



Paul R. LePage
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 James E. Marleau, RN)
Complaint Nos. 2012-266 & 2014-25)

DECISION AND ORDER
Discipline

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, the Maine State Board of Nursing (“Board”) met in public session at the Board offices in Augusta, Maine on April 3, 2014. The purpose of the meeting was to conduct an adjudicatory hearing to determine whether grounds existed to impose discipline on Licensee James Marleau.

A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Susan Baltrus, MSN, RN; Robin Brooks (Public Member); Elaine Duguay, LPN; Joanne Fortin, RN; Peggy Soneson, RN; and Chair Margaret Hourigan, RN, EdD. Mr. Marleau was present and represented himself. Ronald Guay, Esq., represented the State. Rebekah J. Smith, Esq. served as Presiding Officer.

The Board took administrative notice of its statutes and rules and admitted into evidence State Exhibits #1 to #5 and Licensee Exhibit #1 without objection. Each party made an opening statement. The State presented the following witnesses: the Licensee; Susan Weaver, CNA at Marshall Healthcare; Josie McFarlane, former RN at Marshall Healthcare; Becky Guptill, housekeeper at Marshall Healthcare; Shannon Todd, RN, former Director of Nursing at Marshall Healthcare; and Debra Murphy, RN, Administrator at Marshall Healthcare. Due to extenuating circumstances, Susan Weaver and Josie McFarlane testified by phone. The Licensee did not present any additional witnesses. Each party made a closing statement. The Board then deliberated and made the following findings of fact and conclusions of law by a preponderance of the credible evidence regarding the allegations against the Licensee.



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

II. FINDINGS OF FACT

1. James E. Marleau was issued a license as a Registered Professional Nurse by the Maine State Board of Nursing on September 7, 2011. (State Exhibit #2.)
2. Marshall Healthcare is a long-term care facility. (Testimony of Murphy.) Mr. Marleau began working at Marshall Healthcare as a per diem nurse on March 6, 2012. (Testimony of Marleau.)
3. Susan Weaver, a CNA at Marshall Healthcare, was preparing patient C.T. for bed on November 7, 2012 when C.T. indicated that she had a headache. (Testimony of Weaver.) Ms. Weaver told C.T. she would get the charge nurse for him to authorize some medicine, at which point the patient indicated that she did not want Mr. Marleau, then the charge nurse, in her room because he had fondled himself in her room. (Testimony of Weaver.) On November 15, 2012, Shannon Todd, RN, Director of Nursing at Marshall Healthcare, decided not to interview the resident regarding this incident after discussing the matter with Nancy Tripp, LPN, who worked at the facility and was the daughter-in-law of C.T. (State Exhibit #5.) Ms. Tripp had interacted with C.T. shortly after she made the allegation and felt that C.T. had made up the incident as she consistently fabricated stories of abuse by men. (State Exhibit #5.) A subsequent Maine Department of Health & Human Services (“DHHS”) investigation also noted that Ms. Tripp had concluded that the incident C.T. complained of to Ms. Weaver did not actually occur after immediately interviewing C.T. after she made the allegation. (State Exhibit #4.)
4. Josie McFarlane, an RN at Marshall Healthcare in November 2012, was the charge nurse on duty on November 8, 2012. (Testimony of McFarlane.) On that day, she observed Mr. Marleau standing at the medication cart dispensing medications. (Testimony of McFarlane.) Patient M.V., who was blind and utilized a wheelchair, often sought attention and an understanding of her environment by feeling with her hands, pedaling her wheelchair forward, and sweeping her arm back and forth. (Testimony of McFarlane.) From her wheelchair, M.V. reached out to Mr. Marleau at the medication cart and clung to him, at which point Ms. McFarlane removed M.V. and locked her chair so she could not approach Mr. Marleau again. (Testimony of McFarlane.) Ms. McFarlane then left

the area, but when she returned she saw that M.V. had again approached Mr. Marleau; Ms. McFarlane asked another employee to take M.V. to her room. (Testimony of McFarlane.) Ms. McFarlane then heard Mr. Marleau say, "You know, she was at the right height," which Ms. McFarlane took to be a comment referencing a sexual act. (Testimony of McFarlane.) Ms. McFarlane did not perceive M.V. to be touching Mr. Marleau with sexual intent. (Testimony of McFarlane.) Ms. McFarlane stated in a subsequent interview with the DHHS that she did not believe that M.V. was able to hear Mr. Marleau's comments. (State Exhibit #4.)

