



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Division of Health Professions Licensure
Board of Registration in Nursing

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VIA U.S. FIRST CLASS CERTIFIED MAIL # 7014 0510 0001 0374 9503
RETURN RECEIPT REQUESTED

February 6, 2015

Jennifer Boyd Herlihy, Esq.
Adler, Cohen, Harvey, Wakeman and Guekguezian, LLP
75 Federal Street
Boston, MA 02110

RE: *In the Matter of Brian J. Couture*, License No. RN238068
Board of Registration in Nursing; Docket No. NUR-2014-0087


Dear Attorney Herlihy,

This letter acknowledges receipt of two signed original copies of the Consent Agreement for Voluntary Surrender (Agreement) between your client and the Board of Registration in Nursing (Board) in resolution of the above-referenced complaint. The Board has now signed both original copies of the Agreement, one of which is enclosed for your records. Please note that the effective date of the Agreement is February 5, 2015.

A copy of this letter and the Agreement will remain in complaint file Docket No. NUR-2014-0087. The file will be retained for no less than three (3) years in accordance with state public records laws.

You may contact me at (617) 973-0824 if you have any questions regarding this matter.

Sincerely,


Olajumoke Atueyi, Board Counsel
Board of Registration in Nursing

Enclosure



I do hereby certify the foregoing to be a true and certified copy of the document on file with the Massachusetts Board of Registration in Nursing.

COMMONWEALTH OF MASSACHUSETTS

Am
Authorized Signature

2/11/15
Date

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN NURSING

In the Matter of
Brian J. Couture
License No. RN238068
Expire 01/06/16

Docket No. NUR- 2014-0087

CONSENT AGREEMENT FOR VOLUNTARY SURRENDER

The Massachusetts Board of Registration in Nursing (Board) and Brian J. Couture (Licensee), a Registered Nurse (RN) licensed by the Board, License No. RN238068 do hereby stipulate and agree that the following information shall be entered into and become a permanent part of the Licensee's record maintained by the Board:

1. The Licensee acknowledges that a complaint has been filed with the Board against his Massachusetts Registered Nurse license (license¹) related to the conduct set forth in paragraph 2, identified as Docket No. NUR-2014-0087 (Complaint).
2. The Licensee admits that while employed as a Registered Nurse at St. Vincent's Hospital in Worcester, MA, he reported to worked on March 23, 2014, impaired by hydromorphone for which he did not have a valid prescription. A urine drug test was positive for the drug. On or about January 2014 through March 2014, he removed Fentanyl in excess of the ordered dosage without valid justification and he failed to document wasting the excess amount. He removed Dilaudid in excess of the ordered dosage and failed to waste the excess Dilaudid in a timely manner. When he did waste the Dilaudid, the content could not be identified. The Licensee acknowledges that his conduct constitutes failure to comply with the Board's Standards of Conduct at 244 Code of Massachusetts Regulations (CMR) 9.03(5), (35), (36) (38) (39) and (47) and warrants disciplinary action by the Board under Massachusetts General Laws (G.L.) Chapter 112, section 61 and Board regulations at 244 CMR 7.04, Disciplinary Actions.

¹ The term "license" applies to both a current license and the right to renew an expired license.
Brian J. Couture
License No: RN238068
NUR-2014-0087

