



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
250 Washington Street, Boston, MA 02108-4617

MAURA T. HEALEY
Governor

KIMBERLEY DRISCOLL
Lieutenant Governor

KATHLEEN E. WALSH
Secretary

ROBERT GOLDSTEIN, MD, PhD
Commissioner

Tel: 617-624-6000
www.mass.gov/dph

September 25, 2023

Via First Class & UPS Overnight Mail Tracking No. 1z a3v 757 22 1006 351 3,

Brendan Reardon, Esq.
Reardon Law Office, LLC
One International Place
Suite 1400
Boston, MA 02110

RE: **Matter of Kristen Nicastro; NUR-2018-0030**

Dear Mr. Reardon:

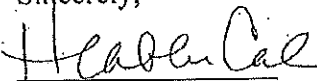
Please find enclosed the **Final Decision and Order** issued by the Board of Registration in Nursing on September 25, 2023, and effective ten (10) days after the Final Decision and Order is signed. This constitutes full and final disposition of the above-referenced complaint, as well as the final agency action of the Board. Your client's appeal rights are noted on page 5.

Please note that as of the effective date, your client's license status will change to **Probation**. It will remain in **probationary** status until the Board notifies Ms. Nicastro of a change in license status in accordance with the terms of the order.

Please direct all questions, correspondence and documentation relating to probation requirements to the attention of Kimberly Jones, Probation Compliance Officer at the address above. You may also contact Ms. Jones at (617) 973 - 0863.

You may contact Lynn Worley, Board Counsel at (617) 952-2347 with any questions that you may have concerning this matter.

Sincerely,

 BSN, RN, JD

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

Cc: Beverly Kogut, Esq. Administrative Magistrate
Jessica Uhing-Luedde, Esq., Prosecuting Counsel

Commonwealth of Massachusetts
Board of Registration in Nursing

Matter of Kristen Nicastro
RN216167
Expires 3/13/24

Docket Nos. NUR 2018-0030

FINAL DECISION AND ORDER

In an Order to Show Cause dated October 3, 2019 (OTSC), the Massachusetts Board of Registration in Nursing (Board) asked why it should not take action against the Licensed Registered Nurse (RN) license of Kristen Nicastro (Respondent) or right to renew such license. The OTSC alleges that Respondent withdrew for [REDACTED] non-scheduled controlled substances, namely, prochlorperazine, ondansetron and famotidine, while practicing as an RN.

A full adjudicatory hearing was held on November 9, 2020, November 10, 2020, November 12, 2020, and July 7, 2022 (Hearing). On March 28, 2023, the Administrative Magistrate entered a Tentative Decision in this matter. The Administrative Magistrate determined that the Prosecutor had proved that Respondent's RN license is subject to discipline as to each ground for discipline set forth in the OTSC, to wit 244 CMR 9.03 (5), (35), (37), and (47), and common law prohibitions against conduct undermining public confidence in the profession's integrity, M.G.L. c. 112, § 61A. The Board hereby adopts the *Tentative Decision*, including all findings of fact, conclusions of law and credibility determinations. The Tentative Decision is attached hereto and incorporated by reference.

Final Decision

The Board voted to adopt the within Final Decision at its meeting held on September 13, 2023, by the following vote:

In favor: A. Alley, MSN, RN; K. Crowley, DNP; M. Harty, LPN; A. Joseph, MD; Linda Kelly, CNP; L. Keough, PhD, CNP; D. Nikitis, BSN, RN; C. Norris, LPN, V. Percy, MSN, RN; R. Reynolds, PhD, RN, MSN

Opposed: None

Abstained: None

Recused: None

Absent: K. Barnes, JD, RPH; A. Sprague, ASN, RN; Lisa Wu, MBA, RN

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 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 Respondent's attorney filed objections to the characterization of Compazine as a controlled substance, the Administrative Magistrate's reliance on the nurse manager's testimony, and the acceptance of Hardiman as an expert. The Board is not required to address each of Respondent's objections or provide a specific response for rejecting objections. See *Arthurs v. Board of Registration in Medicine*, 383 Mass. 229, 315-316 (2005) and *Weinberg v. Board of Registration in Medicine*, 443 Mass. 679, 687 (2005). Further, a reviewing court "must accept the factual determinations made by the agency" if they are supported by substantial evidence." *McGuinness v. Department of Correction*, 465 Mass. 600, 668 (2013), citing *School Comm. of Boston v. Board of Educ.*, 363 Mass. 125, 128 (1973). "Substantial evidence means such evidence as a reasonable mind might accept as adequate to support a conclusion." M.G.L. c. 30A, § 1(6); *Arthurs*, 383 Mass. at 304. Respondent counsel's objections do not identify any legal error; rather, the objections are simply a further attempt to argue the facts, credibility of witnesses, and mitigating circumstances. As such, the Board finds the Respondent's Objections are without merit.

