

II.

FINDINGS OF FACT

Jennifer Pinkham, 27 years of age, was first licensed as a Registered Nurse in the State of Maine on July 29, 2004. Her license lapsed on August 29, 2005. On January 25, 2005, a nurse at Woodlawn Rehabilitation and Nursing Center in Skowhegan, Maine suspected that Nurse Pinkham was diverting morphine and perhaps other narcotics since the licensee appeared not to have attempted to administer the drugs which she had signed out for to at least four residents. Additionally, certain medications that had been signed out by Nurse Pinkham to be administered to several of the facility's patients were found in her pocketbook. The Director of Nursing then called the Skowhegan Police and Ms. Pinkham admitted to the detectives that she had a drug problem and that she had self-administered the missing morphine earlier and had removed the other medications.

An assessment for pain was conducted regarding four residents who it was suspected had not received the pain relieving medication. One was found to be in severe pain, crying and moaning as were two others. Nurse Pinkham was terminated from employment at the facility on January 25, 2005.

Prior to the above termination, Ms. Pinkham had been employed at Mount St. Joseph Nursing Home in Waterville, Maine. She had been the subject of a previous complaint written to the Board by that facility dated October 19, 2004. In that letter, the Director of Nursing informed the Board that Ms. Pinkham had been employed at Mount St. Joseph from August 19, 2004 until she was terminated on October 18 of that year. During her probationary period, the facility had concerns with her performance, she appeared to be very "groggy", had slurred speech and difficulty standing up. She was discharged for substandard employment. Following the receipt of Mount St. Joseph's letter which had been sent by the Board to Ms. Pinkham, the licensee responded by letter dated November 29, 2004 and offered various explanations for her conduct. In that letter, she stated that she had obtained new employment and made it "a point without being too obvious, to dispense all medications in view of other staff to protect myself from future allegations."

On March 14, 2005, Jennifer Pinkham pled guilty to one count of stealing drugs (Class D) while employed at Woodland Nursing Home and received a 15-day term of imprisonment for her crime. On the day of the Board's hearing in this matter, Jennifer Pinkham forwarded a fax to the

Board and admitted some of the allegations. However, she decided not to attend the hearing even though she was available to do so. She informed the Board in her correspondence that she had completed six months of counseling, completed her jail sentence, enrolled in a Methadone clinic for four and one half months, and is currently free of any illegal substances. She also apologized for her actions in the past, which she recognized "have been both shameful and hurtful, not only to myself, but to the nursing community in general. I note that I lied in my last letter to cover up what I had done, and then did not communicate with the Nursing Board at all because I was so afraid of facing a board of my peers."

III. CONCLUSIONS OF LAW

The Board, by a vote of 6-0, and utilizing its expertise, training, and experience, concluded that Ms. Pinkham violated the following provisions of Maine law.

1. 32 M.R.S. A. Section 2105-A.1.A. which requires the Board to notify the licensee of the contents of a complaint, and in connection therewith, "the licensee shall respond within 30 days."

Disciplinary action is authorized by 32 M.R.S.A. Section 2105-A.2.h. which provides for sanctions for a violation of "this chapter or a rule adopted by the Board."

Nurse Pinkham violated the above statute by her failure to respond to the Board's complaint.

2. 32 M.R.S.A. Section 2105-A.2.A. states the following as grounds for disciplinary action by the Board:

"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."

Nurse Pinkham violated this section when she acted deceitfully in utilizing the Pyxis System, but intentionally did not document subsequent activity as required.

3. 32 M.R.S.A. Section 2105-A.2.B. states the following as grounds for disciplinary action by the Board:

“Habitual substance abuse that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the life or safety of patients”

Ms. Pinkham violated this section by stealing drugs from the facility and administering them to herself.

4. 32 M.R.S.A. Section 2105-A.2.E. states the following as grounds for disciplinary action by the Board:

“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.”

Nurse Pinkham violated this section by failing to document drugs which were prescribed for various patients.

5. 32 M.R.S.A. Section 2105-A.2.F. states the following as grounds for disciplinary action by the Board:

“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.”

Ms. Pinkham violated this section by falsifying records in that she failed to document either the administration of or lack of administration of the prescribed drugs. Additionally, she diverted these missing medications either for her own or others’ use.

6. Rules and regulations of the Maine State Board of Nursing, Chapter 4, “Disciplinary Violations of Law: Sections:

a. 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.” (See A.2.A. above)

b. 1.A.(2): “Habitual intemperance in the use of alcohol or habitual use or narcotic or hypnotic or other substances the use of which has resulted or may result in the licensee performing his duties in a manner which endangers the health or safety of his patients.” (See A.2.B. and A.2.F. above)

c. 1.A.(5): "Incompetency in the practice for which he 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." (See A.2.E.above)

d. 1.A.(6): "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." (See A.2.F. above)

e. 1.A.(8): "Any violation of this chapter or any similar rule adopted by the Board of Nursing."

6. Section 3.F: "Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.

Nurse Pinkham failed to follow the New England Rehabilitation Hospital's protocols and policies regarding proper documentation of drugs.

7. Section 3.K: "Inaccurate recording, falsifying or altering a patient or healthcare provider record."

Ms. Pinkham inaccurately recorded the drug which she administered to several patients and failed to record same for the other patients.

8. Section 3.P: "Diverting drugs, supplies or property of patients or healthcare provider."

Nurse Pinkham diverted drugs which were the property of the healthcare provider.

9. Section 3.Q: "Possessing, obtaining, furnishing or administering prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs."

The Board finds that Nurse Pinkham both obtained and possessed prescription drugs which were not lawfully prescribed to her.

IV.

SANCTIONS

The Board, by a vote of 6-0, and utilizing its experience, training and expertise, hereby orders that:

1. Jennifer L. Pinkham's license to practice as a Registered Nurse is hereby Revoked for a period of three years. During the time of revocation and as a precondition to her reapplication for licensure, she shall:

A. Remain substance free.

B. Jennifer L. Pinkham shall not work or volunteer in any capacity or in any position holding herself out as a registered professional nurse or with the designation R.N. while her nursing license is revoked.

C. Continue with counseling if she is in counseling and be responsible to ensure that quarterly reports from the counselor are provided to the Board.

D. Continue in aftercare if ordered by the counselor or deemed appropriate by any other professional.

E. Advise any individuals who are providing healthcare to her of her substance abuse history in order that they will be aware of her problems associated with certain prescription drugs.

2. Jennifer L. Pinkham shall pay the costs of this hearing not to exceed \$1,500 with payment to be made prior to reapplication for licensure. She shall also be responsible for any transcription costs if she appeals this decision. The Treasurer's check or money order shall be made payable to: "Maine State Board of Nursing" and mailed to Myra Broadway, Exec. Director, 158 State House Station, Augusta, Maine 04333-0158. The hearing costs are ordered due to the fact that Nurse Pinkham failed to timely respond to the Board's complaint, which response may have resulted in a Consent Agreement thereby removing the need for this hearing. Moreover, the ordering of costs is

consistent with past Board practices in similar situations and the Board's policy that those members of the profession who obey Board statutes and rules should not be held responsible for payment of the costs of those who do not obey such laws. (6-0)

SO ORDERED.

WVBR VLS
Dated: ~~September 22, 2006~~



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

V.

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.