3. The Licensee agrees to **SURRENDER** his nursing license for no less than three (3) years commencing with the date on which the Board signs this Agreement (Effective Date).
4. After the Surrender Period when the Licensee can complete to the satisfaction of the Board all of the requirements set forth in this Paragraph the Licensee may petition the Board for reinstatement of his license. The petition must be in writing and must include the following documentation of the Licensee's ability to practice nursing in a safe and competent manner, all to the Board's satisfaction:
 - a. Evidence of completion of all continuing education required by Board regulations for the two (2) renewal cycles immediately preceding the date on which the Licensee submits his petition ("petition date");
 - b. A performance evaluation sent directly to the Board from each of the Licensee's employers, prepared on official letterhead that reviews the Licensee's attendance, general reliability, and specific job performance during the year immediately prior to the petition date².
 - c. Written verification sent directly to the Board from each of the Licensee's medical care providers, which meets the requirements set forth in Attachment B1;
 - d. A report of a mental health evaluation, prepared within thirty (30) days of the petition date and sent directly to the Board, which meets the requirements set forth in Attachment B 2³.
 - e. Authorization for the Board to obtain a Criminal Offender Record Information (CORI) report of the Licensee conducted by the Massachusetts Department of Criminal Justice Information Services.
 - f. Documentation that the Licensee has completed, at least one (1) year prior to the petition date, all requirements imposed upon him in connection with all criminal and/or administrative matter(s) arising from, or related to, the conduct identified in Paragraph 2⁴. Such documentation shall be certified and sent directly to the Board by the appropriate court or administrative body and shall include a description of the requirements and the disposition of each matter.
 - g. Certified documentation from the state board of nursing of each

² If the Licensee has not been employed during the year immediately prior to the petition date, Licensee shall submit an affidavit to the Board so attesting.

³ May be incorporated into the addictionologist evaluation

⁴ If there have been no criminal or administrative matters against the Licensee arising from or in any way related to the conduct identified in Paragraph 2, the Licensee shall submit an affidavit so attesting.

jurisdiction in which the Licensee has ever been licensed to practice as a nurse, sent directly to the Massachusetts Board identifying hi license status and discipline history, and verifying that his nursing license is, or is eligible to be, in good standing and free of any restrictions or conditions.

- h. Submit documentation that he has successfully completed the following continuing education⁵ within sixty (60) days after the Effective Date,
 - i. Six (6) contact hours of continuing education on the topic of Medication Administration and Documentation in Nursing.
 - ii. Three (3) contact hours of continuing education on the topic of Legal and Ethical Aspects of Nursing.
 - iii. Three (3) contact hour of continuing education on the topic of Critical Thinking and Judgment in Nursing Practice.
 - iv. Three (3) contact hour of continuing education on the topic of Pain Management in Nursing.
- 5. In addition to the items identified in Paragraph 4, the Licensee shall submit the following documentation of the Licensee's stable and fully sustained recovery from substance abuse, dependency and/or addiction for two (2) years immediately prior to the petition date, all to the Board's satisfaction:
 - a. The results of random supervised urine tests for substances of abuse sent directly to the Board and collected from the Licensee according to the conditions and procedures outlined in **Attachment A**, no less than fifteen (15) times per year during the two (2) years immediately preceding the petition date. All such results are required to be negative.
 - b. Documentation that the Licensee has obtained a sponsor and has regularly attended Alcoholics Anonymous (AA) and/or Narcotics Anonymous (NA) meetings at least three (3) times per week during the the two (2) years immediately preceding the petition date. This documentation must include a letter of support from the Licensee's sponsor and signatures verifying the required attendance.
 - c. Documentation prepared within thirty (30) days of the petition date and sent directly to the Board from a licensed mental health provider verifying that the Licensee has regularly attended group or individual counseling or therapy, or both, conducted by the mental health provider. Such documentation shall

⁵ These continuing education courses must be *in addition to* any contact hours required for license renewal. They may be taken as home study or as correspondence course, *provided that* they meet the requirements of Board Regulations at 244 CMR 5.00, Continuing Education.

specify the frequency and length of the therapy and/or counseling and shall include a summary of the Licensee's progress in therapy and specific treatment recommendations for the Licensee's sustained recovery from substance abuse, dependency and addiction.

