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July 23, 2024

Via First Class and Certified Mail No. 9589 0710 5270 1788 9275 62,

Return Receipt Requested and via Email

Janet E. Michael, BSN, MSN, JD

Law Office of Janet E. Michael

P.O. Box 10631

Portland, Maine 04104-6031

Re: In the Matter of Adam Barrett
Docket No. NUR-2016-0192
License No. RN237440

Dear Attorney Michael:

Enclosed please find the **Amended** Final Decision and Order ("Order") issued by the Board of Registration in Nursing on July 23, 2024, and effective **August 2, 2024**. Please be advised that the previous Final Decision and Order contained appeal rights language relating to orders involving suspensions or revocations, which is not applicable to the Order of NUR-2016-0192. Mr. Barrett's appeal rights have been amended in the document to reflect the proper process. This is the only change made to the Order. Additionally, an **Amended** Ruling on Objections is enclosed correcting a scrivener's error on the bottom of the document indicating a different licensee.

This constitutes full and final disposition of the above-referenced Complaint, as well as the final agency action of the Board. Mr. Barrett's amended appeal rights are noted on page 12.

Please note that as of the effective date, Mr. Barrett's license status will change to Probation. Please review the terms of the Order for further detail.

You may contact Meghan Bresnahan, Board Counsel at Meghan.bresnahan@mass.gov with any questions that you may have concerning this matter.

Sincerely,

Heather Cambra, BSN, RN, JD

Executive Director

Board of Registration in Nursing

Encl.

cc: Beverly Kogut, Esq., Administrative Magistrate
Noah Ertel, Esq., Prosecuting Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, COUNTY

BOARD OF REGISTRATION IN
NURSING

In the Matter of
Adam Barrett
License No. RN237440
License Expires 09/13/2024

Docket No. NUR-2016-0192

AMENDED FINAL DECISION AND ORDER
AFTER FULL ADJUDICATORY HEARING

Procedural History

On September 26, 2017, the Board of Registration in Nursing (“Board”) issued and duly served on Adam Barrett (“Respondent”), a Registered Nurse (“RN”), an *Order to Show Cause* (“OTSC”) on why it should not take action against his nursing license and right to renew. The OTSC was amended by Prosecuting Counsel twice during the proceedings. The Third Amended OTSC was issued June 10, 2021, and this version will serve as the operative OTSC relative to this Final Decision and Order. The OTSC alleges that Respondent, while employed and on duty as an RN at Massachusetts General Hospital (“MGH”) in Boston, MA, during the summer of 2016: (1) practiced as a nurse while impaired; (2) engaged in conduct as to overrides that violated accepted standards of nursing practice; (3) engaged in a pattern of conduct in his removal, administration, handling, documentation, and wasting of controlled substances that constituted a failure to comply with accepted standards of nursing practice; and (4) [REDACTED]. Respondent filed an *Answer* to the OTSC and Request for a hearing.¹

On February 28, 2022, March 1, 2, and 3, 2022, days 1-4 of the Adjudicatory Hearing were held before Administrative Magistrate Beverly Kogut (“Magistrate Kogut”). On April 26, 27, and 28, 2022, and May 2, 4, and 5, 2022, days 5-10 of the adjudicatory hearing were held. On October 13, 14, and 17, 2022 days 11-13 of the adjudicatory hearing were held.

¹ Respondent filed an Answer and Request for hearing to the initial OTSC, the Second Amended OTSC and the Third Amended OTSC, respectively.

On June 27, 2023, Prosecuting Counsel and Respondent Counsel filed Post-Hearing Briefs (*Post-Hearing Brief*, respectively). The Tentative Decision After Full Adjudicatory Hearing (*Tentative Decision*) was filed March 4, 2024. Respondent Counsel filed Objections including Attachment A on April 9, 2024 (*Respondent's Objections*). Petitioner filed Objections to Respondent's Objections, Request to Re-Open to Record, and Motion to Strike on April 30, 2024 (*Petitioner's Objections* and *Motion to Strike*).

The Board has reviewed and carefully considered the *Tentative Decision*, *Respondent's Objections*, and *Petitioner's Objections* and *Motion to Strike*. The Board's decision relative to *Respondent's Objections*, and *Petitioner's Objections* and *Motion to Strike* is set forth in *Ruling on Respondent's Objections to the Tentative Decision*. Based on the Board's *Ruling on Respondent's Objections to the Tentative Decision*, the Board adopts the *Tentative Decision* in full, including all findings of fact, credibility determinations, conclusions of law and discussion contained therein, as the Board's Final Decision. The *Tentative Decision* is attached hereto and incorporated by reference.

