The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
250 Washington Street, Boston, MA 02108-4619

MAURA T. HEALEY
Governor

KIMBERLEY DRISCOLL
Lieutenant Governor

KATHLEEN E. WALSH
Secretary

ROBERT GOLDSTEIN, MD, PhD
Commissioner

Tel: 617-624-6000
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April 17, 2024

Via First Class, Certified Mail No. 7020 0090 0000 1273 3701 & Email

Timothy J. Birmingham, Esq.
100 Smith Place
Cambridge, MA 02138
atty.birmingham@yahoo.com

RE: In the Matter of Daniel L'Heureux

Docket No. NUR-2020-0136
License No. LN69933

Dear Attorney Birmingham:

Enclosed please find the Final Decision and Order ("Order") issued by the Board of Registration in Nursing on April 17, 2024 and **effective April 27, 2024**. This constitutes full and final disposition of the above-referenced Complaint, as well as the final agency action of the Board. Mr. L'Heureux's appeal rights are noted on page 9.

Please note that as of the effective date, Mr. L'Heureux's license will change to Probation. Per the terms of the Order, Mr. L'Heureux's license will remain on probation for **one (1) year**.

You may contact Rebecca Barros, Board Counsel, at rebecca.barros@mass.gov with any questions that you may have concerning this matter.

Sincerely,

Heather Cambra BSN, RN, JD

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

Encl.
cc: Diane Barry, Esq., Hearing Officer
Stephen Pleva, Esq., Prosecuting Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN NURSING

Board of Registration in Nursing, Petitioner, v. Daniel L'Heureux LN License 69933 License expires 12-27-2021 Respondent.	)	Docket No. NUR-2020-0136

FINAL DECISION AND ORDER AFTER SANCTION HEARING

Pursuant to the above-referenced matter, the Board of Registration in Nursing (the "Board") submits this herein Final Decision and Order after Sanction Hearing. In connection with the Final Decision and Order, the Board reasserts the following procedural history. On or about October 6, 2021, the Board issued an *Order to Show Cause* ("OTSC"). On May 31, 2023, the parties filed a Joint Status Report Requesting Sanction Hearing, stipulating to key facts and conclusions of law. A sanction hearing was held on September 28, 2023, where Prosecuting Counsel, Respondent's Counsel, and Respondent were all present.

Following the sanction hearing, the Hearing Officer issued a *Tentative Decision After Sanction Hearing* ("Tentative Decision"), dated October 31, 2023, recommending discipline against the Respondent. The Board has carefully considered the Tentative Decision and hereby adopts the Tentative Decision, including all findings of fact and conclusions of law. The Tentative Decision is attached hereto and incorporated herein by reference.

Based on the recommend discipline by the Hearing Officer, the Board has determined

that the evidence warrants a **one (1) year probationary period with six (6) months of toxicology screenings.** As basis for this finding, the Board is charged with protecting the public health, safety, and welfare. *See* Kvitka v. Board of Registration in Medicine, 407 Mass. 140, 143 (190), *citing* Levy v. Board of Registration & Discipline in Medicine, 378 Mass. 519, 524 (1979). 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, 407 Mass. at 143; *see also* Raymond v. Board of Registration in Medicine, 387 Mass. 708, 713 (1982). It is undisputed that Respondent admits to possessing controlled substances (including Trazodone, Cephalexin, Perphenazine, and a Lidocaine (5%) patch), which were property of the Veterans Administration Hospital ("VA") in Bedford, Massachusetts, in his vehicle parked on VA property, in violation of federal law. It is further undisputed that Respondent admits to possessing alcohol in his vehicle parked on VA property, in violation of federal law. It is also undisputed that Respondent admits to having [redacted]