6. The Board may choose to reinstate the Licensee's license if the Board determines that reinstatement is in the best interests of the public at large. Any reinstatement of the Licensee's license may be conditioned upon the Licensee entering into a consent agreement for the PROBATION of his license for (2) years duration, and including requirements, that the Board determines at the time of relicensure to be reasonably necessary in the best interests of the public health, safety and welfare.
7. The Licensee agrees that he will not practice as a Registered Nurse in Massachusetts from the Effective Date unless and until the Board reinstates his license⁶.
8. The Board agrees that in return for the Licensee's execution of this Agreement it will not prosecute the complaint.
9. The Licensee understands that he has a right to formal adjudicatory hearing concerning the allegations against him and that during said adjudication he would possess the right to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on his own behalf, to contest the allegations, to present oral argument, to appeal to the courts, and all other rights as set forth in the Massachusetts Administrative Procedures Act, G. L. c. 30A, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 *et seq.* The Licensee further understands that by executing this Agreement he is knowingly and voluntarily waiving his right to a formal adjudication of the complaints.
10. The Licensee acknowledges that he has been at all times free to seek and use legal counsel in connection with the complaint and this Agreement.
11. The Licensee acknowledges that after the Effective Date, the Agreement constitutes a public record of disciplinary action by the Board. The Board may forward a copy of this Agreement to other licensing boards, law enforcement entities, and other individuals or entities as required or permitted by law.

⁶ The Licensee understands that practice as a Registered Nurse includes, but is not limited to, seeking and/or accepting a paid or voluntary position as a Registered Nurse or a paid or voluntary position requiring that the applicant hold a current Registered Nurse license. The Licensee further understands that if he accepts a voluntary or paid position as a Registered Nurse or engages in any practice of nursing after the Effective Date and before the Board formally reinstates his license, evidence of such practice shall be grounds for the Board's referral of any such unlicensed practice to the appropriate law enforcement authorities for prosecution, as set forth in G. L. c. 112, ss. 65 and 80.

12. The Licensee certifies that he has read this Agreement. The Licensee understands and agrees that entering into this Agreement is a final act and not subject to reconsideration, appeal or judicial review.

Brian J. Couture 1/23/15
Brian J. Couture (sign and date)

ROBB MORROW
Witness Print

Robb Morrow 1-23-2015
Witness (sign and date)

Rula Harb
Rula Harb, MSN, RN
Executive Director
Board of Registration in Nursing

February 5, 2015
Effective Date of Surrender Agreement

Fully Signed Agreement Sent to Licensee on 2-6-15 by Certified

Mail No. 7014 0570 0001 0374 9583

ATTACHMENT B 1

Minimum requirements for medical evaluations to be submitted to the Board

Medical evaluation

A medical evaluation of the Licensee conducted by a licensed, board certified physician written on the physician's letterhead, sent directly to the Board by the physician and completed within thirty (30) days before submission of the petition for reinstatement or other submission to the Board. The evaluation shall state that the physician has reviewed this document and any Board Consent Agreement, Order, and/or other relevant documents, and that he or she has reviewed the specific details of the Licensee's underlying conduct alleged or otherwise described.

The evaluation shall provide a detailed, clinically based assessment of the Licensee and shall be completed in accordance with all accepted standards for such an evaluation. The purpose of the evaluation is to provide the Board with the physician's analysis of the following materials and his or her opinion as to whether the Licensee is able to practice nursing in a safe and competent manner. To be most useful to the Board, the evaluation should include, but not be limited to, the following:

- a. Record Review. A review of the Licensee's written or electronic medical and mental health records (for at least the preceding two years);
- b. Conversation(s) with Provider(s). Follow up conversations with any currently or recently treating primary care physicians or advanced practice nurses and any mental health providers;
- c. Review of Prescriptions. A list of all of the Licensee's prescribed medications with the medical necessity for each prescription; if there are or may be other prescribers than the evaluating physician then the evaluation should include a review of all of the Licensee's pharmacy records for the preceding two years;
- d. In-Person Interview(s). Medical (and mental health if pertinent) history obtained by the physician through in-person interviews with the Licensee, which are as extensive as needed for the physician to reach a clinical judgment;
- e. Detailed Statement of History. A detailed statement of the Licensee's medical (and mental health if pertinent) history including diagnoses, treatments and prognoses;
- f. Detailed Description(s) of Current Conditions. Detailed descriptions of the Licensee's existing medical conditions with the corresponding status, treatments and prognosis including, but not limited to, each condition, if any, which gave rise to the conduct which is the subject of the Board's interest;

