

In the Matter of Henri Paul )  
DesRosiers )

DECISION AND ORDER  
ON STATE'S MOTION TO  
DISMISS

Hearing in this matter took place on February 21, 2014. Present were Board members Susan Baltrus, MSN, RNBC; Robin Brooks, Public Member; Carmen Christensen, RN; Valerie Fuller, APRN; and Margaret Hourigan, RN, EdD (Chair). The State was present and represented by Assistant Attorney General Ron Guay. Licensee Henri DesRosiers was present and represented by Phillip Johnson, Esq. Jeffrey Frankel, Esq. served as hearing officer and legal advisor to the Board. The hearing officer polled Board members for possible bias with respect to Mr. DesRosiers. No Board members indicated any bias, and neither the State nor the licensee requested the recusal of any Board member due to bias.

State Exhibits 1-9 were admitted into the hearing record without objection. There were no objections to the Board taking official notice of Maine statutes and the Board's rules.

In this proceeding, the Board charged Mr. DesRosiers with one count of incompetence pursuant to 32 MRS §2105-A (2) (E) and one count of unprofessional conduct pursuant to 32 MRS §2105-A (2) (F). Mr. DesRosiers is an Advanced Practice Registered Nurse - Certified Registered Nurse Anesthetist ("CRNA"), and it is that license against which this complaint was filed. Mr. DesRosiers's license as a registered professional nurse was not at issue in this proceeding.

The incompetence count consists of two elements:

A) On February 25, 2013, while practicing at Calais Regional Hospital, you provided anesthesia to a patient who experienced a prolonged period of hypotension due to unrecognized blood loss. The extended period of the

hypotension was due to your failure to detect clear physical findings indicative of the condition. The patient experienced significant physical harm and was required to be transported by helicopter to Eastern Maine Medical Center ("EMMC").

B) While practicing at Calais Regional Hospital on March 19, 2013, you provided anesthesia services to a patient who experienced hypotension, which you failed to treat.

(Notice of Hearing, Ex. 1)

The unprofessional conduct with which Mr. DesRosiers was charged stemmed from a complaint "that on January 29, 2013, you fell asleep during a pre-operative interview with one of your patients." (Notice of Hearing, Ex. 1)

On December 6, 2013, the Board issued an immediate suspension of Mr. DesRosiers's CRNA license for 30 days on the basis of the two alleged hypotension incidents and other information. (Notice of Immediate Suspension of License as Certified Registered Nurse Anesthetist, Ex. 3) The suspension was extended without date on January 10, 2014 pending final disposition of this matter and was in effect at the time of the hearing. (Interim Consent Agreement, Ex. 7)

Prior to the taking of testimony, the State moved to dismiss the charge of incompetence with prejudice and moved to dismiss the charge of unprofessional conduct without prejudice. On both counts, the motion was prompted by Board investigative materials that were received or generated subsequent to the immediate suspensions and the issuance of the Notice of Hearing on January 22, 2014.

With respect to the incompetence count, the Board commissioned E. June St. Pierre to perform an independent medical review of Mr. DesRosiers's performance during the

February 25, 2013 and March 19, 2013 incidents.<sup>1</sup> For the February 25, 2013 incident, Ms. St. Pierre concluded, "Overall I don't feel a compromise of anesthesia standards of practice in reviewing this chart. Communication was a little lax." For the March 19, 2013 incident, Ms. St. Pierre concluded, "No standard of care breached in the review of the chart. Slow response with vasopressor at start of case for the hypotension." (Case Reviews, Ex. 6) Based on the independent medical review, the State contends that there is insufficient evidence to prove incompetence, and requests the Board find that no violation of a standard of care relating to Mr. DesRosiers's practice of nurse anesthesia occurred.

Count 2, the falling asleep charge, was based upon information provided by Calais Regional Hospital. (Calais Regional Hospital - Concern Form, Ex. 5). On February 14, 2014, Board investigator Cindy Lee Griffin was able to interview the patient whose comments to Calais Regional led the hospital to submit the concern form to the Board. In this interview (Ex. 8), the patient stated that Mr. DesRosiers closed his eyes for a matter of seconds while he was talking with her, but that she did not believe that he fell asleep.<sup>2</sup> This behavior may be consistent with a March 7, 2008 Non-Disciplinary Consent Agreement between Mr. DesRosiers and the Board related to Mr. DesRosiers's sleep apnea. (Non-Disciplinary Consent Agreement, Ex. 7) Based on the interview, the State contends that there is insufficient evidence to prove unprofessional conduct based on Mr. DesRosiers's allegedly having fallen asleep during the patient interview. However, the State does intend to file a subsequent complaint relating to Mr. DesRosiers's sleep apnea as it affects Mr. DesRosiers's fitness to practice under 32 MRS §2105-A(2)(C). In order that the State not be barred from

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<sup>1</sup> Ms. St. Pierre's report, which was dated January 16, 2014 and received by the Board on February 3, 2014, also contains an entry for a February 2, 2013 incident which was not part of this proceeding.

<sup>2</sup> The Board listened to the recording of this interview at the hearing.

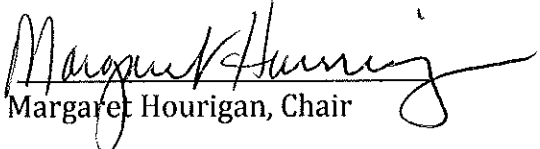
basing that complaint in whole or in part on the facts alleged in Count 2 of this complaint, the proposed dismissal of Count 2 is without prejudice.

The licensee concurred in the State's motions to dismiss as described above.

Following discussion, and for the reasons set forth above, the Board voted unanimously as follows:

1. Count 1 of the Notice of Hearing in this matter is dismissed with prejudice.
2. The Board finds that Mr. DesRosiers did not commit incompetence on either February 25, 2013 or March 19, 2013 as alleged in the Notice of Hearing.
3. Count 2 of the Notice of Hearing in this matter is dismissed without prejudice.
4. The suspension of Mr. DesRosiers's CRNA license originally issued on December 6, 2013 and extended without date on January 10, 2014 pending final disposition of this matter is terminated as of the close of the hearing in this matter.

DATED: February 21, 2014

  
Margaret Hourigan, Chair

#### NOTICE OF APPEAL RIGHTS

Pursuant to the provisions of 5 MRS §§11001-11002 and the general language following 10 MRS §8003 (5)(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 Decision and Order. The petition shall specify the person seeking review, the manner in which the person is aggrieved and the final agency action which the person seeks 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 State Board of Nursing, all parties to the agency proceedings and the Maine Attorney General.