Discussion

The Board is charged with protecting the public health, safety, and welfare and, to this end, the Board has broad authority to regulate the conduct of nursing professionals including the ability to sanction professionals for conduct that undermines public confidence in the integrity of the profession. See Kvitka v. Board of Registration in Medicine, 407 Mass. 140 cert. denied, 498 U.S. 823 (1990); Raymond v. Board of Registration in Medicine, 387 Mass. 708, 713 (1982).

The OTSC alleges that Respondent, while employed and on duty as an RN at Massachusetts General Hospital ("MGH") in Boston, MA, during the summer of 2016: (1) practiced as a nurse while impaired; (2) engaged in conduct as to overrides that violated accepted standards of nursing practice; (3) engaged in a pattern of conduct in his removal, administration, handling, documentation, and wasting of controlled substances that constituted a failure to comply with accepted standards of nursing practice; and (4) [REDACTED].

Respondent filed an *Answer* to the OTSC and Request for a hearing.² The *Tentative Decision* contains the following findings:

1. It was not proven that Respondent practiced as a nurse while impaired.
2. It was not proven that Respondent engaged in conduct as to overrides that violated accepted standards of nursing practice.
3. It was not proven that Respondent engaged in a pattern of conduct in his removal, administration, handling, documentation and wasting of controlled substances that constituted a failure to comply with accepted standards of nursing practice.

4. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

5. The Board has authority to discipline Respondent's license based on [REDACTED]

[REDACTED]

The Board does not have authority to discipline Respondent for the allegations not proven. Therefore, the Board will only address the following allegation that was proven at hearing:

Respondent, while on duty as an RN at MGH, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Board has authority to discipline Respondent's license based on [REDACTED]

[REDACTED]

² Respondent filed an Answer and Request for hearing to the initial OTSC, the Second Amended OTSC and the Third Amended OTSC, respectively.

[REDACTED]

[REDACTED]

[REDACTED]

It is Petitioner's position that [REDACTED] is pure speculation at best; that is lacks any basis in fact or science and that it was prejudicial error for the Respondent to have been allowed to offer any evidence regarding [REDACTED] in the first instance.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. As Petitioner points out, [REDACTED] is purely speculative. The Board cannot rely on speculations, it must rely on accepted science and medicine.

The legal determinations found in the *Tentative Decision* state that [REDACTED], Respondent failed to engage in the practice of nursing in accordance with accepted standards of nursing practice in violation of 244 CMR 9.03 (5), engaged in behavior likely to have an adverse effect upon public health, safety or welfare in violation of 244 CMR 9.03 (47), and undermined public confidence in the profession's integrity³. This conduct also subjects his license to discipline pursuant to G.L. 112, § 61, authorizing discipline when a Respondent is guilty of deceit, malpractice, or gross misconduct in the practice of the nursing profession or of any offense against Commonwealth law relating to nursing practice.

³ The public expects a nurse to have the ability to practice with reasonable judgment, actions and competency. No expert testified about whether Respondent [REDACTED] while working as a nurse, violates accepted standards of nursing practice. Evidence establishing each pertinent accepted standard of nursing practice is not essential when, as in this case, conduct is so obvious that laymen can rely on their common knowledge to recognize a violation of accepted standards. See *Kirabati Seafood Co. LLC, v. Dechert LLP*, 478 Mass. 111, 117 (2017); *Pongonis v. Saab*, 396 Mass. 1005, 1005 (1985) (rescript). Respondent's [REDACTED] is egregious conduct that obviously violates accepted standards of nursing practice. The Board has authority to sanction nurses for conduct which undermines public confidence in the profession's integrity. See *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338, 342 (1996). The ability to practice nursing requires unswerving dedication to preserve life and restore health. See *Raymond v. Board of Registration in Medicine*, 387 Mass. 708, 712 (1982). [REDACTED] breaches dedication to preserve life and restore health and undermines public confidence in the profession's integrity. It is also behaviors that is likely to have an adversely effect not only upon Respondent's health, safety and welfare but that of the public as well in violation of 244 CMR 9.03 (47).

