



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: Melissa W. Brautigam)
)
) **DECISION AND ORDER**
) **APPEAL FROM DENIAL**

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 9:00 a.m. on August 7, 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 Melissa Brautigam’s Application for Licensure as a Registered Professional Nurse in the State of Maine. A quorum of the Board attended during all stages of the proceedings. Participating and voting Board members were Chair Margaret Hourigan, RN, EdD; Susan C. Baltrus, MSN, RN, CNE; Robin Brooks (public representative); Elaine Duguay, LPN; Valerie Fuller, APRN; and Joanne Fortin, RN. Andrew Black, Assistant Attorney General, presented the State’s case. Melissa Brautigam was present and represented by Roberta Winchell, Esq. 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 1-16 and Appellant’s Exhibits 1-15 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.

II. FINDINGS OF FACT

Melissa Brautigam is a thirty-seven year old resident of Levant, Maine. Ms. Brautigam has been employed during the past seven years at Eastern Maine Medical Center (EMMC) as a unit secretary in the Operating Room. She also attended nursing school and successfully completed the nursing program at



1
PRINTED ON RECYCLED PAPER

Eastern Maine Community College in May 2012. Following graduation, Ms. Brautigam passed the Registered Professional Nurse examination required for a license. Appellant Brautigam subsequently applied for licensure in Maine as a Registered Professional Nurse on May 22, 2012. The Board denied the application due to her history of substance abuse.

Ms. Brautigam testified at the hearing in this matter that she had two criminal convictions for operating under the influence ("OUI"). The first occurred on July 23, 2004 and the second on August 30, 2008. In her application to the Board, Ms. Brautigam neglected to inform the Board of two additional convictions. The first was leaving the scene of an accident on July 23, 2004 and the second involved operating a motor vehicle without a license on August 30, 2008.

Ms. Brautigam further testified that as of August 30, 2008, her life was "out of control" and she was drinking to excess. Moreover, she had suicidal thoughts immediately following the second OUI incident which caused her to seek admission on August 30, 2008 as an inpatient at St. Mary's Hospital in Lewiston, Maine. Her initial attempts to gain admission were unsuccessful, primarily because only one bed was available and that bed was reserved for patients who had a dual diagnosis. Ms. Brautigam first told the admitting staff the untruth that she had a dual diagnosis of cannabis and alcohol abuse. Appellant was then informed that alcoholism did not qualify as one of the dual diagnoses, so Appellant untruthfully stated that she also was dependent on the drug Klonopin. Soon after, Ms. Brautigam was admitted, taking the last available bed that she was not qualified to occupy.

Ms. Brautigam was discharged on September 2, 2008. Her final diagnoses at that time included "Mood Disorder, not otherwise specified" and "Cannabis dependence." Appellant testified that she informed the discharging physician that she had been untruthful regarding drug dependence, but he did not believe her recantation.

On a related matter, Ms. Brautigam complied with the Board's request that she forward to the Board the medical records relating to her St. Mary's hospitalization. However, she intentionally redacted several passages of her discharge summary, including the diagnosis of cannabis dependence and detoxing from Klonopin because she did not want the Board to see that information. The Board eventually obtained an unredacted version.

Melissa Brautigam was evaluated in connection with her second OUI for three hours between May 5, 2010 and May 17, 2010. The evaluation was performed by Liz Irvine, LADC, CCS. She wrote that Ms. Brautigam's status as related to her substance abuse was "positive in remission." She stated that the Appellant did not have any signs or symptoms of mental health issues and that she felt confident that Appellant "will not drink and drive and that she has learned from her experiences."

Appellant, at the request of her attorney, was evaluated by Susan Polyot, MEd, LADC, CCS, CEAP, on October 19 and November 1 and 6, 2012. Ms. Brautigam, during her sessions, stated to Ms. Polyot that she had a history of tobacco use, but denied use of other substances, which denial was not truthful.

Counselor Polyot wrote that the Appellant was found "to not meet the criteria for Substance Dependence" and the results of her testing "indicate a low probability of having a Substance Abuse Disorder." Ms. Polyot added that based on the results of her evaluation, there is no demonstration of "any indication that her current use of alcohol would interfere with her ability to safely perform her duties as an RN."

