



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: RICHARD C. MILES, RN
of Orrington, ME
License No. RN49864

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CONSENT AGREEMENT
FOR
PROBATION

Complaint 2010-390

INTRODUCTION

Pursuant to Title 32 Chapter 31, the Maine State Legislature endowed the Board with the power and duty to regulate the practice of nurses licensed by the Board, including issuing licenses and investigating complaints. Pursuant to 10 M.R.S. §8008, the Legislature provided that the sole purpose of the Board is to "protect the public health and welfare" and that "other goals or objectives may not supersede this purpose."

This document is a Consent Agreement ("Agreement") regarding Richard C. Miles's license as a registered professional nurse ("RN") in the State of Maine. The parties to this Agreement are Richard C. Miles ("Licensee" or "Mr. Miles"), the Maine State Board of Nursing ("the Board"), and the Office of the Attorney General, State of Maine. A subcommittee of the Board met with the Licensee in an informal conference on August 21, 2013. The parties enter into this Agreement pursuant to 32 M.R.S. §2105-A (1-A)(B), 10 M.R.S. §§8003 (5)(A-1)(4) and 8003 (5)(B) in order to resolve Complaint 2010-390.

FACTS

1. Licensee has been licensed to practice as an RN in Maine since June 16, 2004.
2. On August 24, 2010, the Board received notification from Eastern Maine Medical Center ("EMMC") that the Licensee had been terminated for diversion of controlled substances. As a result of receiving this information, the Board initiated a complaint against the Licensee's Maine nursing license. Board staff docketed the Complaint as 2010-390.
3. On August 25, 2010, the Board issued a Notice of Complaint to Licensee relating to Complaint 2010-390.
4. On September 23, 2010, the Board received the Licensee's written response to the Notice of Complaint.
5. On February 8, 2013, the subcommittee of the Board held an informal conference with the Licensee regarding Complaint 2010-390 to review whether he had violated the following statutes:

32 M.R.S. §2105-A (2)(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.

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.

32 M.R.S. §2105-A (2)(E). A licensee is considered incompetent in the practice for which he is licensed if the licensee has:



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OFFICES LOCATED AT: 161 CAPITOL ST., AUGUSTA, ME
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(1) Engaged in conduct which evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public.

(2) Engaged 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.

32 M.R.S. §2105-A (2)(F). The licensee engaged in unprofessional conduct which violates a standard of professional behavior that has been established in the practice for which he is licensed.

32 M.R.S. §2105-A (2)(H). A violation of a Maine Revised Statute, Title 32, Chapter 31 and rules adopted by the Board.

6. During the informal conference, the subcommittee of the Board considered the very thorough investigation conducted by EMMC, as well as the Licensee's explanation of the events.
7. Evidence of potential drug diversion and/or substandard administration of medication before the Board included:
 - a) personal possession of oxycodone without documentation
 - b) multiple instances of removal of other medications without documentation
 - c) multiple instances of improper wasting of narcotics
 - d) the presence of narcotics and drug paraphernalia in his locker
 - e) admission of "sloppy" documentation of administered narcotics
8. Based on the evidence before it, the subcommittee of the Board deferred action on Complaint 2010-390, continued the informal conference and requested that the Licensee obtain a substance abuse evaluation to be conducted by the Medical Professionals Health Program.
9. On August 21, 2013, the Board held the continued informal conference with the Licensee regarding Complaint 2010-390 in order to review the findings of the substance abuse screening evaluation. The evaluation did not find ongoing substance abuse as an issue for the Licensee. The evaluation did, however, note a potential for concern based on the time proximity related to previous medically prescribed use of narcotics and the alleged diversion event. The evaluator recommended a number of practice precautions, including monitoring of narcotics administration, as professional protective devices for the Licensee.
10. Following the informal conference, the subcommittee voted to offer the Licensee a Consent Agreement which would allow the Licensee to continue his practice of nursing while addressing the concerns of potential drug diversion.
11. Absent Licensee's acceptance of this Agreement by signing, dating, and returning it to the Maine State Board of Nursing, 158 State House Station, Augusta, Maine 04333-0158 **on or before January 3, 2014**, the Board will take further action. In the absence of an agreement the Board could impose, subsequent to adjudicatory proceedings, findings beyond those contained above and also impose greater adverse action including fines, suspension or revocation of Licensee's license.

AGREEMENT

12. Licensee admits to the Facts as stated above and admits that such conduct constitutes grounds for the Board to impose discipline against his Maine nursing license under the following laws and regulations:

32 M.R.S. §2105-A (2)(F) and Board Rules Chapter 4 §1.A.6 for engaging in conduct that violates any standard of professional behavior which has been established in the practice for which the licensee is licensed; and

Board Rule Chapter 4 §3 (F) for failing to follow policies and procedures in the practice situation designed to safeguard the patient.

13. As discipline for the violations admitted to in paragraph 12 above, Licensee agrees that unless this Agreement is modified in writing by all of the parties hereto, **his license to practice as a registered professional nurse shall be probationary for the next five (5) years** following the execution of this Agreement and his license will be subject to the following conditions:

- a) **Nurse Supervisor.** Licensee's nursing employment is restricted during the period of probation to structured settings with on-site supervision by another registered nurse. Structured settings shall not include assignments from temporary employment agencies, home health care, school nursing, work as a travel nurse, or within the correctional system.