5. Becky Guptill, who was employed as a housekeeper at Marshall Healthcare in November 2012, was present on November 8, 2012 and observed Mr. Marleau close to the medication cart when M.V. approached him in her wheelchair and put her hands up the back of his shirt. (Testimony of Guptill.) She heard Mr. Marleau say, "Oh, she is coming around front," at which point he turned so he was facing M.V. and ran his fingers through her hair and subsequently stated, "Oh, she is at the right height now." (Testimony of Guptill.) Ms. Guptill interpreted Mr. Marleau's comments and behavior to be sexually oriented. (Testimony of Guptill.) Ms. Guptill did not perceive M.V.'s touching of Mr. Marleau to be sexual in nature. (Testimony of Guptill.)
6. Debra Murphy, RN, was the Administrator of Marshall Healthcare in November 2012. (Testimony of Murphy.) On November 9, 2012, she was made aware of the allegation that Mr. Marleau had acted inappropriately towards patient M.V. the previous evening. (Testimony of Murphy.) Ms. Murphy interviewed Ms. Guptill and Ms. McFarlane in order to conduct a preliminary investigation, after which she discussed the matter with Director of Nursing Shannon Todd and transferred the remainder of the investigation to her. (Testimony of Murphy.)
7. Shannon Todd, RN, was employed as the Director of Nursing at Marshall Healthcare in November 2012. (Testimony of Todd.) She interviewed Mr. Marleau regarding the alleged incident involving M.V. (Testimony of Todd.) Ms. Todd informed Mr. Marleau that he was being suspended pending an investigation. (Testimony of Todd.) Mr. Marleau acknowledged that when M.V. began to bring her hands around to the front of his body, he turned around and commented that she was at the right

height, although he made the comment to another employee, not to M.V. (Testimony of Todd.) Ms. Todd understood Mr. Marleau to indicate that his comment was sexual in nature, but was directed to staff rather than M.V., a fact that he requested be included in her report. (Testimony of Todd.) Ms. Todd asked Mr. Marleau if he felt he would be able to maintain professional boundaries with staff and patients and he indicated that he did not because he had made too many friends at the facility and that he was resigning. (Testimony of Todd.) Mr. Marleau did not make any statement to indicate that he felt that the environment was unsafe for him when he resigned. (Testimony of Todd.) Ms. Todd asked Mr. Marleau to put his version of the incident and his resignation in writing, which he agreed to do, but did not. (Testimony of Todd.) Ms. Todd did not perceive M.V.'s reaching out to be sexual in nature and there was no care plan in place for M.V. regarding sexually inappropriate behavior. (Testimony of Todd.)

8. Although Mr. Marleau testified that he resigned on November 9, 2012 because his supervisors refused to acknowledge that C.T. and M.V. had exhibited sexually inappropriate behaviors towards him, he was not yet aware of the allegation by C.T. at the time of his resignation. (Testimony of Marleau.)
9. On December 12, 2012, Ms. Murphy reported to the Board that James Marleau, a per diem RN at Marshall Healthcare Facility, has been accused of making sexual remarks to a resident. (State Exhibit #3.) Ms. Murphy notes that the complaint had been investigated pursuant to facility policy and referred to the Maine Department of Health and Human Services. (State Exhibit #3.) Ms. Murphy reported that the facility had planned to suspend Mr. Marleau while an investigation occurred, but that Mr. Marleau had admitted the conversation was sexual in nature and inappropriate and had resigned effective immediately. (State Exhibit #3.) Ms. Murphy noted that although Mr. Marleau had been asked to put his version of the incident in writing, as well as submit a written resignation, he had not submitted either. (State Exhibit #3.)

