



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: Dale Alan Carr, R.N. ) **DECISION AND**  
 Disciplinary Action ) **ORDER**

**I. PROCEDURAL HISTORY**

Pursuant to the authority found in 32 M.R.S. Sec. 2105-A(1-A)(D), *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 office located in Augusta, Maine at 8:30 a.m. on July 21 and 27, 2010. The purpose of the meeting was to conduct an adjudicatory hearing to determine whether Dale Carr violated Board Statutes and Rules while licensed 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 Chairman Dorothy Melanson, R.N.; Robin Brooks (public representative); Susan C. Baltrus, M.S.N., R.N.C.; Carmen Christensen, R.N.; and Elaine Duguay, L.P.N. John Richards, Assistant Attorney General, presented the State's case. Dale Carr was present and not represented by legal counsel.<sup>1</sup> James E. Smith, Esq. served as Presiding Officer.

The Board first determined that none of the Board members had conflicts of interest which would bar them from participating in the hearing. The Board then took official notice of its Statutes and Rules, and subsequent to the opening statements by the parties, State's Exhibits 1-23 were admitted into the Record. The Board next 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 regarding the alleged violations.

**II. FINDINGS OF FACT**

Dale Carr, 39 years old and a resident of Monmouth, Maine, was first licensed as a registered professional nurse in the State of Maine on March 15, 1994. He most recently was employed as a registered nurse at Mercy Hospital in Portland, Maine. That employment was terminated on November 24, 2008 for reasons related to his alleged participation in domestic violence and child pornography.

<sup>1</sup> The presiding officer ruled on Dale Carr's several motions and objections on the record outside of the presence of Board members.



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## **A. Prior Disciplinary Actions**

On November 3, 1994, Dale Carr was convicted of Theft by Unauthorized Taking, Terrorizing, and Violating a Condition of Release. The theft occurred when he diverted for his own private use scheduled drugs from at least two residents of a local nursing home, where he was then employed, from January 1994 through June of that year. Respondent Carr believed that one of the patients “would be too confused to know whether or not the medication had been administered” to her/him. As a result, on December 18, 1996, Dale Carr signed a Consent Agreement with this Board wherein he admitted to having engaged in incompetent and unprofessional conduct. In the Consent Agreement, respondent Carr accepted a Reprimand and a one-year suspension, with all but 30 days suspended, and a period of probation which he satisfactorily completed.

The Terrorizing conviction arose during the period when former Monmouth Police Chief Ken Latulippe conducted his investigation of the drug theft charges. He spoke with Dale Carr during the investigation and Carr inquired as to the location of Carr’s wife, Valerie. Chief Latulippe asked what Carr wanted Latulippe to do if he located Carr’s wife. Dale Carr responded: “Put a bullet in her head and save me the trouble.” The respondent later stated that he was misquoted and had actually said: “Put a bullet in the person’s head who took my wife.” He then added that he would “beat” his wife when she was located.

A second Consent Agreement with the Board was signed by Dale Carr on February 3, 1999. The facts in that Agreement reveal that the Respondent, during the fall of 1996, made harmful and inappropriate remarks to a client’s family and certified nursing assistant working in the client’s home. The remarks were admitted by Mr. Carr to have adversely affected an 11-year-old child in that family. The Respondent, in Agreement II, further admitted that on or about April 7, 1997, he inserted a cannula into a patient so that an IV could be started. Dale Carr’s nursing license was under suspension at the time. As a result, the Board fined him \$1,000; placed him on probation for three years; and further ordered him to attend a professional boundaries course. Dale Carr successfully completed the period of probation.

The next licensure-related issue involving Dale Carr occurred as a result of his not meeting the terms of a Child Support Order. As a result, the Maine Department of Health and Human Services (DHHS) ordered the Board, by letter dated June 9, 2009, to revoke or suspend Dale Carr’s nursing license. The Board then revoked his license on June 12, 2009 and restored it three days later due to compliance with his support obligations. The DHHS again on subsequent occasions ordered that Dale Carr’s license be suspended/revoked for similar reasons, and letters from the Board revoking Dale Carr’s nursing license were sent to him on August 19, 2009 (reinstated August 24, 2009) and February 26, 2010. The respondent’s license was most recently reinstated on June 28, 2010 and is listed as having “lapsed” pending resolution of this complaint.

