

MAINE STATE BOARD OF NURSING

IN RE: Marie E. Dempsey, RN ) DECISION  
Disciplinary Action ) AND ORDER

I. PROCEDURAL HISTORY

Pursuant to the authority found in 32 M.R.S. Sec. 2105-A(1-A), *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 hearing room located in Augusta, Maine at 10:30 a.m. on June 6, 2013. The purpose of the meeting was to conduct an adjudicatory hearing to determine whether grounds exist to affirm the Board’s earlier denial of Marie Dempsey’s Renewal Application for Licensure as a Registered Professional Nurse in the State of Maine. A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Chair Pro Tem Susan C. Baltrus, MSN, RN, CNE; Robin Brooks (public representative); Carmen Christensen, RN; Elaine Duguay, LPN; Joanne Fortin, RN; and Peggy Sonesen, RN. Andrew Black, Assistant Attorney General, presented the State’s case. Nurse Dempsey was present and represented by Attorney Christopher Taintor. James E. Smith, Esq. served as Presiding Officer.

The Board first determined that none of the Board members had conflicts of interest that would bar them from participating in the hearing. The Board then took official notice of its statutes and rules, and subsequent to the parties’ opening statements, State’s Exhibits 1-20 and Appellant’s Exhibits 1-36 were admitted into the Record. The Board then heard the testimony, reviewed the submission of exhibits, and considered the parties’ closing arguments, after which it deliberated and made the following findings of fact by a preponderance of the credible evidence and conclusions of law regarding the alleged violations.<sup>1</sup>

<sup>1</sup> The State dismissed Counts 2 and 3 at the beginning of the Board’s deliberations.

## II.

### FINDINGS OF FACT

#### **A. History of Marie Dempsey's Alcoholism**

Appellant Marie Dempsey, a 41-year-old resident of Windham, Maine, has been licensed as a Registered Professional Nurse for approximately 16 years. She was first licensed as such in Maine on July 12, 2001, shortly after she moved to this state. She admits to being an alcoholic and to deal with that problem, attends Caduceus meetings at least once per week and Alcoholics Anonymous (AA) meetings three times each week. Significantly, since April 2012 Nurse Dempsey has had an AA sponsor ("AM") who has been in that role for many years and is respected by her fellow AA members. Appellant's previous sponsor apparently quit.

Ms. Dempsey also has been receiving counseling related to her former abuse of alcohol and was evaluated on the advice of her attorney by the Top of the Hill Counseling Services in Portland, Maine. Ms. Dempsey completed two one-hour sessions on February 18, 2013 and February 25, 2013 with Top of the Hill evaluator/clinician Christopher Coose, LADC, CCS. He noted that Nurse Dempsey began to treat with counselor Michael Alpren in 2009 for depression and drinking. Mr. Alpren referred Ms. Dempsey to Mary Menard, LADC for the alcohol problem. In April 2010, Nurse Dempsey was admitted for Level I treatment with Ms. Menard and in September of that year, the Appellant began attending AA meetings and remained abstinent from alcohol for 8.5 months.

Ms. Menard retired in April 2011; the Appellant had a relapse on July 27, 2011 which lasted for ten days and resulted in an Operating Under the Influence (OUI) conviction. She was admitted to Mercy Hospital in Portland, Maine on August 1, 2011. Her intake sheet revealed that she daily drank a 12-pack of beer and had been drinking alcohol since the age of 13. On August 2, 2011, Ms. Dempsey was admitted to the Mercy Recovery Center (MRC) Intensive Outpatient Program (IOP). She completed the IOP on August 15, 2011 and subsequently attended six group sessions at MRC. The next significant event in Ms. Dempsey's life occurred in April 2012, when she began to work with her sponsor "AM" to learn different methods of dealing with her alcoholism.

The evaluation conducted by Chris Coose on February 18, 2013 and February 25, 2013 did not reveal any concerns. Mr. Coose noted that Nurse Dempsey's primary stressor is working to earn enough money. She was deemed motivated to remain abstinent. Moreover, on February 28, 2013, Counselor Coose had a 20-minute conversation with Ms. Dempsey's sponsor. Sponsor AM was confident that Ms. Dempsey was taking a different approach to her recovery this time.