Respondent's Post-Hearing Brief argues that Respondent does not now, nor did he in 2016, pose any actual or potential threat to the health, safety, and welfare of the citizens of the Commonwealth and that he did not violate any standards of nursing practice and therefore, this case must be dismissed.

Petitioner's Post-Hearing Brief argues that as a result the violations of statutes, regulations, and case law which the Petitioner has proved by a preponderance of the evidence, it is appropriate that the Board sanction the Respondent consistent with Board precedent established in cases with similar factual circumstances. Specifically, Petitioner recommended that, at a minimum, the Board suspend the Respondent's license and right to renew said license for three (3) years with reinstatement requirements as determined by the Board, and post-suspension probation. Petitioner argues that this sanction is consistent with the evidence and board precedent and cites multiple cases involving Respondents who practiced while impaired. However, as stated in the *Tentative Decision*, it was not proven that Respondent practiced while impaired. Therefore, the cases cited by Petitioner relative to sanction are inapplicable and the Board declines to suspend Respondent's license.

The evidence in this case indicates that Respondent [REDACTED] [REDACTED] The Board considers a nurse's [REDACTED] [REDACTED] – to be a serious violation of standards of nursing practice, as it substantially increases the risk of impaired practice, drug diversion, and/or harm to patients. Moreover, such conduct undermines public confidence in the profession.

In order to guard against the possibility of [REDACTED] [REDACTED], the Board finds a one-year period of probation with toxicology screening is necessary to protect the public. This sanction is consistent with Board precedent (See In the Matter of Mary Eagan, Board of Registration in Nursing, Docket No. NUR-2021-0015. Consent Agreement for one-year probation with random toxicology screening where Respondent [REDACTED] and thereafter [REDACTED] in violation of 244 CMR 9.03 (5) and (47).)

The Board notes that other matters involving the unauthorized use of controlled substances, without evidence of impaired practice or drug diversion, have resulted in a three-year suspension. In this case, however, the Board notes mitigating circumstances, including Respondent being awarded clinical scholar status by the Department of Nursing at MGH, [REDACTED], multiple character witnesses, testimony and letters of support from multiple colleagues, professionals, and personal friends, and Respondent's involvement in professional societies, committees, and volunteer work. The Board acknowledges that these findings speak to Respondent's character, work ethic, and professional commitment to the field of nursing. As such, based on the findings in the *Tentative Decision*, the Board has determined suspension of the license is not necessary.

The Board voted to adopt the within **Final Decision** at its meeting held on July 10, 2024, by the following vote:

<i>In favor:</i>	<i>A. Alley, MSN, RN, K.A. Barnes, JD, RPh, K. Crowley, DNP, RN, A. Joseph, MD, L. Kelly, DNP, CNP, L. Keough, PhD, CNP, RN, M. McAuliffe, DNP, RN, CPAN, J. Monagle, PhD, RN, D. Nikitas, BSN, RN, V. Percy, MSN, RN, R. Reynolds, PhD, MSN, RN</i>
<i>Opposed:</i>	<i>None</i>
<i>Abstained:</i>	<i>None</i>
<i>Recused:</i>	<i>None</i>
<i>Absent:</i>	<i>A. Sprague, BS, RN</i>

ORDER

1. Based on its Final Decision, the Board orders that Respondent's license to practice as a Registered Nurse in Massachusetts, License No. RN237440 be placed on **PROBATION** for no less than **one (1) year** with random toxicology screening commencing on the Effective Date of this Order ("Effective Date").

2. During the Probationary Period, the Respondent shall comply with all of the following requirements to the Board's satisfaction:
- a. Comply with all laws and regulations governing the practice of nursing.
 - b. Notify the Board in writing within ten (10) days of each change in his name and/or address.
 - c. Timely renew his license to practice nursing.
 - d. Respond to inquiries from Board staff in a timely manner.
 - e. Disclose the terms of this Order to the Program Administrator of any Nursing Education Program at which he is enrolled during the Probationary Period.
 - f. If Respondent is actively employed in a nursing capacity, he must adhere to the following guidelines:
 - i. Employment in a facility setting where the Respondent receives consistent, on-site supervision by a qualified licensed nurse⁴ for a minimum average of twenty (20) hours per week throughout the Probationary Period.
 - ii. A qualified licensed nurse is defined as a nurse who 1) possesses a Massachusetts⁵ nursing license in good standing or authority to practice under federal law, or both; 2) is employed in a supervisory role; 3) possesses a minimum of one year full-time experience in nursing, or its equivalent, within the last five years; 4) is educationally prepared at or above the level of the Respondent; and 5) has no open complaints with the Board and no open criminal matters.
 - g. Refrain from the practice of nursing in any of the following employment settings during the Probationary Period:
 - i. Settings where structured, consistent on-site supervision is not in place including but not limited to, home care agencies or private home care;
 - ii. Travel nurse agencies; or
 - iii. Temporary staffing agencies.