## **B. June 18, 2008 Board Complaint**

On January 16, 2007, Valerie Carr, Respondent's wife for 16 years, filed a request for a Protection from Abuse Order (a/k/a Protection Order) against Dale Carr. In that document, she alleged that during her marriage in 1994, she left her home and stayed for two weeks at the domestic violence shelter due to her husband's shouting and threats. She then added that in October 2004, Dale Carr told her that "she was the kind of woman that deserves to be beat" and that he grabbed her "by the shoulders ... and attempted to throw [her] down the stairs. In September 2005, during another fight, he tried to strangle [her] and then proceeded to shove [her] around the kitchen...The children are in fear of him..."

Valerie Carr then alleged in her request for a Protection Order that on January 15, 2007, Dale Carr intervened in an argument between his two sons IC and A, aged 10 and 13, respectively. She wrote that "My husband smacked my son (A) in the head. When A did not move quickly enough, my husband went to grab him and in the process my son defensively swung at him. My husband knocked my son to the floor so hard, my son sustained bruises in and around the mouth and left ear." (Dale Carr is approximately 5'9" and 230 pounds; A is skinny and has chronic renal failure).

Shortly before the January 15 incident, Valerie left Dale a letter in which she stated, in part, that "I know that your addiction to child pornography is not only disturbing, but way out of control" and "the whole child pornography/pedophilia has been my greatest stress cause..." She described the images to be of children between the ages of 6-12. After the January 15 incident, Dale Carr returned to the home and left a note containing the following language: "You flatter yourself thinking you are worth spending my life in jail for. I want my f\*\*\*ing bullets back. Trust me, you aren't worth it."

The court then issued, on January 16, 2007, a Temporary Order for Protection from Abuse and granted an Order for Protection from Abuse on February 5, 2007. That Order did not explicitly make findings of abuse but did, among other prohibitions, restrain Dale Carr from "threatening, assaulting, molesting, etc." his wife and children and prohibited him from being at the home. The Order was amended on January 14, 2008 to reflect somewhat different terms due to the Carr's divorce.

## **C. Other Domestic Violence**

As above noted, Dale Carr was convicted of terrorizing his wife Valerie on November 3, 1994. Some of Valerie Carr's later allegations of abuse of her and her children were substantiated by her children when interviewed on September 22, 2009 by Ellen Hurd, LCSW. Ms. Hurd has a Master's

Degree and specializes in assessing children for abuse and exposure to domestic violence.<sup>2</sup> Ms. Hurd evaluated the Carr's daughter, E, 11 years of age on the above date. E stated that Dale Carr "would abuse my mom, my brothers, and I in all three ways...verbally, mentally, and physically. He would work, sleep, be on the computer, playing on the computer, nothing else." E added that "my mom would do the chores for my brothers and I 'cause she was afraid if we did it wrong, that our dad would hurt us..."

E further related that Dale would bring out a belt, fold it in half, and snap it if the kids got in trouble. She stated that Dale would spank the kids with his hand, a belt, and a stick that was kept on top of the refrigerator and hit the children on the head, back, stomach, and legs leaving a mark on some occasions. Ms. Hurd found clear evidence that E had been psychologically and physically abused by her father and by witnessing domestic abuse.

Thirteen-year-old IC reiterated much of E's statements regarding abusive treatment and the marks left by the stick. He described Dale's anger as being demonstrated by yelling, screaming at the children, and hitting things. This child stated that "he would hit us, push us...and then he would go upstairs and yell at our mom. It was just a nightmare...He would slap (mom) and punch her sometimes...but he would smack her like all the time." "...When our dad would punch her, she would...scream and say 'That really hurt' really loud and all of us saw our mom get slapped."

IC also described the events on the night of January 15, 2007. He stated that "dad wrestled my brother down to the ground and I was just in shock until...I turned to E, she was horrified, so I jumped on our dad's back and was choking him until he got off...he had put his elbow up against our brother's neck." "Mom ran into the den, locked the door, and called the police." IC then, in response to the question: "Have you ever seen grownups with no clothes on," stated "...on the computer I have when our dad was looking at the porn." Ms. Hurd arrived at the same conclusions regarding abuse of IC that she did with E.