- g. Any Existing Limitations. A detailed description of any and all corresponding existing or continuing limitations of any kind;
- h. Ongoing Treatment Plan. Recommendations for the Licensee's on-going treatment and specific treatment plan, if any;
- i. Evaluating Physician's Opinion as to Safety and Competence. The physician's opinion as to whether the Licensee is presently able to practice nursing in a safe and competent manner (in light of all of the above); and
- j. Physician's C.V. A copy of the physician's curriculum vitae should be attached.

ATTACHMENT B 2

Minimum requirements for mental health evaluations to be submitted to the Board

Mental Health evaluation

A comprehensive mental health evaluation of the Licensee conducted by a licensed clinical psychologist (Ph.D or Psy.D or Ed.D) or a licensed, board certified psychiatrist written on said provider's letterhead, sent directly to the Board by the provider and completed within thirty (30) days before submission of the petition for reinstatement or other submission to the Board. The evaluation shall state that the provider has reviewed this document and any Board Consent Agreement, Order, and/or other relevant documents, and that he or she has reviewed the specific details of the Licensee's underlying conduct alleged or otherwise described.

The evaluation shall provide a detailed, clinically based assessment of the Licensee and shall be completed in accordance with all accepted standards for such an evaluation. The purpose of the evaluation is to provide the Board with the provider's analysis of the following materials and his or her opinion as to whether the Licensee is able to practice nursing in a safe and competent manner. To be most useful to the Board, the evaluation should include, but not be limited to, the following:

- a. Record Review. A review of the Licensee's written or electronic mental health records (for at least the preceding two years) (and medical records from the same time frame if pertinent);
- b. Conversation(s) with Provider(s). Follow up conversations with any currently or recently treating mental health providers (and primary care physicians or advanced practice nurses as relevant);
- c. Review of Prescriptions. A list of all of the Licensee's prescribed medications with the medical necessity for each prescription; if there are or may be other prescribers than the evaluating provider, then the evaluation should include a review of all of the Licensee's pharmacy records for the preceding two years;
- d. In-Person Interview(s). Mental health (and medical if pertinent) history obtained by the provider through in-person interviews with the Licensee, which are as extensive as needed for the provider to reach a clinical judgment;
- e. Detailed Statement of History. A detailed statement of the Licensee's mental health (and medical if pertinent) history including diagnoses, treatments and prognoses;
- f. Detailed Description(s) of Current Conditions. Detailed descriptions of the Licensee's existing mental health conditions with the corresponding status,

treatments and prognosis including, but not limited to, each condition, if any, which gave rise to the conduct which is the subject of the Board's interest;

- g. Specific Assessments. Assessments of the Licensee in each of the following areas:
 - i. Cognition status - orientation to time, place and person; ability to recognize and organize responsibilities accurately and to make accurate, appropriate decisions; critical thinking ability sufficient for appropriate clinical judgment; and ability to collect and analyze data to problem solve efficiently and accurately, and to identify cause and effect relationships accurately.
 - ii. Affective status- interpersonal skills sufficient to interact appropriately and honestly with individuals, families and groups; and ability to recognize and conform to lawful standards of social conduct.
 - iii. Ability to recognize the limits of professional boundaries and the risk that the Licensee will violate professional boundaries with patients.
 - iv. Ability to control her/his impulses; and the likelihood that she/he will repeat any of the conduct that gave rise to the Board's review of his/her safety and competency in nursing practice.
- h. Summary of Progress and/or Limitations. A summary of the progress Licensee has made in treatment and detailed description of any and all corresponding existing or continuing limitations of any kind;
- i. Ongoing Treatment Plan. Recommendations for the Licensee's on-going treatment and specific treatment plan, if any;
- j. Evaluating Physician's Opinion as to Safety and Competence. The provider's opinion as to whether the Licensee is presently able to practice nursing in a safe and competent manner (in light of all of the above); and
- k. Provider's C.V. A copy of the provider's curriculum vitae should be attached.