Counselor Coose wrote in the evaluation that, "Marie appears to be content and dynamic in her approaches to abstinence." He added that Appellant Dempsey was highly motivated to change and her prognosis for continued abstinence/recovery was good to excellent. Mr. Coose recommended that Nurse Dempsey continue to attend the Caduceus group, continue in a Level I aftercare setting, continue to build sober supports in her 12-Step recovery groups and complete the step work with her AA sponsor. Lastly, he recommended that Nurse Dempsey continue to monitor the discontinuation from alcohol and seek counseling with a mental health professional if necessary. Counselor Coose did not think that Nurse Dempsey was currently engaged in any illicit drug use.

### **B. Credibility of Marie Dempsey**

Marie Dempsey appeared to tell the partial truth, but not the whole truth, regarding some of her past work evaluations. She downplayed her use of drugs to Christopher Coose, who found no significant recent use of illicit substances. The record reveals, however, that as of August 1, 2011, Ms. Dempsey was using Morphine, Percocet, and Klonopin together with alcohol. She used marijuana daily from age 20 to 30 and apparently was recently using Klonopin, marijuana, and alcohol on the night of her automobile accident on July 26, 2011.

Additionally, Nurse Dempsey gave at least three different explanations of the incident which occurred when her car went off the road while she was inebriated. One story was that she was drunk and went off the road; another explanation was that she swerved to miss an animal and went off the road; a third rendition appears in her letter to the Board dated August 14, 2012 wherein she wrote: "...I felt that I could not make it home safely. I decided to pull over to the side of the road...and was standing by my car when a Windham Police Officer pulled over..." The subject officer testified at this hearing that Ms. Dempsey's car was down over an embankment next to a row of trees.

Perhaps the most troubling statement regarding Nurse Dempsey's credibility is found in her October 20, 2012 letter to the Board wherein she states: "I have been employed by Maine Medical Center for the past ten years without incidence or evidence of patient neglect." This statement is countered by her employer's Record of Warning given to her by her manager who wrote: "Poor patient care as evidenced by:

- Error in Heparin administration with resultant harm to patient and disregard for 2 person verification process.
- Triage - poor customer service complaint this week; peer staff relate many instances of leaving her area and not attending to [patient] flow needs.

- VSA call – [Nurse Dempsey] called to respond to VSA. Told Coordinator she had “taken a sleeper” and couldn’t come in. Marie presents an alternate story. Has removed self from call schedule for duration of October and November due to transportation issues with approval from Manager.
- Peer staff relate an overall difficulty in focusing on priorities of care for her patients.
- Action Taken and Plan for Resolution of Problem with Deadline for Improvement:
  - Review of Heparin policy (High Alert medications)
  - Suggest an EHO evaluation for safety screening.”

Moreover, in Ms. Dempsey’s 2011 Annual Performance Review, her manager comments that:

- “Marie has had policy reviews and performance counseling to follow up with a couple of patient care situations with less than optimal outcomes.
- Professional issues: poor customer service, difficulty focusing on priorities of care, abrupt communication, unapproachable by peers, leaving assigned area.
- Peer feedback has identified that Marie’s behavior can affect overall patient LOS [“Length of Stay”] and department goals. Marie has received this feedback, but she has had a difficult time with accountability in this area.”

The manager gave her an RD rating (**Requires Development**). Despite these lapses, Appellant’s employer has supported her and has transferred her to the hospital’s radiology department.

### III. CONCLUSIONS OF LAW

Based on the above facts and those found in the record but not alluded to herein, and utilizing its experience and training, the Board, by a vote of 6-0, concluded that Marie Dempsey violated the provisions of 32 M.R.S. Sec. 2105-A(2)(B) and Board Rules Chapter 4, Sec. 1.A.(2). (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.)

### IV. SANCTIONS/CONDITIONS

The Board further voted 6-0 to renew Marie Dempsey’s license to work as a Registered Professional Nurse. The Board understands that its actions are governed by the provisions of 5 M.R.S. Sec. 8008 which read as follows:

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. Other goals or objectives may not supersede this purpose.

