

AMENDED

MAINE STATE BOARD OF NURSING

IN RE: Jennifer L. Higgins, R.N.)	
)	DECISION AND ORDER
Licensure Disciplinary Action)	

PROCEDURAL HISTORY

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 State of Maine Board of Nursing (Board) met in public session at the Board's offices located in Augusta, Maine on July 23, 2002 for the purpose of determining whether Jennifer L. Higgins, R.N. engaged in fraud, deceit, unprofessional or incompetent conduct or abused substances as a registered nurse while licensed in Maine as more specifically stated in the Notice of Hearing dated June 12, 2002. A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Chairman Richard L. Sheehan, M.S., R.N., Kathleen A. Dugas, L.P.N., Hazel M. Rand, (public representative), Jeanne B. Delicata, R.N.C. and Karen Tripp (public representative). John H. Richards, Ass't. Attorney General, presented the State's case. James E. Smith, Esq. served as Presiding Officer.

Ms. Higgins did not appear and neither was she represented by counsel. Service of the Notice of Hearing was duly made by regular mail which was not returned to the sender (Board). Subsequent to the opening statement by counsel, State's Exhibits 1-9 and the Board's Rules and statutes were admitted into the Record. Following the submission of exhibits and opening and closing arguments, the Board deliberated and made the following findings of fact by a preponderance of the credible evidence regarding the violations alleged in the Complaint.

FINDINGS OF FACT

Jennifer L. Higgins, birth date September 16, 1973, has been a licensed registered nurse in Maine since 1999. Her current license expires September 16, 2002. On October 29, 2001, Ms. Higgins began her employment as a registered nurse at Clover Health Care, a nursing facility in Auburn, Maine. During her orientation, she was required to be given a TB test. She refused to lift up her left sleeve and explained that she was embarrassed because her "cat scratched her." In the following days, during the 6:30 a.m.-3:00 p.m. shift, Ms. Higgins would leave the premises for lunch, take extended breaks, and, on one occasion, took a lengthy break without signing out. She was observed on numerous occasions to fall asleep, at times while in a standing position, which caused both staff and patients to comment. Additionally, she was late arriving at work on at least one occasion and left work early on another. Her explanation for her unacceptable behavior was that she was not sleeping well, had

suffered the termination of a long term relationship, and that her parents were having marital difficulties.

Due to the above, nurse Higgins was given three days off. The time away did not appear to cure the aberrant behavior since she continued to fall sleep on the job and her eyes were constantly on the verge of closing. To further complicate matters, Ms. Higgins's father arrived at the facility and stated that she was an addict. On November 8, 2001, Ms. Higgins was terminated from her employment at Clover.

Police records duly admitted during the hearing revealed that Jennifer Higgins was arrested on March 29, 2002 for unlawful possession of scheduled drugs with needle track marks viewed on the arms and the backs of her hands. One of the drugs was identified as cocaine. She was also in possession of drug paraphernalia.

CONCLUSIONS OF LAW

The relevant statutory and regulatory provisions regarding the above matter and as stated in the Complaint/Notice of Hearing are as follows:

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:

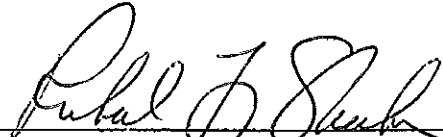
E. Incompetence in the practice for which the licensee is licensed. A licensee is considered incompetent in the practice if the licensee has:

1. Engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public. The above facts found in this Decision support the conclusion that Ms. Higgins is incompetent due to her substance abuse and sleeping during working hours while on duty.

The Board, by a vote of 5-0, based primarily on the cumulative effect of the above recited facts and its training and expertise, concluded that Jennifer Higgins, R.N. violated the above statutory and regulatory standards of nursing. The Board revoked her license to practice as a registered nurse pursuant to 10 M.R.S.A. Sec. 8003. 5. A-1. (2-A).

SO ORDERED.

Dated: July 23, 2002


Richard L. Sheehan, M.S., R.N. Chairman
Maine State Board of Nursing

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.