The Board recognizes that Respondent's actions constitute unprofessional conduct, poor judgment, and conduct which undermines public confidence in the integrity of the profession. Additionally, illegal or improper possession of controlled substances by a nurse poses a patient safety risk, including the risks of medication errors, impaired practice, and diversion. However, the Board considers that the evidence indicates that Respondent did not ingest alcohol or controlled substances on the property of the VA, and with the exception of [redacted] Respondent was not impaired by any alcohol or controlled substances while on duty at the VA. Respondent further did not bring any alcohol

into the VA building and rather, according to the Respondent, he inadvertently brought alcohol into his vehicle, as well as inadvertently removed the medications from the VA. The Board notes that the aforementioned incident was an isolated occurrence, which Respondent alleges was brought on by [redacted] However, the Board cannot excuse the Respondent's actions. The Board considers the fact that no patients were harmed by Respondent's actions. The Board further considers the fact that Respondent has no prior Complaints made against him, has no criminal record, nor any prior substance abuse as alleged, and was remorseful regarding his actions. In order to determine whether this event was in fact an isolated occurrence, the Board believes that enforcing a **one (1) year probationary period with six (6) months of toxicology screenings**, where Respondent can be readily supervised and monitored, is necessary and appropriate to ensure compliance with controlled substances laws and to protect against the risk of medication errors, impaired practice, and drug diversion.

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

In favor: L. Kelly, DNP, RN, CNP; A.J. Alley, MSN, RN, NE-BC; K. Crowley, DNP, RN, CNP; A. Joseph, MD; L. Keough, PhD, RN, CNP; M. McAuliffe, DNP, RN; J. Monagle, DNP, RN; D. M. Nikitas, BSN, RN; V. Percy, MSN, RN; R. Reynolds, PhD, MSN, RN; A. Sprague, BS, ASN, RN

Opposed: None

Abstained: None

Recused: None

Absent: K.A Barnes, JD, RPh; L. Wu, MBA, ASN, RN

ORDER

Based on its Final Decision, the Board imposes a **ONE (1) YEAR PROBATIONARY PERIOD WITH SIX (6) MONTHS OF TOXICOLOGY SCREENINGS** on Respondent's nursing license, LN License 69933. The Board notes that the facts in this case are not disputed and that Respondent admitted to his errors. The terms of the Probationary Period are as follows:

1. The License, LN69933, shall be placed on **PROBATION** for no less than **one (1) year** ("Probationary Period"), commencing with the date on which the Board signs this Order ("Effective Date").

2. During the Probationary Period, the Licensee 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, and not engage in any continued or further conduct such as that set forth in Paragraph 2.

    b. Notify the Board in writing within ten (10) days of each change in their name and/or address.

    c. Timely renew their 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 they are enrolled during the Probationary Period.

    f. Maintain active employment ("Active Practice Requirements") in a position that requires a nursing license, in a facility setting where the Licensee receives consistent, on-site supervision by a qualified licensed nurse[1] for a minimum average of twenty (20) hours per week throughout the Probationary Period.

        a. The Licensee agrees that a qualified licensed nurse is defined as a nurse who, 1) possesses a Massachusetts[2] nursing license in good standing or authority to practice under federal law, or both; 2) is employed in a supervisory role; 3) possesses a

[1] The Licensee 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 Licensee practices nursing.
[2] Or a license to practice in the jurisdiction in which the Licensee is employed.

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 Licensee; 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:

   a. Settings where structured, consistent on-site supervision is not in place including but not limited to, home care agencies or private home care;

   b. Travel nurse agencies; or

   c. Temporary staffing agencies.

h. Review this Final Decision and Order with each of their nursing supervisors, and arrange for each nursing supervisor to submit directly to the Board:

   a. a completed and signed "Supervisor Verification Form" (**Form 1**), attached to this Order, within thirty (30) days of

      (1) the Effective Date *and*

      (2) any subsequent employment commenced during the Probationary Period

   b. *quarterly* written reports[3], using the "Supervision Report Form" (**Form 2**), attached to this Order, attesting to the quality of the Licensee's nursing practice, reliability and attendance and specifically addressing Licensee's overall conduct, substance use, medication administration and documentation, including any errors and incidents. The Board may take action pursuant to paragraph 5 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 Licensee is not employed in accordance with paragraph 2(f).

j. If not employed in accordance with paragraph 2(f) within 30 days of the Effective Date:

   a. On a weekly basis: actively search for nursing employment.