⁴ The Respondent must receive direct supervision from a qualified licensed nurse who is employed in a supervisory role and is physically located at all times in each facility in which the Respondent practices nursing.

⁵ Or a license to practice in the jurisdiction in which the Respondent is employed.

- h. If Respondent is actively employed in a nursing capacity, he must review this Order with each of his nursing supervisors, and arrange for each nursing supervisor to submit directly to the Board:
 - i. a completed and signed “Supervisor Verification Form” (**Form 1**), provided with this Order, within thirty (30) days of
 - (1) the Effective Date *and*
 - (2) any subsequent employment commenced during the Probationary Period
 - ii. *quarterly* written reports⁶, using the “Supervision Report Form” (**Form 2**) provided with this Order attesting to the quality of the Respondent’s nursing practice, reliability and attendance and specifically addressing Respondent’s sustained recovery from substance abuse. The Board may take action in the event that any quarterly report reveals a practice issue the Board deems significant.
- i. Within 30 days of the Effective Date, notify the Board in writing if the Respondent is not employed in accordance with paragraph f.
- j. Notify the Board in writing within seven (7) days of any change in the Respondent’s employment status, including each change in Employer, each resignation or termination, and the name, address, and telephone number of each new Employer.
- k. Notify the Board in writing within seven (7) days of any complaint filed against his nursing license in any jurisdiction in which he holds such a license.
- l. Demonstrate either absence of, or successful, sustained recovery from, substance abuse, by:
 - i. Abstaining from the use of alcohol and all substances of abuse or substances with potential for abuse.
 - ii. Complying with random observed toxicology screening, including but not limited to testing of urine, blood or hair as determined necessary by Board staff, for a *minimum* of fifteen tests annually. Compliance requires that the Respondent enroll⁷ with and maintain a current account with the Board’s Drug Testing Management Company (DTMC) identified in

⁶ The Respondent is responsible for ensuring that these reports on the required form are received by the Board commencing ninety (90) days after the Effective Date and on the first day of every third month thereafter.

⁷ The Respondent must enroll with the DTMC within seven (7) days of the Effective Date.

Attachment A of this Order, and that the Respondent meet the conditions and procedures outlined in **Attachment A**, including but not limited to:

- a. Calling the DTMC daily, during hours set by the DTMC to determine whether the Respondent has been selected to test on that day;
- b. When selected to test, appearing at a lab identified by the DTMC as appropriate for collecting observed toxicology samples for the type of test that has been scheduled, during the hours of collection, and provide a sample; and
- c. Agreeing that the DTMC shall provide the results of random toxicology screening to the Board.

The Respondent agrees that positive toxicology screening results that are not supported by a valid prescription provided to Board staff prior to the toxicology test date are a violation of this Order.

- iii. Identifying all treatment providers, including primary care physicians, prescribers, therapist(s) and counselor(s), as of the Effective Date and reporting any change of existing treatment providers or addition of new treatment or new treatment providers within ten (10) days. After the Effective Date and upon request thereafter, providing an Authorization for Release of Information for each current treatment provider. Providing documentation from each treatment provider in which the provider verifies that they are aware of Respondent's Probation status.
- iv. Providing authorization, upon request, for Board staff to obtain the Respondent's Prescription Monitoring Program (PMP) report. Identifying all pharmacies where the Respondent has filled prescriptions within the last year and reporting any new pharmacies where the Respondent fills prescriptions during Probation. After the Effective Date and upon request thereafter, providing an Authorization for Release of Information for each pharmacy.

