



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: Mary Durland-McDermott ) DECISION**  
**Licensure Disciplinary Action ) AND 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 9:00 a.m. on April 23, 2009. The purpose of the meeting was to conduct an adjudicatory hearing to determine whether Mary Durland-McDermott violated Board statutes and rules as a registered professional nurse while licensed in Maine. A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Chairman Bruce O’Donnell, C.R.N.A.; Robin Brooks (public representative); Susan C. Baltrus, M.S.N., R.N.C.; Carmen Christensen, R.N.; and Margaret Hourigan, R.N., Ed. D., C.N.A.A., B.C. John Richards, Assistant Attorney General, presented the State’s case. Mary Durland-McDermott was neither present nor represented by legal counsel. James E. Smith, Esq. served as Presiding Officer.

The Board first found that Nurse Durland-McDermott had been duly served with the Notice of Hearing by certified and regular mail on March 30, 2009. The Board subsequently found that Nurse Durland-McDermott had requested by telephone message a continuance of this matter at some time between the hours of 4:30 p.m. on April 22 and 8:00 a.m. on April 23, 2009. However, she did not provide any further information in regards thereto. Attempts to locate and communicate with the licensee proved fruitless except for a phone message left by the Board’s executive director denying her request. The Board then 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 statement by the State, State’s Exhibits 1-7 were admitted into the Record.

The Board next heard the testimony, reviewed the submission of exhibits, and considered the State’s closing argument, after which it deliberated and made the following findings of fact by a preponderance of the credible evidence regarding the alleged violations.



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## II.

### FINDINGS OF FACT

Mary Durland-McDermott, date of birth May 5, 1965, filed an application dated November 8, 2007 with the Board to be licensed in Maine as a registered professional nurse. She had been previously licensed in the state of New York as a nurse and her current license in that state expired on April 30, 2009. On January 7, 2007, she entered into a Consent Agreement with the New York State Board of Nursing which resulted in her receiving a probationary nursing license effective for 22 months “only when she is employed as a registered professional nurse.”

The Maine Board granted Nurse Durland-McDermott’s application and awarded her a probationary license effective January 16, 2008. The Board, as a condition for licensure, also required her to enter into a Consent Agreement (Maine Agreement) with the Board and the Attorney General’s Office, effective January 11, 2008, which incorporated the terms of the New York Consent Agreement (NY Agreement). The relevant terms of the Maine Agreement as they pertain to this hearing are as follows:

- “6. Mary Durland-McDermott’s license to practice registered professional nursing in the State of Maine will be placed on a probationary status with conditions. The period of probation will be for a period commensurate with her New York license probation, to be effective only while she is employed in nursing practice or enrolled in a nursing education program. For purposes of this Consent Agreement, nursing employment is any employment during which Ms. Durland-McDermott performs nursing services. Ms. Mary Durland-McDermott’s probationary license will be subject to the following conditions:
- a. Mary Durland-McDermott will abstain completely from the use of alcohol or drugs, with the exception of substances used in accordance with a valid prescription from a treatment provider(s) who is aware of Ms. Durland-McDermott’s substance abuse history.
  - b. Mary Durland-McDermott will continue in her treatment program to such an extent and for as long as her treatment provider(s) recommend and will arrange for and ensure the submission to the Board quarterly reports from her treatment provider(s).

- d. Mary Durland-McDermott will arrange for and ensure the submission to the Board of quarterly reports from her nursing employer or clinical faculty regarding her nursing practice.
- e. Mary Durland-McDermott will immediately notify the Board in writing regarding any material change in her nursing employment or entry into an education program in the field of nursing. Notification under this section shall include the place and position of employment or the educational program and the same notification shall apply to any subsequent change in employment or change in educational program.
- f. The State of Maine is now Mary Durland-McDermott's home state of licensure. Ms. Durland-McDermott agrees that during the pendency of this Consent Agreement her nursing practice may be limited to the State of Maine for the purposes of the Nurse Licensure Compact. If Ms. Durland McDermott wishes to practice in any other party state within the Nurse Licensure Compact she shall petition this Board for written authorization. In addition, Ms. Durland-McDermott will arrange to have the party state in which she intends to practice provide the Board with written authorization that she has been approved to practice in that state.
- g. Mary Durland-McDermott will arrange and ensure that she provide copies of any documentation to the Maine State Board of Nursing that she provides to the New York Board regarding her compliance with the New York Board Consent Order.”

As above noted, the Maine Agreement required, in part, that Nurse Durland-McDermott forward treatment provider progress reports as stipulated in paragraph 6(b) of the Agreement. Although in February 2008, she advised the Board's Probation Compliance Officer that an initial treatment provider report would be forthcoming, it had not been received by the Board as of July 25, 2008. Eventually, the licensee filed a letter dated January 7, 2009 from Tri-County Mental Health Services with the Board verifying that she had attended substance abuse counseling at that facility from November 7, 2007 through February 28, 2008, for a total of 13 sessions of

individual counseling, followed by her discharge. This report, however, was deficient in that no specific recommendations for future treatment were addressed.

Additionally, a report was forwarded to the Board from the licensee's physician dated January 21, 2009. Nurse Durland-McDermott was informed on January 23, 2009 that the report "does not fulfill the requirements of a treatment provider report as he [the doctor] has not addressed your substance abuse, nor made any recommendations for continued sobriety. We need more than a list of your vaccination history and one line which simply states how long you've been a patient." No additional treatment progress reports or related information such as the name of the licensee's Alcoholics Anonymous sponsor and dates of attendance were received from her, despite assurances on January 20, 2009 by Nurse Durland-McDermott that she would provide the Board with same.