[3] The Licensee 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.

b. On a monthly basis: submit to the Board a detailed description of their nursing job search activities and the status of their nursing employment.

k. Complete the Active Practice Requirements within a period up to a maximum of double the length of the Probationary Period.[4]

l. Notify the Board in writing within seven (7) days of any change in the Licensee's employment status, including each change in Employer, each resignation or termination, and the name, address and telephone number of each new Employer.

m. Notify the Board in writing within seven (7) days of any complaint filed against their nursing license in any jurisdiction in which they hold such a license.

3. During the first six (6) months of the Probationary Period, Licensee shall abstain from the use of alcohol and controlled substances. Further, during the first (6) months of the Probationary Period, Licensee shall comply with random, observed toxicology screenings, including, but not limited to, testing of urine, blood, or hair as determined necessary by Board staff, for a *minimum* of seven tests. Compliance requires that the Licensee enroll[5] with and maintain a current account with the Board's Drug Testing Management Company ("DTMC") identified in **Attachment A** of this Order, and that the Licensee 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 Licensee 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.

4. The Licensee 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.

[4] The Probationary Period is defined in Paragraph 1.
[5] The Licensee must enroll with the DTMC within seven (7) days of the Effective Date.

a. 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 Licensee's Probation status.

b. Providing authorization, upon request, for Board staff to obtain the Licensee's Prescription Monitoring Program ("PMP") report. Identifying all pharmacies where the Licensee has filled prescriptions within the last year and reporting any new pharmacies where the Licensee fills prescriptions during Probation. After the Effective Date and upon request thereafter, providing an Authorization for Release of Information for each pharmacy.

5. If the Licensee does not comply with each requirement of this Order, or if the Board opens a Subsequent Complaint[6] during the Probationary Period:

a. The Board may upon written notice to the Licensee, as warranted to protect the public health, safety, or welfare:

i. EXTEND the Probationary Period; and/or

ii. MODIFY the Probation requirements; and/or

iii. IMMEDIATELY SUSPEND the Licensee's nursing license.

b. If the Board suspends the Licensee's nursing license pursuant to Paragraph 5(a)(iii), the suspension shall remain in effect until:

i. the Board gives the Licensee written notice that the Probationary Period is to be resumed and under what terms; or

ii. the Board and the Licensee sign a subsequent agreement; or

iii. the Board issues a written final decision and order following adjudication of the allegations (1) of

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

noncompliance with this Order, and/ or (2) contained in the Subsequent Complaint.

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

In favor:	L. Kelly, DNP, RN, CNP; A.J. Alley, MSN, RN, NE-BC; K. Crowley, DNP, RN, CNP; A. Joseph, MD; L. Keough, PhD, RN, CNP; M. McAuliffe, DNP, RN; J. Monagle, DNP, RN; D. M. Nikitas, BSN, RN; V. Percy, MSN, RN; R. Reynolds, PhD, MSN, RN; A. Sprague, BS, ASN, RN
Opposed:	None
Abstained:	None
Recused:	None
Absent:	K.A Barnes, JD, RPh; L. Wu, MBA, ASN, RN

EFFECTIVE DATE OF ORDER

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

RIGHT TO APPEAL

Respondent is hereby notified of the right to appeal this Final Decision and Order to the Supreme Judicial Court pursuant to M.G.L. c. 112, § 64. Respondent must file any appeal within thirty (30) days of receipt of this notice of Final Decision and Order.