A, the oldest child who was 16 at the time of the evaluation, described his father beating him and IC with a leather belt and stick. He also recalled his father hitting his mother and calling her a "bitch." A stated that he was aware since the age of eight of his father's viewing of pornography and "pop-ups" of naked women would appear on the computer when his father was still in the house. He considered Dale to have "a problem viewing pornography." Ms. Hurd stated that all the children had issues revolving around their sexual behaviors and none of the children had observed child pornography in the home.

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<sup>2</sup> It is important to note that the three Carr children were examined by Lawrence Ricci, M.D. who found "no evidence of recent physical abuse or neglect and no evidence of genital or rectal trauma." There are no allegations in this case of child sexual abuse by Dale Carr.

The children's recitations of abuse were supported by Dale Carr's friend, Sean Estabrook. Estabrook testified that Carr would yell at Carr's children for minor misbehavior and that Carr intimidated the children and they were afraid of him.

#### **D. Child Pornography**

Valerie Carr had confided in Sean Estabrook and another friend of Dale's, Daniel Landers, that she was extremely concerned regarding Dale's use of child pornography on the computer. Both of these individuals raised her concerns with Dale. While discussing the subject with Estabrook, Carr never denied viewing child pornography and would use metaphors when referring to that subject. One time, he told Sean that "I no longer have beer in the fridge," which, in the context of their discussion, meant that Carr no longer had child porn in the computer. Carr informed Estabrook that the reason he viewed the porn was to get back at his wife because the sex between them "wasn't so good." Dale Carr further told Sean Estabrook that he "would just say that she's the one that put images on the computer" and that they would have to prove that the images were not computer generated. Carr added that "if she (Valerie) wanted to push this, I'll say she did this." Sean Estabrook testified that these discussions were based on child porn, not adult pornography.

Daniel Landers spoke with Dale concerning Dale's use of child pornography. He suggested to Dale that he remove all the computers in the house or at least limit access to them. At a later date, Valerie and Dale attempted to have a system to limit entry into the computer whereby each of them would have to input one-half of the password. Dale subsequently foiled this attempt.

Valerie Carr had reported her concerns regarding Dale's use of child pornography to the FBI in December 2006, which did not result in further action by that agency. Valerie Carr also wrote a diary in which she additionally detailed her concerns regarding Dale Carr's viewing of child pornography on the home computer. She further discussed those concerns both in person and by e-mail with one of her best friends, Rebecca Haughey.

Valerie also reported her concerns to the Monmouth Police Department on the day before the January 16, 2007 Protection Order was issued. The Chief of the Monmouth Police Department then, with consent, removed the Carr household computers and sent them to Detective Scot Bradeen, who is an expert on recapturing computer images of child pornography. Detective Bradeen performed a forensic analysis of the computers and recovered 2,361 images of suspected child pornography on the family desktop computer's hard drive. These were not computer generated or morphed images, but instead were photographs of actual male and female children mostly between the ages of 6-12. The children were depicted exposing their genitalia or engaged in sex acts. There were at least 443 children whose identity

was established. Of great significance is the fact that many of the child pornography images were bookmarked, which means that they were intentionally downloaded.

At this hearing, Detective Bradeen persuasively testified that children, including the ages of the Carr siblings, do not as a rule download or view child porn, but are more interested, if at all, in adult images. He further testified that whoever deleted the images and bookmarks at 8:16 p.m. on January 16, 2007 more likely was the individual who downloaded the porn in the first instance.

It is significant to note that all witnesses, with the exception of Dale Carr, ruled out the possibility that Valerie was the culprit regarding the child porn on the family computer. Although Dale Carr stated that he was out of the home due to the protection order, the evidence is more persuasive that he did not give a credible accounting of his whereabouts at the subject time and his work records demonstrate that he was not at his place of employment. Indeed, it would have been easy for him to slip into his house at night and delete the objectionable images and bookmarks. It is more likely than not that he, and no other member of the family, was responsible for the child pornographic images found on the family computer.

#### **E. Events Subsequent to the Protection Order**

Dale Carr was subsequently indicted for Possession of Sexually Explicit Materials (the child pornography images). Valerie Carr was to be the chief prosecution witness against her husband. Valerie Carr, following the Protection Order, eventually moved to Bangor with the children. The children all described a pleasant home life there and expressed love for their mother. Tragically, she died on November 6, 2008; her death was ruled as an accidental overdose of medications. When she died, her testimony was lost and the charges against Dale Carr were dismissed.