The nurse supervisor must be in direct contact with the Licensee (i.e., physically on site) and be able to, at all times, observe his nursing performance, in particular, during the administration of narcotics. The nurse supervisor shall inform the Board if the Licensee demonstrates any issues with regard to inappropriate decision-making, ability to concentrate, absenteeism, drug diversion, narcotic administration/documentation or any other concerns. The supervising nurse shall report such information to the Board by telephone and in writing within 24 hours or as soon thereafter as possible. In addition, the nurse supervisor shall provide the Board with a written report regarding Licensee's nursing performance every three (3) months following the execution of this Agreement. It is the Licensee's responsibility to ensure that these reports are provided to the Board in a timely manner.

- b) **Notification to Nursing Employers/Potential Employers/Licensing Jurisdictions.** Licensee shall provide a copy of this Agreement to any nursing employers or potential nursing employers, and to any jurisdiction in which he holds or seeks a nursing license.

- c) **Contact Address/Change of Contact Address – Notification Requirement.** Licensee shall provide the Board with a current address at which he may be contacted by the Board. Licensee shall inform the Board in writing within 15 days of any change of his contact information.

- d) **Employment Change – Notification Requirement.** Licensee will notify the Board in writing within five (5) business days of any change in his nursing employment and/or enrollment in a nursing education program. Notice under this section shall include the place and position of employment and/or the nursing educational program.

- e) **Nursing Employment Restrictions.** The State of Maine is a "party state" that has adopted the Nurse Licensure Compact ("Compact"), which is set out in Chapter 11 of the Board Rules. The State of Maine is Licensee's "home state" of licensure and primary state of

residence, which means that he has declared the State of Maine as his fixed permanent and principal home for legal purposes relating to his 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. Licensee understands and agrees that this Agreement is applicable to his multi-state licensure privilege, if any, to practice nursing in Compact states.

IT IS FURTHER AGREED that while Licensee's license is subject to this Agreement, he may not work outside the State of Maine pursuant to a multi-state privilege without the written permission of the Maine State Board of Nursing and the Board of Nursing in the party state in which he wishes to work.

14. Violation of any of the terms or conditions of this Agreement by Licensee shall constitute grounds for discipline including, but not limited to, modification, suspension, or revocation of licensure or the denial of licensure renewal.
15. In accordance with this Agreement and pursuant to 10 M.R.S. §8003(5)(B), the Board and Licensee agree that the Board has the authority to issue an order modifying, suspending, and/or revoking his license in the event that he fails to comply with any of the terms or conditions of this Agreement.
16. In the event that Licensee is alleged to have violated any condition of his probation, the Board will give written notice to him regarding his failure to comply, sent to the last known address that is on file with the Board. Licensee shall, within 30 days from receipt of this notification, submit a written response to the Board regarding the alleged violation. The Board will review Licensee's response to determine what action, if any, it will take. **If the Licensee fails to timely respond to the Board's notification regarding noncompliance, his license may be immediately suspended pending a hearing at the next scheduled Board meeting.** If after notice and hearing, the Board finds that the Licensee has failed to meet probationary conditions, the Board may take any disciplinary action that it deems appropriate and impose any of the sanctions including, but not limited to, that found in 10 M.R.S. §8003 and 32 M.R.S. §2105-A.
17. This Agreement is not appealable and is effective until modified or rescinded by the parties to this Agreement. This Agreement cannot be modified orally. It can only be modified by writing and only if signed by all of the parties to the Agreement and approved by the Office of the Attorney General. Licensee may file a written request, together with any supporting documentation, to modify the terms and conditions of this Agreement. The Board retains the sole discretion to: (a) deny Licensee's request; (b) grant Licensee's request; and/or (c) grant Licensee's request in part as it deems appropriate to ensure the protection of the public. Any decision by the Board as a result of Licensee's request to modify this Agreement need not be made pursuant to a hearing and is not appealable to any court.
18. The Board and the Attorney General may communicate and cooperate regarding Licensee's practice or any other matter relating to this Agreement.
19. 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.
20. This Agreement constitutes adverse action and is reportable to the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB).

21. Nothing in this Agreement shall be construed to affect any right or interest of any person not a party hereto.
22. For the purposes of this Agreement, the term "execution" means that date on which the final signature is affixed to this Agreement.
23. Licensee acknowledges by his signature hereto that he has read this Agreement, that he has had an opportunity to consult with an attorney before executing this Agreement, that he has executed this Agreement of his own free will and that he agrees to abide by all the terms and conditions set forth in this Agreement.

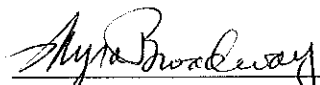
DATED: 12/31/2013



LICENSEE RICHARD C. MILES, RN

FOR THE MAINE STATE BOARD OF NURSING

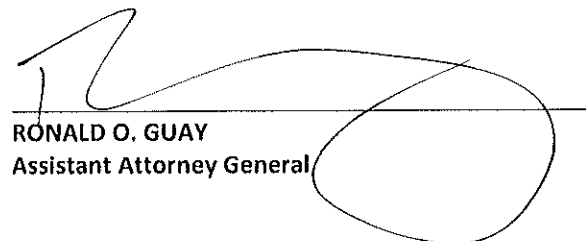
DATED: Jan 2, 2014



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

FOR THE OFFICE OF THE ATTORNEY GENERAL

DATED: 1/3/14



RONALD O. GUAY
Assistant Attorney General

Effective Date: 1/3/14