Board of Registration in Nursing,

Heather Cambra BSN, RN, JD

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

Date Issued: April 17, 2024

Notified:

Via First-Class, Certified Mail No. 7020 0090 0000 1273 3701 & Email

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Commonwealth of Massachusetts
Department of Public Health
Bureau of Health Professions Licensure
Board of Registration in Nursing
250 Washington Street • Boston, Massachusetts 02108

SUPERVISOR VERIFICATION, AND AGREEMENT TO MONITOR PRACTICE AND PROVIDE PERIODIC REPORTS TO THE BOARD OF REGISTRATION IN NURSING

Name of Nurse on Probation _____

License Type and No. _____ Docket No(s). _____

Effective Date of the Probation Agreement or Order: _____

Length of Probation (specified in Agreement or Order): _____

Nurse's Date of Employment: _____ Nurse's Job Title: _____

Employer Name and Address: _____

_____

I, _____ (print supervisor's full name) on _____ (insert date) reviewed a signed copy of the Probation Agreement (Agreement) or Order between _____ (insert nurse's name) and the Board of Registration in Nursing (Board). I hereby agree that I will monitor and evaluate this nurse's practice as specified in the Agreement or Order, and will provide written reports to the Board on the Supervision Report form provided by the Board at the intervals required by the Agreement or Order.

I also agree to promptly notify the Board's Probation Compliance Officer if the nurse resigns or is terminated from employment.

I further certify that I am a RN / LPN (circle one), have completed at least one (1) year of clinical nursing practice, and that I do not have any open administrative or criminal complaint by any Board of Nursing.

SUPERVISOR'S SIGNATURE _____ Date: _____

_____

(Print/Type: Name and Title of Supervisor completing this form)

Supervisor's License Type and No.: _____ Supervisor Phone No.: _____

PLEASE NOTE CAREFULLY: This completed form must be mailed *with* the supervisor's signed cover letter written on the facility's letterhead directly to: Probation Compliance Officer
DPH – BHPL, Board of Registration in Nursing
250 Washington Street, 3rd Floor, Boston, MA 02108

FORM 1- Manual Version
Final 6/14/07
Revised 8/14/017, 05/09/18
Corrected 9/5/2019

Commonwealth of Massachusetts
Department of Public Health
Bureau of Health Professions Licensure
Board of Registration in Nursing
250 Washington Street • Boston, Massachusetts 02108

SUPERVISION REPORT FOR NURSES ON PROBATION WITH THE BOARD OF REGISTRATION IN NURSING

(Please review the nurse's Probation Agreement or Order and complete this evaluation of the nurse's practice)

Nurse's Name: _____ Docket No.: _____

License Type and No.: _____ Expiration Date _____

Nurse's Job Title: _____

Employer Name and Address: _____

Time period covered by this supervision report: Start Date: _____ to End Date: _____

Rate the following and explain any "Does Not Meet" ratings (use the "Comments" column and if needed the back of this form or include on supervisor's signed cover letter on facility letterhead).

Quality being rated	Does Not Meet	Meets	Comments
Organizes and plans work effectively	☐	☐	
Completes assignments	☐	☐	
Works as a team member	☐	☐	
Communicates effectively	☐	☐	
Seeks guidance and supervision appropriately	☐	☐	
Interacts with patients in a therapeutic manner	☐	☐	
Demonstrates problem solving ability	☐	☐	
Manages stressful situations appropriately	☐	☐	
Makes timely and appropriate nursing assessments	☐	☐	
Makes appropriate nursing interventions	☐	☐	
Delegates nursing care activities appropriately	☐	☐	
Removes, handles, wastes, and accounts for the whereabouts of, medications appropriately	☐	☐	
Documents controlled substances and medication administrations accurately and completely	☐	☐	
Documents nursing care and interventions accurately and completely	☐	☐	
Other practice skill(s) specified by Probation Agreement or Order	☐	☐	

SUPERVISION REPORT FOR NURSES ON PROBATION WITH THE BOARD OF REGISTRATION IN NURSING (continued)

The nurse HAS ☐ HAS NOT ☐ (**please choose one and do not leave any blanks**) worked an average of at least twenty (20) hours per week during the time period covered by this report.

