, violated the provisions of 32 M.R.S. Sec. 2105-A(2)(F), "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."

C. Fraud or Deceit

Robert Cavner applied on-line to renew his practical nurse license on May 8, 2008. In that application, he answered "No" to the question: "Is there any complaint pending against your license in any state or jurisdiction?" Based upon the answers

¹ The Notice of Hearing was amended to include this allegation.

² The Notice of Hearing was amended to include this allegation.

provided, the Board, via the InforME on-line renewal program, renewed his license. As noted above, there had been a complaint issued by the Maine Department of Health and Human Services prior to the renewal application of which the licensee was aware. Since Mr. Cavner neglected to honestly answer the question, the Board voted 7-0 to find him in violation of 32 M.R.S. Sec. 2105-A(2)(A) and Board Rule Chapter 4, Sec. 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.

The Board additionally, for consistency, concluded that Mr. Cavner violated the provisions of 32 M.R.S. Sec. 2105-A(2)(H), any violation of this chapter or rule adopted by the Board.

III. SANCTIONS

The Board, exercising its experience and training, and based on the above findings and conclusions, voted 7-0 that:

1. Robert W. Cavner's license to practice licensed practical nursing is hereby **REVOKED effective March 4, 2010**. The Board reasoned that Mr. Cavner's nursing practices constitute a serious threat of harm to the public and therefore the revocation is warranted. The Board further based its decision on the fact that Mr. Cavner did not appear at any informal conferences or adjudicatory hearings, which absences serve to demonstrate a total lack of interest in matters affecting the public health and welfare as well as his license.
2. Robert Cavner shall pay the **COSTS** of this hearing **by August 14, 2010**. The costs total **\$575** (Hearing Officer: 1.15 hours attendance at hearing, 2.15 hours to write the decision @ \$115 per hour = \$402.50; Court Reporter: \$125; Copying Fees: 90 pp. @ \$.25 = \$22.50; Service by Sheriff: \$25). The bank check or money order shall be made payable to "Treasurer, State of Maine" and mailed to Myra Broadway, J.D., M.S., R.N., Executive Director, #158 State House Station, Augusta, Maine 04333-0158. Additional costs may be assessed in the event that Robert Cavner requests a transcript of the hearing.

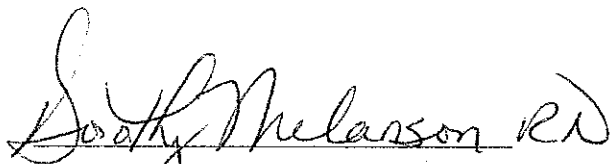
Costs shall be paid before the Board entertains any request by Robert Cavner for re-licensure.

The costs are ordered since this hearing may have been avoided had the licensee attended the informal conferences and/or this hearing to attempt to resolve the issues prior to the hearing. The costs are also in keeping with the Board's practice of assessing the costs to those who violate Board Statutes and Rules as opposed to sharing the costs with those licensees who obey same.

3. Robert Cavner shall pay a **fine of \$6,000** by August 14, 2010. The fine is the maximum \$1,500 for each of the above four violations. The bank check or money order shall be made payable to "Treasurer, State of Maine" and mailed to Myra Broadway, J.D., M.S., R.N., Executive Director, #158 State House Station, Augusta, Maine 04333-0158.

SO ORDERED.

Dated: April 14 2010


Dorothy Melanson, R.N., Chair Pro Tem
Maine State Board of Nursing

IV.

APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S. Sec. 10051.3 and 10 M.R.S. Sec. 8003(5)(G) and (5-A)(G), any party that appeals this Decision and Order must file a Petition for Review in the Maine District Court having jurisdiction 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 Maine Attorney General.