Nurse Durland-McDermott also failed to file with the Board the required reports from her employer, MAS Medical Staffing, in contravention of paragraph 6(d) of the Maine Agreement. She was employed as a professional registered nurse by MAS Medical Staffing in February 2008. She was terminated by this employer shortly thereafter in 2008 due to too many absences and a complaint of drinking alcohol while on nursing duty at a hospital's detoxification ward. Although her employer gave her the opportunity to be tested for alcohol, she did not follow through because it would make her "look guilty" and her attorney advised against the testing. The licensee returned to duty with MAS Medical Staffing in May 2008 with the support of her physician. However, she was once again terminated in July 2008 due to complaints from two different facilities regarding errors related to patient medications.

The licensee has had continued alcohol related difficulties since signing the Maine Agreement. For example, she was hospitalized in Jacksonville, Florida on November 19, 2008 until November 24, 2008 for alcohol detoxification. Notification of this hospitalization was not provided by the licensee to the Board.

Nurse Mary Durland-McDermott filed an e-mail with the Board dated March 27, 2009, which detailed her defense to some of the allegations in the Notice of Hearing. She denied ever drinking alcohol while on duty as a nurse and that "all of the facilities that I have worked for have always been very pleased with my job performance." The evidence in this matter does not support those assertions.

### 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 Registered Nurse Mary Durland-McDermott violated the provisions of:

1. 10 M.R.S. Sec. 8003(5) (C) (3) Noncompliance with the Board's Consent Agreement executed on January 11, 2008.
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 service rendered within the scope of the license issued.
3. 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.
4. 32 M.R.S. Sec. 2105-A (2) (E) (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 and by engaging in conduct that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which the licensee is licensed.
5. 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.
6. 32 M.R.S. Sec. 2105-A (2) (G). Subject to the limitations of Title 5, chapter 341, conviction of a crime that involves dishonesty or false statement or that relates directly to the practice for which the licensee is licensed or conviction of a crime for which incarceration for one year or more may be imposed.
7. 32 M.R.S. Sec. 2105-A (2) (H). Any violation of this chapter or a rule adopted by the Board.
8. Board Rule Chapter 4, Sec. 1.A. (1) The practice of fraud or deceit in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued.
9. Board Rule Chapter 4, Sec. 1.A.(2) Habitual intemperance in the use of alcohol or the habitual use of narcotic or hypnotic or other substances the use of which has resulted or may result in the licensee performing her duties in a manner which endangers the health or safety of her patients.

10. Board Rule Chapter 4, Sec. 1.A. (5) Incompetency in the practice for which she is licensed.

A licensee shall be deemed incompetent in the practice if the licensee has:

- a. Engaged in conduct which evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public; or
- b. Engaged in conduct which evidences a lack of knowledge, or inability to apply principles or skills to carry out the practice for which she is licensed.

11. Board Rule Chapter 4, Sec. 1.A. (6) Unprofessional conduct. A licensee shall be deemed to have engaged in unprofessional conduct if she violates any standard of professional behavior which has been established in the practice for which the licensee is licensed.

12. Board Rule Chapter 4, Sec. 1.A.(7) Subject to the limitations of Title 5, chapter 341, conviction of a crime which involves dishonesty or false statement or which relates directly to the practice for which the licensee is licensed, or conviction of any crime for which incarceration for one year or more may be imposed.

13. Board Rule Chapter 4, Sec. 1.A. (8) Any violation of this chapter or any rule adopted by the Board of Nursing.

14. Board Rule Chapter 4, Sec. 3 Nursing behavior which fails to conform to legal standards and accepted standards of the nursing profession, and which could reflect adversely on the health and welfare of the public shall constitute unprofessional conduct and shall include, but not be limited to, the following:

(B). Assuming duties and responsibilities within the practice of nursing without adequate preparation or when competency has not been maintained.

(F). Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.

(K). Inaccurate recording, falsifying or altering a patient or health care provider record.

(N). Practicing nursing when unfit to perform procedures and make decisions in accordance with the license held because of physical, psychological or mental impediment.

(O). Practicing nursing when physical or mental ability to practice is impaired by alcohol or drugs.

**IV.**

**SANCTIONS**

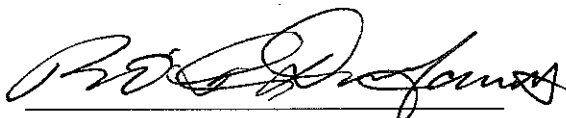
The Board, exercising its experience and training, and based on the above findings and conclusions, voted 5-0 to **IMMEDIATELY REVOKE** the nursing license of Mary Durland-McDermott. The Board reasoned that Ms. Durland-McDermott's nursing practices constitute a serious threat of harm to the public and therefore the revocation is warranted. The Board further voted 5-0 to assess Mary Durland-McDermott the **COSTS** of this hearing which shall be received by the Board **by October 23, 2009**. The costs total **\$782.50** (Hearing Officer: 1.45 hours to review record and attendance at hearing, 3.45 hours to write decision @ \$115 per hour = \$632.50; Court Reporter: \$150). The bank check or money order shall be made payable to: Treasurer, State of Maine and mailed to Myra Broadway, J.D., M.S., R.N., Executive Director, Maine State Board of Nursing, 158 State House Station, Augusta, Maine, 04333-0158. Additional costs may be assessed in the event that Mary Durland-McDermott requests a transcript of the hearing. Costs shall be paid before the Board entertains any request by Mary Durland-McDermott for relicensure.

The costs are ordered since this hearing might have been avoided had the licensee attended this hearing to attempt to resolve the issues prior to the hearing. The costs are also 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.

**SO ORDERED**

3 June 2009

Date



Bruce O'Donnell, C.R.N.A., 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.