The Board, after Ms. Brautigam had received the evaluation from Counselor Polyot, requested on July 3, 2013 that Appellant sign a release. That document would authorize Counselor Polyot to provide the Board with medical information and was captioned "Release of Medical Information" covering the period from October 19, 2012 to the present. This release was quite broad and requested "all intake forms, fact sheets, history and physical forms, consultation, operative, pathology, laboratory, x-ray and emergency room reports, and discharge summary and results from the SASSI test administered on November 1, 2012." The Board's cover letter also requested Appellant to sign the form and forward it to her treatment provider as soon as possible. At this hearing, Ms. Brautigam testified that she signed the form and sent it on to Ms. Polyot. Ms. Polyot testified that she had never seen signatures on that form, and neither had the Board until this hearing. Unbeknownst to the Board, Ms. Brautigam substituted a form from Ms. Polyot's office which narrowed the request for information.

On a more positive note, Ms. Brautigam at this hearing appeared enthusiastic and determined to be a caring and empathetic nurse. She offered several letters evidencing her good character and suitability to be a Registered Professional Nurse. For example, the Chief of Vascular Anesthesia at EMMC wrote that he has worked with her during the past seven years and "she plays an important role in keeping a set of busy operating rooms on schedule." She also impressed this physician with her "efficiency, professionalism and people skills" and had been awarded several certificates for her accomplishments in nursing school.

A nursing instructor added that Ms. Brautigam's "communication and interaction at the bedside was always confident and caring" and Melissa was assigned "high acuity patients with complex medical problems, which she handled with skill and professionalism." She was described by this instructor as being "a high scoring student both academically and clinically." Additionally, Robert Peterson, Patient Care Administrator at EMMC, described the Appellant as a "model employee" and added several other positive comments in support of her appeal.

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, and further the lack of truthfulness regarding some of Appellant's testimony, the Board, by a vote of 6-0, concluded that Melissa Brautigam violated the provisions of:

- (1) 32 M.R.S. Sec. 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.
- (2) 32 M.R.S. Sec. 2105-A(2)(A). The practice of fraud or deceit in obtaining a license under this chapter or in connection with services rendered within the scope of the license issued.¹

IV. SANCTIONS/CONDITIONS

The Board explained 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 Board considered Ms. Brautigam's lack of veracity balanced by her positive letters of recommendation. The Board then voted 6-0 to issue Melissa Brautigam a license to practice registered professional nursing subject to the following conditions:

1. Ms. Brautigam is hereby placed on probation for a period of five (5) years from the date of the 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 is subject to the following conditions:
 - a. Ms. Brautigam 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. Brautigam will arrange for and ensure the submission to the Board of quarterly reports from her nursing employer and counselor(s) regarding her nursing practice. If during the period of probation, her employment as a nurse or her educational program terminates, she shall notify the

¹ The State repeatedly raised the issue whether parts of Ms. Brautigam's testimony and exhibits were deceitful with no objection by Ms. Brautigam. As a result, the issue was tried by implied consent of the parties. Town of Naples v. Yarcheskis, et al, ME 100 [¶19] "In Yarcheskis, the defendants did not object to the many references concerning their mailboxes and newspaper delivery boxes at trial. Therefore, the issue of whether the mailboxes and delivery boxes were located in the roadway was tried by consent." Town of Orrington v. Pease, 660 A.2d 919, 922 (Me. 1995); Bernier v. Merrill Air Eng'rs, 2001 ME 17, ¶ 22, 770 A.2d 97, 105; M.R. Civ. P. 15(b) ("When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.").

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.

- c. Ms. Brautigam 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. Brautigam shall provide to the Board the results of a random urine and/or substance screen once each quarter taken by a Board pre-approved provider.
- e. Nurse Brautigam 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. Brautigam for response.

Ms. Brautigam 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 inaccurate or incorrect, either through hearing or determination by the Executive Director and/or the Office of the Attorney General, Ms. Brautigam's license will be immediately reinstated retroactive to the date of suspension.

If Ms. Brautigam 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.

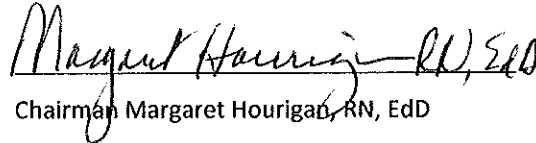
- f. With regard to the Nurse Licensure Compact, of which Maine is a part, Ms. Brautigam shall not be authorized a multistate privilege, but shall practice nursing on single state status with supervision.

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. Appellant shall be responsible for payment of the transcript if she orders a copy.

Wherefore, the **APPEAL is GRANTED.**

SO ORDERED.

Dated: September 5, 2013


Chairman Margaret Hourigan, RN, EdD
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.