As a result of the charges, a local newspaper on April 23, 2008 covered the story. The Board received a copy of the article and filed a request with Dale Carr seeking his response to the article's contents. A response was not forthcoming for at least one year.

Mercy Hospital terminated Dale Carr's employment on November 24, 2008, based on information obtained after reviewing the transcript of Detective Bradeen's testimony, which occurred at an April 22, 2008 hearing on Dale Carr's motion to dismiss the criminal charge. Mercy Hospital, in its letter to Dale Carr, stated that "Mercy is satisfied that you in fact did possess many highly offensive pornographic images of children on your personal computer. Although this conduct occurred outside of the workplace, Mercy cannot and will not employ persons who engage in behavior that so offends its mission and values and that involves the actual or potential exploitation of children. ...In addition, we have learned that you have been charged at least twice with violating a protective order. While possession

of child pornography alone is sufficient cause for your termination, we consider these charges to raise further serious concerns about your fitness to serve as an employee of Mercy.”

### 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 5-0, concluded that Dale Carr violated the following statutes and Board rules:

1. 32 M.R.S. Sec. 2105-A.(2)(E)(1) (Incompetent Conduct)... by engaging in conduct that evidences a lack of ability or fitness to discharge the duty owed by a licensee to a client or patient or the general public.
2. 32 M.R.S. Sec. 2105-A.(2)(F) (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.
3. 32 M.R.S. Sec. 2105-A.(2)(H). Any violation of this chapter or a rule adopted by the Board.
4. Board Rule Chapter 4, Secs. 1.(A)(5)(a) by engaging in incompetent conduct.
5. Board Rule Chapter 4, Secs. 1.(A)(6) by engaging in unprofessional conduct.
6. Board Rule Chapter 4, Secs. 1.(A)(8). Any violation of this chapter or rule.

### IV. SANCTIONS

The Board, exercising its experience and training, and based on the above findings and conclusions, voted 5-0 to **REVOKE**<sup>3</sup> the registered professional nurse license of Dale A. Carr. The Board reasoned that Mr. Carr’s nursing practices constitute a serious threat of harm to the public and, therefore, the revocation is warranted.

The Board further voted 5-0 to assess Dale Carr the **COSTS** of this hearing **not to exceed \$5,000** and which shall be received by the Board **by March 1, 2011**. The costs **total \$3,791.25** (Hearing Officer: 5 hours, 15 minutes to review large record/exhibits/diary and pre-hearing conference; 14 hours, 30 minutes at hearing ; 8 hours to write decision = 27.75 hours @\$115/hour = \$3191.25 + Court Reporter: \$600). The bank check or money order shall be made payable to “Treasurer, State of Maine” and mailed to: Maine State Board of Nursing, Myra Broadway, J.D., M.S., R.N., Executive Director, 158 State House

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<sup>3</sup> The Board noted its opinion that the revocation would be permanent if clearly authorized by law.

Station, Augusta, Maine 04333-0158. Additional costs may be assessed in the event that Dale Carr requests a transcript of the hearing.

The costs are in keeping with the Board's practice of assessing the costs to those who violate Board statutes and Rules as opposed to sharing the costs with those licensees who obey same.

The Board also voted that Dale Carr shall pay a **Total Fine of \$4,500 by March 1, 2011**. The fine is the maximum \$1,500 for the above three violations. The bank check or money order shall be made payable to: "Treasurer, State of Maine" and mailed to: Maine State Board of Nursing, Myra Broadway, J.D., M.S., R.N., Executive Director, 158 State House Station, Augusta, Maine 04444-0158.

**SO ORDERED.**

Dated

*August 24, 2010*



Dorothy Melanson, Chairman  
Maine State Board of Nursing

**V.**

**APPEAL RIGHTS**

Pursuant to the provisions of 5 M.R.S. Sec. 10051.3 and 10 M.R.S. Sec. 8003(5)(G) and (5-A)(G), any party that appeals this Decision and Order must file a Petition for Review in the Maine District 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 Maine Attorney General.