MASSACHUSETTS BOARD OF REGISTRATION IN NURSING

ATTACHMENT A

Guidelines for Nurses' Participation in Random Urine Drug Screens for Evaluation by the Massachusetts Board of Registration in Nursing (Board)

- I. Nurses who are required by a Board Agreement or Order to have random, supervised urine drug screens are expected to remain abstinent from all substances of abuse, including alcohol. It is a nurse's responsibility not to ingest any substance(s) that may produce a positive drug screen, including over-the-counter medications. Unless otherwise stated in a nurse's Board Agreement or Order, all nurses shall be randomly tested a minimum of fifteen (15) times per year.
- II. The Board designates one Drug Testing Management Company (DTMC).¹ The Board will accept only the results of urine drug screens that are performed under the auspices of the DTMC and reported directly to the Board.
- III. All costs related to a nurse's participation in the DTMC urine drug screening program are the responsibility of the participating nurse.
- IV. A nurse is expected to sign an agreement with the DTMC and to comply with all of the conditions and requirements of the agreement with the DTMC and any related policies, including without limitation, any requirements related to supervision of urine collection and/or temperature checks.
- V. No vacations from calling to test or from testing shall be approved. This does not mean that a nurse cannot take a vacation while participating in random urine screens; arrangements can be made thorough the DTMC to have urine screens done at approved laboratories throughout the continental U.S.
- VI. Failure to call the DTMC or failure to test when selected shall be considered non-compliance with the nurse's Board agreement or Order. Calls to the DTMC must be made between the hours of 5:00 a.m. and 1:00 p.m.
- VII. Failure to test when selected, and/or a positive drug screen that is confirmed by the Medical Review Officer (MRO) and that is not supported by appropriate documentation of medical necessity and a valid prescription shall be considered as a relapse in the nurse's abstinence. All prescriptions for any medication (including renewal prescriptions) must be submitted to the DTMC within five (5) days.
- VIII. Urine drug screen reports that show a low creatinine (<20 mg/dl) may be an indication of an adulterated or diluted specimen; further testing may be required.

¹ The current DTMC is First Lab. To contact First Lab call (800) 732-3784.

MASSACHUSETTS BOARD OF REGISTRATION IN NURSING

- IX. Nurses who do not have a current MA nursing license and who are enrolled in urine drug screening with the DTMC for the purpose of documenting to the Board that they are in stable and sustained recovery from substance abuse, must provide written authorization to the DTMC to release to the Board a complete record of their participation in the drug screening program, including documentation of missed calls, no shows, test results and a full history report at the completion of their DTMC participation. During their DTMC participation, nurses who do not have a current MA nursing license for whatever reason (surrender, suspension, lapse, revocation) are expected to designate a monitor of their choosing (e.g. friend, family member, health care provider, AA sponsor) who will be authorized to receive test results from the DTMC. The Board does not monitor the testing of unlicensed individuals and will evaluate a nurse's participation in the DTMC only when the DTMC testing is completed and the nurse applies for license reinstatement. Unlicensed nurses should identify themselves as such to the DTMC and sign an individual agreement with the DTMC.
- X. Random supervised urine tests are done in panels which shall include, but are not limited to, each of the following substances:
- Ethanol and all ethanol products
 - Amphetamines
 - Barbiturates
 - Benzodiazepines
 - Buprenorphine
 - Cannabinoids
 - Cocaine (metabolite)
 - Opiates:
 - Codeine
 - Morphine
 - Hydromorphone
 - Hydrocodone
 - Oxycodone
 - Phencyclidine
 - Methadone
 - Propoxyphene
 - Meperidine
 - Tramadol
 - Suboxone