SUPERVISION

How frequently is the nurse supervised?_____

How is supervision provided?_____

Have there been any incidents involving the nurse requiring counseling, conference, oral/written warnings since last report? If yes, please explain and attach copies of all relevant documents.

_____

_____

How often are the nurse's patient records reviewed?_____

Does this nurse have any other nursing practice issues? Explain._____

_____

ADDITIONAL COMMENTS are appreciated

(If needed, please use the back of this form or include on supervisor's signed cover letter on facility letterhead)

****

Please call the Probation Compliance Officer at (617) 973-0863 to discuss any concerns or for clarification regarding the nurse's probation.

SUPERVISOR'S SIGNATURE: _____DATE SIGNED_____

_____

(Print/Type: Name and Title of Supervisor completing this form)

Supervisor's License Type and No.:_____ Supervisor Phone No.:_____

PLEASE NOTE CAREFULLY:

This fully completed form must be mailed *with* the supervisor's signed cover letter written on the facility's letterhead directly to: Probation Compliance Officer
DPH – DBPL, Board of Registration in Nursing
250 Washington Street, 3rd Floor
Boston, MA 02108

MASSACHUSETTS BOARD OF REGISTRATION IN NURSING

ATTACHMENT A

Guidelines for Licensee's Participation in Random Toxicology Drug Screens for Evaluation by the Massachusetts Board of Registration in Nursing (Board)

I. Licensees who are required by a Board Agreement or Order to have random, observed toxicology drug screens are expected to remain abstinent from all substances of abuse, including alcohol and other substances, including but not limited to over-the counter (OTC) medication, supplements, products, and food items which metabolize as substances listed in Section XI[1].

II. Unless otherwise stated in a Licensee's Board Agreement or Order, all Licensees shall comply with random, observed toxicology screens a minimum of fifteen (15) times per year. The Licensee will comply with additional random toxicology screening, including but not limited to testing of urine, blood and hair as determined necessary by Board staff.

III. The Board designates one Drug Testing Management Company (DTMC).[2] The Board will accept only the results of toxicology drug screens that are performed under the auspices of the DTMC and reported directly to the Board.

IV. All costs related to a Licensee's participation in the DTMC toxicology drug screening program are the responsibility of the participating licensee.

V. A Licensee 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 observation of urine collection and/or temperature checks.

VI. Arrangements can be made through the DTMC to have toxicology screens done at approved laboratories throughout the continental U.S.

VII. Failure to call the DTMC or failure to test when selected shall be considered non-compliance with the Licensee's Board Agreement or Order. Calls to the DTMC must be made during hours set by the DTMC.

VIII. A positive drug screen that is not supported by appropriate documentation of medical necessity and a valid prescription shall be considered non-compliance with the Licensee's Board agreement or Order.

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[1] This includes but is not limited to, OTC cold medications, hand sanitizers, oils, poppy seeds, fermented teas, and vanilla extract.

[2] The current DTMC is Affinity eHealth. To contact Affinity eHealth call 1-877-267-4304.

IX. 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.

X. 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. 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.

XI. Random observed toxicology screening shall test for the following substances:

Ethanol and all ethanol products
Amphetamines
Barbiturates
Benzodiazepines
Buprenorphine
Cocaine (metabolite)
Carisoprodol
Diphenhydramine
Gabapentin
Opiates
Fentanyl
Codeine
Morphine
Hydromorphone
Hydrocodone
Oxycodone
Phencyclidine
Methadone
Propoxyphene
Meperidine
Pseudoephedrine
THC
Tramadol
Sedative-Hypnotics (e.g., zolpidem, eszopiclone, zalepon)
Sedative-Antidepressants (c.g., trazadone, mirtazapine, amitryiptyline)
Substances identified by the National Institute of Drug Abuse (NIDA) as a substance of abuse or misuse [https://www.drugabuse.gov/drugs-abuse]

Substances identified by the Substance Abuse and Mental Health Services Administration (SAMHSA) as a substance of abuse or misuse [https://www.samhsa.gov/atod]