The license shall be conditional and RN Dempsey placed on probation for a period of five (5) years from the date of the execution of this Decision and Order. Those conditions are as follows:

1. Ms. Dempsey is hereby placed on probation for a period of five (5) years from the date of execution of this Decision and Order, effective only while she is employed in nursing practice and/or enrolled in a clinical nursing educational program. Her probationary license will be subject to the following conditions:
  - a. Ms. Dempsey shall fully comply with the conditions of probation in this Decision & Order. She shall inform the Board in writing within 15 days of any address change.
  - b. Ms. Dempsey must notify the Board in writing within five (5) business days after any change in her nursing employment. Notice under this section shall include the place and position of employment.
  - c. Ms. Dempsey will abstain completely from the use of alcohol or drugs, with the exception of substances used in accordance with valid prescriptions from healthcare providers who are aware of her history.
  - d. Ms. Dempsey will arrange for and ensure the submission of quarterly reports to the Board by her treatment providers and such reports shall continue until her probation is terminated. If Ms. Dempsey's treatment is terminated during her probation, she shall notify the Board and provide written documentation.
  - e. Ms. Dempsey shall enroll and participate within 30 days of this fully-executed Decision and Order in the Medical Professional Health Program (MPHP) or a similar monitoring program with random urine and/or substance screens.
  - f. Ms. Dempsey's nursing employment is restricted to daytime hours during the period of probation and to structured settings with on-site supervision by a registered professional nurse. Structured settings shall not include assignments from temporary employment agencies, home health, school nursing, work as a travel nurse or within the correctional system.

- g. Ms. Dempsey will arrange for and ensure the submission to the Board of quarterly reports from her nursing employer regarding her nursing practice. If during the period of probation, her employment as a nurse or her educational program terminates, she shall notify the Board in writing within five (5) business days after she is terminated or separated, regardless of cause, with a full explanation of the circumstances surrounding the termination or separation.
  - h. 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 Ms. Dempsey’s “home state” of licensure and primary state of residence, which means that she has declared the State of Maine as her fixed permanent and principal home for legal purposes; her 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. Ms. Dempsey understands that this Decision is applicable to her multi-state licensure privilege, if any, to practice nursing in Compact states. While Ms. Dempsey’s license is subject to this Decision, she 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 she wishes to work.
2. Nurse Dempsey is hereby put on notice that if any member of the Board or the Board’s Executive Director receives reasonably reliable information suggesting that she has not remained substance-free in accordance with this Order, her license will be immediately and automatically suspended pending further review by the Board. In the event any member of the Board or its Executive Director receives such information, it will be immediately forwarded to Ms. Dempsey for response. Ms. Dempsey understands that in such an event, her license shall remain suspended pending a hearing. The Board shall hold a hearing within 60 days of the automatic suspension unless both the Licensee and the Board agree to hold the hearing later, or the Executive Director and/or the Office of the Attorney General earlier determine that such information is without merit. If the information received is proven to be inaccurate or incorrect, either through hearing or determination by the Executive Director and/or the Office of the Attorney General, Ms. Dempsey’s license will be immediately reinstated retroactive to the date of suspension.
  3. If Nurse Dempsey violates any other condition of her probation, the Board will give written notice to the Licensee regarding her failure to comply. The Licensee has 30 days from receipt of this notification to respond to the Board, in writing, regarding the alleged

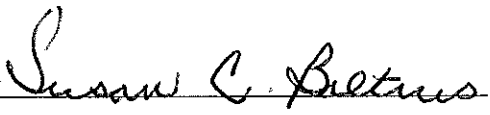
violation. The Board will review the Licensee's response to determine what action, if any, it determines to take. If the Licensee fails to timely respond to the Board's notification regarding her failure to comply, her license will be immediately suspended pending a hearing at the next regularly scheduled Board meeting. If after notice and a hearing, the Board finds that the Licensee has failed to meet the conditions of probation, the Board may take any disciplinary action which it deems appropriate and impose any of the sanctions including, but not limited to, that found in Title 10 M.R.S. §8003 and Title 32 M.R.S. §2105-A.

4. This Decision & Order 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.
5. This Decision & Order constitutes a final adverse licensing action that is reportable to the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB) pursuant to Section 1128E of the Social Security Act and 45 C.F.R. Part 61.

Wherefore, the **APPEAL** is **GRANTED**.

**SO ORDERED.**

Dated: July 18, 2013

  
Chair Pro Tem Susan C. Baltrus, MSN, RN, CNE  
Maine State Board of Nursing

V. **APPEAL RIGHTS**

Pursuant to the provisions of 5 M.R.S. Sec. 11001 & 11002, and 10 M.R.S. Sec. (5-A)(G), any party that appeals this Decision and Order must file a Petition for Review in the Maine Superior 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 Attorney General.