3. Board staff may, pending review by the Board, take immediate action to restrict nursing practice privileges following:

- a. A self-report of unauthorized substance use by the Respondent;
- b. A positive toxicology screening result that is not supported by a current and valid prescription provided to Board staff prior to the toxicology test date;

- c. A third party report that the Respondent has engaged in unauthorized substance use or has been impaired, provided that such report is supported by statement or documentation by a person to whom the Respondent has admitted such use or impairment or a person who has observed such use or impairment;
- d. A report from an out of state employer that the Respondent is under investigation for a practice issue which violates Board regulations at 244 CMR 9.00 *et seq.*

Immediate action that Board staff may take includes notifying the Respondent and any employer where the Respondent may be engaged in nursing practice, that the Respondent's nursing practice privileges have been restricted by the Board. Board staff shall inform the Respondent of the factual basis for taking immediate action. In the event that the Respondent disputes the factual basis, the Respondent agrees to refrain from the practice of nursing pursuant to their Massachusetts license until such time as the Board either determines that there is no violation, or takes action pursuant to Paragraph 5.

- 4. If Respondent has complied to the Board's satisfaction with all the requirements contained in this Order, the Probationary Period will terminate **one (1) year** after the Effective Date.
- 5. If the Respondent does not comply with each requirement of this Order, or if the Board opens a Subsequent Complaint⁸ during the Probationary Period, the Respondent agrees to the following:
 - a. The Board may upon written notice to the Respondent, as warranted to protect the public health, safety, or welfare:
 - i. EXTEND the Probationary Period; and/or
 - ii. MODIFY the Probation Order requirements; and/or
 - iii. IMMEDIATELY SUSPEND the Respondent's nursing license.
 - b. If the Board suspends the Respondent's nursing license pursuant to Paragraph 5(a)(iii), the suspension shall remain in effect until:
 - i. the Board gives the Respondent written notice that the Probationary Period is to be resumed and under what terms; or
 - ii. the Board and the Respondent sign a subsequent agreement; or

⁸ The term "Subsequent Complaint" applies to a complaint opened after the Effective Date, which (1) alleges that the Respondent engaged in conduct that violates Board statutes or regulations, and (2) is substantiated by evidence, as determined following the complaint investigation during which the Respondent shall have an opportunity to respond.

- iv. the Board issues a written final decision and order following adjudication of the allegations (1) of noncompliance with this Order, and/ or (2) contained in the Subsequent Complaint.
6. If the Board suspends Respondent's nursing license in accordance with Paragraph 5(a)(iii), Respondent will no longer be authorized to engage in the practice of nursing in the Commonwealth of Massachusetts and shall not in any way represent themselves as a Registered Nurse until such time as the Board reinstates their nursing license or right to renew such license⁹.

The Board voted to adopt the within **Final Order** at its meeting held on July 10, 2024, by the following vote:

In favor: *A. Alley, MSN, RN, K.A. Barnes, JD, RPh, K. Crowley, DNP, RN, A. Joseph, MD, L. Kelly, DNP, CNP, L. Keough, PhD, CNP, RN, M. McAuliffe, DNP, RN, CPAN, J. Monagle, PhD, RN, D. Nikitas, BSN, RN, V. Percy, MSN, RN, R. Reynolds, PhD, MSN, RN*

Opposed: *None*

Abstained: *None*

Recused: *None*

Absent: *A. Sprague, BS, RN*

EFFECTIVE DATE OF ORDER

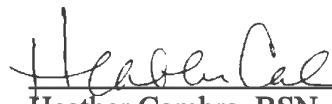
This Final Decision and Order becomes effective upon the tenth (10th) day from the date it is issued (see "Date Issued" below).

⁹ Any evidence of unlicensed practice or misrepresentation as a Registered Nurse after the Board has notified the Respondent of their license suspension shall be grounds for further disciplinary action by the Board and the Board's referral of the matter to the appropriate law enforcement authorities for prosecution, as set forth in G.L. c. 112, §§ 65 and 80.

RIGHT TO APPEAL

Respondent is hereby notified of the right to appeal this Final Decision and Order to the appropriate Superior Court pursuant to M.G.L. c. 30A, § 14. Respondent must file any appeal within thirty (30) days of receipt of this notice of Final Decision and Order.

Board of Registration in Nursing,

 BSN, RN, JD
Heather Cambra, BSN, RN, JD
Executive Director
Board of Registration in Nursing

Date Issued: July 23, 2024

Notified:

**FIRST CLASS & CERTIFIED MAIL NO 9589 0710 5270 1788 9275 62,
RETURN RECEIPT REQUESTED**

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