



Paul R. LePage
GOVERNOR

STATE OF MAINE
BOARD OF NURSING
158 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0158

MYRA A. BROADWAY, J.D., MS., RN
EXECUTIVE DIRECTOR

IN RE: NICHOLAS D. PENNELL, APRN-FNP)
of Alfred, ME)
License Nos. RN49269 & CNP81741)

CONSENT AGREEMENT
FOR
VOLUNTARY SURRENDER

Complaint 2013-52

INTRODUCTION

Pursuant to Title 32, Chapter 31, the Maine State Legislature endowed the Board with the power and duty to regulate the practice of nurses licensed by the Board, including issuing licenses and investigating complaints. Pursuant to 10 M.R.S. §8008, the Legislature provided that the sole purpose of the Board is to "protect the public health and welfare" and that "other goals or objectives may not supersede this purpose."

This document is a Consent Agreement ("Agreement") regarding Nicholas Pennell's licenses as a registered professional nurse ("RN") and Certified Family Nurse Practitioner in the State of Maine. The parties to this Agreement are Nicholas Pennell ("Mr. Pennell" or "Licensee"), the Maine State Board of Nursing ("the Board"), and the Office of the Attorney General, State of Maine. The Board met with the Licensee in an informal conference on December 4, 2013. The parties enter into this Agreement pursuant to 32 M.R.S. §2105-A (1-A)(C), 10 M.R.S. §§8003 (5)(B) and 8003(5)(D) in order to resolve Complaint 2013-52.

FACTS

1. Licensee has been licensed to practice as an RN in Maine since October 15, 2003. He was initially approved by the Board to practice as a Family Nurse Practitioner ("FNP") on November 29, 2005; this "approval" was converted to licensure on September 1, 2008. Mr. Pennell placed his FNP license on Inactive status August 15, 2013.
2. On March 19, 2013, the Board received notification from Maine Medical Partners that Licensee had been terminated from employment as a result of substandard work performance, including inaccurate and incomplete clinical documentation. Additional materials requested by the Board were provided by the facility and received on May 10, 2013. As a result of receiving this information, the Board initiated a complaint against the Licensee's Maine nursing licenses. Board staff docketed the Complaint as 2013-52.
3. On May 14, 2013, the Board issued a Notice of Complaint to Licensee relating to Complaint 2013-52.
4. On June 5, 2013, the Board received notification from the Medical Professionals Health Program ("MPHP") that Mr. Pennell had signed a self-referred five-year monitoring contract on July 12, 2012. Drug tests between July 2012 and February 2013 were negative for the presence of prohibited substances. Due to financial constraints, however, testing was suspended in February 2013. Although his MPHP contract was subsequently terminated, he is welcome to return when he is able to meet program requirements.
5. On June 10, 2013, the Board received the Licensee's written response to the Notice of Complaint in which he stated that he failed to appropriately review and accurately document patient charts on several occasions.



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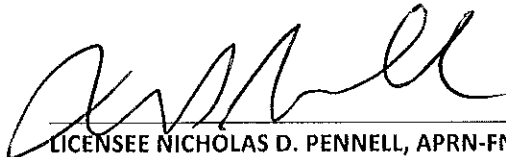
6. On September 5, 2013, following review of the case, the Board advised the Licensee that he would be scheduled for an informal conference.
7. On October 21, 2013, the Board received documentation from York County Shelter Programs, Inc. regarding the Licensee's counseling and participation in its substance abuse recovery program.
8. On December 4, 2013, the Board held an informal conference with the Licensee regarding Complaint 2013-52 and his substance abuse.
9. During the informal conference, the Board considered the documentation provided by the Licensee's former employer and counselor, as well as the Licensee's status of recovery. Licensee admitted to last using opiates on September 17, 2013 following a death in the family. He currently attends one AA and two NA meetings weekly, has a sponsor and family support, and is attempting to secure additional counseling. He is not seeking nursing employment at this time.
10. During the informal conference, the Board discussed with the Licensee the option of license surrender since he does not plan to practice nursing in the near future and wishes to focus on his recovery. The Board voted to offer the Licensee a Consent Agreement for a voluntary surrender.
11. Absent Licensee's acceptance of this Agreement by signing and returning it to the Maine State Board of Nursing, 158 State House Station, Augusta, Maine 04333-0158 on or before January 27, 2014, the Board will take further action. In the absence of an agreement, the Board could impose, subsequent to adjudicatory proceedings, findings beyond those contained above and also impose greater adverse action including costs of a hearing, suspension or revocation of Licensee's license.

AGREEMENT

12. Licensee admits to the Facts as stated above and that such conduct constitutes grounds for the Board to impose discipline against his Maine nursing licenses under the following laws and regulations:
 - a. Pursuant to 32 M.R.S. §2105-A (2)(B) for misuse of alcohol, drugs or other substances that has resulted or may result in the licensee performing services in a manner that endangers the health or safety of patients.
 - b. Pursuant to 32 M.R.S. §2105-A (2)(F) and Board Rules Chapter 4 §1.A.6 for engaging in conduct that violates any standard of professional behavior which has been established in the practice for which the licensee is licensed; and
 - c. Board Rule Chapter 4 §3(F) for failing to follow policies and procedures in the practice situation designed to safeguard the patient.
13. As discipline for the conduct cited in Paragraph No. 12 above, Licensee agrees to **SURRENDER** his Maine RN and APRN licenses, effective on the date of the final execution of this Agreement. Licensee understands and agrees that as a result of surrendering his licenses, he no longer has a nursing license and is subject to the terms of this Agreement until and unless the Board, at his written request, votes to reinstate his licenses. Licensee understands and agrees that upon receiving his request to reinstate his Maine RN and/or APRN licenses, the Board shall have the sole discretion to grant or deny such a request or to grant him licensure with probation and conditions as it determines appropriate to protect the public.

14. Licensee understands and agrees that prior to seeking reinstatement of his nursing license(s), he must provide evidence that he has remained substance-free for one year, including at least two negative random drug screens, and has undergone professional counseling/treatment.
15. This Agreement is not appealable. This Agreement cannot be modified orally. It can only be modified by writing and only if signed by all of the parties to the Agreement and approved by the Office of the Attorney General. Any decision by the Board as a result of Licensee's request to modify this Agreement need not be made pursuant to a hearing.
16. This Agreement is a public record within the meaning of 1 M.R.S. §402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. §408-A.
17. This Agreement constitutes adverse action and is reportable to the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB).
18. Nothing in this Agreement shall be construed to affect any right or interest of any person not a party hereto.
19. For the purposes of this Agreement, the term "execution" means that date on which the final signature is affixed to this Agreement.
20. Licensee acknowledges by his signature hereto that he has read this Agreement, that he has had an opportunity to consult with an attorney before executing this Agreement, that he has executed this Agreement of his own free will and that he agrees to abide by all the terms and conditions set forth in this Agreement.


DATED: 12/28/13



LICENSEE NICHOLAS D. PENNELL, APRN-FNP

FOR THE MAINE STATE BOARD OF NURSING


DATED: Jan 2, 2014



MYRA A. BROADWAY, JD, MS, RN
Executive Director

FOR THE OFFICE OF THE ATTORNEY GENERAL

DATED: 1/3/14



RONALD O. GUAY
Assistant Attorney General

Effective Date: 1/3/14