



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

JOHN ELIAS BALDACCI
 GOVERNOR

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

In Re:)
 Michael E. Weiss) DECISION AND ORDER
)

INTRODUCTION

Pursuant to 32 M.R.S.A. § 2105-A, (1-A) *et seq.*, 5 M.R.S.A. § 9051 *et seq.*, and 10 M.R.S.A. § 8003(5), the Maine State Board of Nursing (“the Board”) met in public session at the Board’s offices located in Augusta, Maine on January 16, 2008 for an adjudicatory hearing in the matter of Michael E. Weiss. A quorum of the Board was in attendance during all stages of the proceeding. Participating and voting board members were Board Chair Therese B. Shipps, D.N.Sc., R.N., Dorothy Melanson, R.N., Susan Brume, L.P.N., Susan Baltrus, R.N., and Robin Brooks.

John H. Richards, Assistant Attorney General, presented the State’s case. Michael Weiss was not present and was not represented by counsel at the proceeding. Susan Sparaco, Assistant Attorney General, served as the Board’s hearing officer.

The State called as witnesses Myra Broadway, Executive Director of the Maine State Board of Nursing and Detective Gerard (Red) Therrien from the Attorney General’s Health Care Crimes Unit. State’s Exhibits 1, 1A, 1B, 2, 3, 4, 5, 5A, 6, and 7 were admitted into evidence.

The Board reviewed the admitted exhibits and considered the testimony of Ms. Broadway and Detective Therrien. At the conclusion of the hearing, the Board deliberated and made the following finding of fact and conclusions of law based upon the preponderance of evidence.



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FINDING OF FACT

1. In July, 2006 the Maine Medical Center reported that Mr. Weiss' employment had been terminated due to an incident involving Mr. Weiss and a patient in the emergency room at the Maine Medical Center on July 6, 2006.

2. The Board directed Mr. Weiss to respond to the allegations contained in Maine Medical Center's report as required by 32 M.R.S.A. § 2105A (1-A). The Board finds, based on the preponderance of evidence, that Mr. Weiss has received notice of the allegations and of his obligation to respond, but has never filed a response with the Board.

3. The July 6, 2006 incident at the Maine Medical Center resulted in subsequent investigations by the Maine Department of Health and Human Services, Division of Licensing and Regulatory Services, and by Detective Therrien of the Attorney General's Health Care Crimes Unit. As a result of its investigation, the Division of Licensing and Regulatory Services discovered an earlier incident occurring on June 3, 2006 involving an altercation between Mr. Weiss and a patient.

4. Based upon the exhibits and testimony presented to the Board, the Board finds by a preponderance of evidence that on July 6, 2006 Mr. Weiss repeatedly yelled "shut up" at an agitated patient in the emergency room and also he kicked a chair towards her.

6. The evidence presented, however, is insufficient for the Board to conclude that the chair actually hit the patient, causing the bruising that is shown in the exhibits. The Board also cannot conclude, based upon the evidence presented to it, that Mr. Weiss

violated the Board's laws or rules during the June 3, 2006 incident referenced in the Division of Licensing's report.

7. However, Mr. Weiss failed to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard patients on July 6, 2006 by repeatedly yelling "shut up" at an agitated patient and kicking a chair.

8. With this conduct Mr. Weiss also caused physical or emotional harm to the patient, either intentionally or negligently.

9. Mr. Weiss' behavior during the July 6, 2006 incident exceeds professional boundaries.

CONCLUSIONS OF LAW

1. Mr. Weiss' conduct on July 6, 2006 constitutes unprofessional behavior and violates the Board's rules within the meaning of 32 M.R.S.A. § 2105-A(2)(F) and (H) and Chapter 4, Section 1(A)(6) and (8) and Section 3(F) and (U).

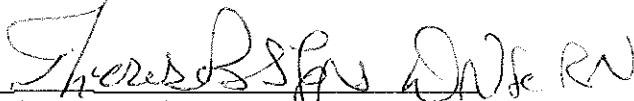
2. Mr. Weiss failure to respond to the complaint or provider report from Maine Medical Center is a violation of 32 M.R.S.A. § 2105-A(1-A).

DISCIPLINARY SANCTION

Based upon the above Findings of Fact and Conclusion of Law, the unanimous vote of the Board is to **CENSURE** the registered professional nursing license of Michael Weiss.

SO ORDERED.

Dated: 1/26/2008


Therese B. Shipps, D.N.Sc., RN,
Chair, Maine State Board of Nursing

APPEAL RIGHTS

Any party to this proceeding may appeal this Decision and Order by filing a petition for review within thirty (30) days of the receipt of this order with the Superior Court in accordance with Title 5, chapter 375, subchapter VII. Any other person aggrieved by this Decision and Order may seek judicial review in like manner by filing a petition for review in Superior Court within forty (40) days after the decision was rendered.