



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:) **DECISION**
Wendi Gustafson) **AND**
Licensure 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. 8001, *et seq.*, the Maine State Board of Nursing (Board) met in public session at the Board’s office located in Augusta, Maine on October 22, 2008 at 1:00 p.m. The purpose of the meeting was to conduct an adjudicatory hearing to determine whether Wendi Gustafson violated Board statutes and rules as a registered professional nurse while licensed in Maine, as more specifically stated in the Notice of Hearing dated September 19, 2008. 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.; Dorothy Melanson, R.N.; Robin Brooks (Public Representative); Susan C. Baltrus, M.S.N., R.N., C.; and Carmen Christensen, R.N. John H. Richards, Assistant Attorney General, presented the State’s case. Wendi Gustafson was neither represented by legal counsel nor present, although had been served by first class mail with the Notice of Hearing on or about September 23, 2008. James E. Smith, Esq. served as Presiding Officer.

Following the determination that none of the Board members 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 A-D were admitted into the Record. The Board then heard the testimony, reviewed the submission of exhibits, and considered counsel’s closing argument, 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.



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II.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Wendi Gustafson, date of birth October 21, 1966, has been licensed as a registered professional nurse in Maine since August 2, 2005. Her license lapsed on October 21, 2006. Ms. Gustafson was employed by Lakewood, which is a long-term care skilled nursing facility located in Waterville, Maine.

In early March 2006, Lakewood's Director of Nursing Services, Elizabeth Giguere, became aware of the staff's concerns that Ms. Gustafson was diverting drugs at that facility. As a result, Ms. Giguere confronted Ms. Gustafson on March 7, 2006 with the following allegations:

1. Ms. Gustafson's record keeping documentation was inadequate since she signed out certain narcotic drugs, including Percocet (Oxycontin), to be administered to residents, but failed to document that the drugs had been administered.
2. Ms. Gustafson documented that she medicated several residents during her 11 p.m. – 7 a.m. shift who did not require medication on dates when other nurses covered that shift. Her assessment notes did not meet the standard which mandated that a patient be assessed both before a medication is given and also after the medication is provided.
3. Ms. Gustafson frequently made corrections by overwriting an entry on residents' narcotic records regarding the date and time of the administration of medication, whereas standard operating procedure requires that a line be drawn through the error and dated and initialed by the nurse.
4. Ms. Gustafson made frequent corrections in the number of tablets given to residents.
5. Ms. Gustafson made it difficult to determine the date on which a medication was given since she would employ either "0000" or "2400" to denote midnight, despite Lakewood's policy of utilizing "2400."
6. Ms. Gustafson did not explain an incident regarding a resident where her documentation sheet reveals that the individual was in no pain at 12:30 a.m., although Percocet was written on the narcotic record as being given at that time.
7. Ms. Gustafson allegedly gave two Percocet tablets to a resident at 6:30 a.m. for pain, whereas the day nurse recorded the resident's pain rating at 8:00 a.m.

at 10 out of 10, which is the greatest amount of pain. The two tablets should have resulted in much less pain or sleep.

8. Ms. Gustafson recorded administering Schedule II drugs to residents at a specific time during her shift, whereas certified nurse's aides caring for the residents witnessed the individuals to be sleeping at the alleged time of administration.
9. Ms. Gustafson documented giving drugs to patients who were under the care of another charge nurse on the same shift. The documentation revealed that the residents were not in need of such medication, which could have endangered their health, especially if the charge nurse had already administered medication.

In response to the above, Ms. Gustafson stated that she felt she had a problem. She admitted to Nurse Giguere that "...I stopped using about a year ago and just restarted in the last few months - since we moved. I tried to stop about a week ago, but it didn't work." Lakewood reported the results of its investigation to the Board and law enforcement. On March 9, 2006, Lakewood terminated Wendi Gustafson's employment. Additionally, on August 28, 2007, Ms. Gustafson pled guilty to the Class C crime of stealing drugs.

As a result of the above facts, the Board unanimously concluded that Wendi Gustafson violated the provisions of 32 M.R.S. Sec. 2105-A(2)(A) ("The practice of fraud or deceit ... in connection with service rendered within the scope of the license issued") and (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").

III.

SANCTIONS

The Board, exercising its experience and training, and based on the above findings and conclusions, hereby orders the following disciplinary action by a unanimous vote:

1. Wendi Gustafson's license to practice registered professional nursing in the State of Maine is hereby **REVOKED**.

2. Wendi Gustafson shall pay the costs of this hearing, not to exceed \$1,000, **by February 3, 2009**. The costs total \$702.50 (Hearing Officer: 2hrs at the hearing + 1.5hrs to write decision, or 3.5hrs @\$115 per hours = \$402.50, plus Court Reporter @\$300). 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, 158 State House Station, Augusta, Maine 04333-0158. Additional costs may be assessed in the event that Wendi Gustafson requests a transcript of the hearing. Costs shall be paid before the Board entertains any request by Wendi Gustafson for relicensure. The costs are ordered since the necessity for this hearing could have been avoided had Nurse Gustafson surrendered her license if she did not plan to attend the hearing. Additionally, associated hearing costs are more appropriately assessed against those licensees who violate Board statutes and rules rather than those who obey same.

SO ORDERED.

11/6/2008

Date



Bruce O'Donnell, C.R.N.A., Chairman
Maine State Board of Nursing

IV.

APPEAL RIGHTS

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 District 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.