10. By letter dated December 19, 2012, the Board notified Mr. Marleau of the complaint and advised that he was required by state statute to respond within 30 days, which was January 22, 2013. (State Exhibit #3.)
11. By letter to the Board dated January 22, 2013, Mr. Marleau responded to the complaint, stating that he did not understand why Ms. Murphy indicated that he had admitted to a sexual conversation and that he resigned because his supervisors refused to acknowledge that M.V. and several other residents had been extremely sexually inappropriate to him, thereby creating an unsafe work environment. (State Exhibit #3.)
12. On February 19, 2013, Jo Shannon, RN, Health Services Consultant, DHHS, conducted a telephone interview with Mr. Marleau regarding the November 8, 2012 incident with M.V. (State Exhibit #4.) When Mr. Marleau was asked about the incident, he acknowledged that the comments “she’s headed around the front” and “she’s at the right height” were made, but he could not recall if he made them or another staff member did. (State Exhibit #4.) Ms. Shannon also informed Mr. Marleau about the allegations regarding a November 7, 2012 incident with C.T., to which he responded that C.T. was sexually inappropriate towards him at times, but he had not committed the complained of conduct. (State Exhibit #4.)
13. On January 28, 2014, the Board received a Reportable Incident Form from Marshall Healthcare regarding the November 7, 2012 allegation of inappropriate conduct by Mr. Marleau toward C.T. (State Exhibit #5.)
14. By letter dated January 30, 2014, the Board informed Mr. Marleau that it was initiating a complaint regarding the report from Marshall Healthcare and informed Mr. Marleau that he was required by state statute to respond within 30 days, which was March 5, 2014. (State Exhibit #5.)
15. By letter dated March 6, 2014, Mr. Marleau responded that the allegations concerning patient C.V. were fabricated and expressed concern that the two allegations were made within a 24-hour period. (Licensee Exhibit #1.) Mr. Marleau testified that he mailed the response on March 6, one day after the deadline for submission, and acknowledged that Board staff informed him on more than one

occasion that the Board had not received it and invited him to submit it by fax or email. (Testimony of Marleau; State Exhibit #5.) The response was provided to the Board on the day of hearing. (Testimony of Marleau.)

16. By certified letter dated March 11, 2014, the Board notified Mr. Marleau that a hearing would be held on April 3, 2014. (State Exhibit #1.)

III. GOVERNING STATUTES AND RULES

1. A licensee of the Maine State Board of Nursing must respond to a complaint within 30 days. 32 M.R.S. § 2015-A (1-A).
2. The Maine State Board of Nursing may modify, suspend, revoke, or refuse to renew the license of a licensee if the licensee engages in 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. 32 M.R.S. § 2105-A (2) (F).
3. The Maine State Board of Nursing, for each violation of applicable laws, rules, or conditions of licensure by a licensee, may issue warnings, censures, or reprimands; suspend a license for up to 90 days per violation; revoke a license; impose civil penalties of up to \$1,500 per violation; and impose conditions of probation upon a licensee for such time period as the Board deems appropriate. 10 M.R.S. § 8003(5) (A-1).
4. The Maine State Board of Nursing may assess the licensee the actual expenses incurred by the Board or its agents for investigations and enforcement duties performed. 10 M.R.S. § 8003-D.

IV. CONCLUSIONS OF LAW

The Board, considering the above facts and those alluded to in the record but not referred to herein, by unanimous vote, found that it had jurisdiction over James Marleau and determined as follows:

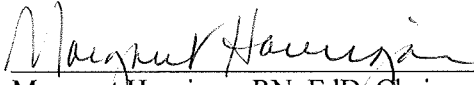
1. James Marleau engaged in unprofessional conduct in violation of 32 M.R.S. § 2105-A (2) (F) by making inappropriate sexual comments about and gestures towards patient M.V. on November 8, 2012.

2. James Marleau engaged in unprofessional conduct by not responding to the January 30, 2014 Board Notice of Complaint/Provider Report within 30 days in violation of 32 M.R.S. § 2105-A (1-A).
3. As a sanction, the Board:
 - a. Issued James Marleau a **WARNING** for unprofessional conduct regarding both incidents of unprofessional conduct.
 - b. Imposed a period of three years of probation while working as a registered professional nurse, during which James Marleau must not work under his license in an unstructured setting, including assignments from temporary employment agencies, home health, school nursing, work as a travel nurse, or within the correctional system. During the period of probation, Mr. Marleau must be supervised by an on-site RN who provides quarterly reports to the Board addressing Mr. Marleau's professional practice. Also during the period of probation, Mr. Marleau must complete an educational program regarding appropriate boundaries to be pre-approved by the Executive Director of the Board. In addition, Mr. Marleau's multi-state privilege is revoked during the period of probation and his license is limited to the jurisdiction of Maine.
 - c. Imposed the actual costs of **\$1,914.34** for this proceeding on James Marleau, payable during the three-year period of probation.

The Board, by unanimous vote, also dismissed the allegation that James Marleau spoke inappropriately and exposed himself to patient C.T. on November 7, 2012 because the allegation was not proven by a preponderance of the evidence.

So Ordered.

Dated: May 15, 2014


Margaret Hourigan, RN, EdD, Chair
Maine State Board of Nursing

V. APPEAL RIGHTS

Pursuant to the provisions of 10 M.R.S. § 8003(5) and 5 M.R.S. § 11002(3), any party that appeals this Decision and Order must file a Petition for Review in the 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.