MAINE STATE BOARD OF NURSING

IN RE: Donald England, R.N.)	DECISION AND ORDER
Licensure Disciplinary Action)	

I. PROCEDURAL HISTORY

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Pursuant to the authority found in 32 M.R.S.A. Sec. 2105-A(1-A)(D), et seq., 5 M.R.S.A. Sec. 9051, et seq. and 10 M.R.S.A. Sec. 8001, et seq., the Maine State Board of Nursing (Board) met in public session at the Board's offices located in Augusta, Maine on July 27, 2004 for the purpose of determining whether grounds exist for the Board to take disciplinary action against Donald England's license to practice as a registered nurse in Maine as more specifically stated in the Notice of Hearing. A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Acting Chairman Richard L. Sheehan, M.S., R.N., Hazel Rand, (public member), Charyl Doughty, L.P.N., Bruce O'Donnell, C.R.N.A. and Karen Tripp (public member). Jack Richards, Ass't. Attorney General, presented the State's case. Mr. England appeared but was not represented by counsel. James E. Smith, Esq. served as Presiding Officer.

Following the determination that none of the Board had conflicts of interest which would bar them from participating in the hearing, the taking of official notice of its statutes and rules, and subsequent to the opening statement by counsel, State's Exhibits 1,2 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 regarding the violations alleged in the Complaint.

II. <u>FINDINGS OF FACT</u>

Donald England is a resident of Mimbres, New Mexico. He was first licensed to practice nursing in the State of Maine on November 30, 2001 although had been licensed previously in the State of California. His Maine license lapsed on November 12, 2003.

Mr. England began his employment on a per diem basis at Sisters of Charity Health Systems (Sisters) located in Lewiston, Maine on December 17, 2001. He was assigned to the Adult Chemical Dependency Unit. On September 4, 2002, he was found to have been rude to an 18 year old patient by shrugging his shoulders and muttering "Jesus Christ" when that individual requested medication. In addition to the complained of behavior, he released a patient without a physician's discharge order. Although the required papers were subsequently received, and Nurse England had a plausible explanation for his actions, that failure was deemed by Sisters to be a violation of that facility's rules.

As a result of the above, Donald England was suspended for one day, resigned from that facility on September 17, 2002, and has retired from the nursing profession.

CONCLUSIONS OF LAW

The Board, by a vote of 5-0, found and concluded that Donald England violated the following provisions of Board statutes and Rules.

- 1. 32 M.R.S.A. Sec. 2105-A.2. Grounds for discipline. The board may suspend or revoke a license pursuant to Title 5 section 10004. The following are grounds for an action to issue, modify, suspend, revoke or refuse to renew the license of an individual licensed under this chapter:
- 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.

The facts found in this Decision support the conclusion that Nurse Fisher was rude to a patient at Sister's facility and discharged a patient without a physician's order.

- 2. "Rules and Regulations of the Maine State Board of Nursing, Chapter 4."
 - 1. Disciplinary Action.

III.

A. Grounds for Discipline

- 6. Unprofessional conduct. A licensee shall be deemed to have engaged in unprofessional conduct if he violates any standard of professional behavior which has been established in the practice for which he is licensed.
- 3. Definition of Unprofessional Conduct. 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:
- F. Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.

Nurse England violated this provision when he was rude to a patient at Sister's facility and discharged a patient without a physician's order.

I. Failing to safeguard the patient's dignity and right to privacy in providing services regardless of race, color, creed and status.

Nurse England violated this provision when he was rude to a patient at Sister's facility and discharged a patient without a physician's order.

As a result of the above violations, The Board voted 5-0 to:

- 1. Issue a Letter of Warning to Nurse England pursuant to 10 M.R.S.A. Sec. 8003. The Board was of the opinion that the violations were serious enough to warrant disciplinary action.
- 2. Order Nurse England to pay the costs related to the hearing not to exceed \$800 by November 30, 2004. Those costs total \$320. (Hearing officer -2 hours @ \$100 per hour = \$200; Court

reporter services = \$120). The check or money order shall be made payable to: Maine Board of Nursing and mailed to Myra Broadway, Exec. Director, 158 State House Station, Augusta, Maine 04333-0158. The costs are in keeping with past Board practices and considering that no response was filed to the complaint which could have been resolved without the need for a hearing.

SO ORDERED.

Same Starter Contract

Dated: August/ 4, 2004

Richard L. Sheehan, M.S., R.N. Acting Chairman

Maine State Board of Nursing

IV. <u>APPEAL RIGHTS</u>

Pursuant to the provisions of 5 M.R.S.A. Sec. 10051.3, any party that decides to appeal this Decision and Order must file a Petition for Review within 30 days of the date of receipt of this Order with the Superior Court having jurisdiction. The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish 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.