In this case, there is substantial evidence to support the finding that Respondent diverted controlled substances from BH while she was working as a nurse. Specifically, the Respondent diverted four (4) 20 mg capsules of famotidine (Pepcid), forty-one (41) 10 mg tablets of prochlorperazine (Compazine); and thirteen (13) 4 mg tablets of ondansetron (Zofran). This is a clear violation of law.

In determining a sanction in this matter, the Board notes all three controlled substances diverted by Respondent were Schedule VI controlled substances. Further, the Board notes Respondent has been a nurse over 20 years with no complaints. Respondent has taken accredited continuing education courses in Drug Diversion Training and Nursing Ethics in order to demonstrate her understanding of the importance of these subjects.

This Board has previously disciplined nurses for engaging in conduct similar to the Respondent. See, *In the Matter of Dawn Leach*, Docket No. NUR-2019-0071 (Respondent failed to properly document her handling of controlled substances in her custody and failed to write nurses' notes for certain patients in her care.) The Board ordered Respondent's license to practice as a Registered Nurse in Massachusetts ("RN") be placed on PROBATION for a period of six (6) months); *In the Matter In the Matter of Patti Turner*, Docket No. NUR-2015-001 (Board ordered

that Respondent's license be placed on Probation for six months because she stipulated that she failed to document required information in patients' medical records and that she documented inaccurate information in patients' medical records, in violation of 244 CMR 9.03(5), (15), (31), (38), (39), (44), and (47)); *In the Matter of John Handren*, Docket No. NUR-2011-0265; *In the Matter of Dawn Leach*, NUR-2019-0071 (Board ordered a Stayed Suspension and Probation for one year with remedial CEUs and monitored practice because Respondent's conduct violated 244 CMR 9.03 (5), (35), (39), (44), (46), and (47)).

Order

Based on its Final Decision, the Board orders that Respondent's license to practice as a Registered Nurse in Massachusetts (RN) be placed on **PROBATION** for a period of one (1) year commencing with the date on which the Board signs this Order (Effective Date). During the Probationary Period, the Respondent shall comply with all of the following requirements to the Board's satisfaction:

- a. refrain from the practice of nursing in any of the following employment settings during the Probationary Period:
Settings where structured, consistent on-site supervision is not in place including but not limited to,
 - i. Home care agencies or private home care,
 - ii. Travel nurse agencies, or
 - iii. Staffing agencies.
- b. 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 the Order to Show Cause.
- c. Notify the Board in writing within ten (10) days of each change in her name and/or address.
- d. Timely renew her license to practice nursing.
- e. Respond to inquiries from Board staff in a timely manner.
- f. Disclose the terms of this Order to the Program Administrator of any Nursing Education Program at which she is enrolled during the Probationary Period.
- g. Maintain active employment (Active Practice Requirements) in a position that requires a nursing license, in a facility setting where the Respondent receives consistent, on-site supervision by a qualified licensed nurse for a minimum average of twenty (20) hours per week throughout the Probationary Period.
- h. A qualified licensed nurse is defined as a nurse who:
 - 1) possesses a Massachusetts 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.

i. Review this Order with each of her nursing supervisors, and arrange for each nursing supervisor to submit directly to the Board: 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 and quarterly written reports, 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 documentation practice including any errors and incidents. The Board may take action in the event that any quarterly report reveals a practice issue the Board deems significant.

j. Within 30 days of the Effective Date, notify the Board in writing if the Respondent is not employed in accordance with paragraph g;

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

l. 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.

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

The Board voted to adopt this Order at its meeting held on September 13, 2023 by the following vote:

In favor: A. Alley, MSN, RN; K. Crowley, DNP; M. Harty, LPN; A. Joseph, MD; Linda Kelly, CNP; L. Keough, PhD, CNP; D. Nikitis, BSN, RN; C. Norris, LPN, V. Percy, MSN, RN; R. Reynolds, PhD, RN, MSN

Opposed: None

Abstained: None

Absent: K. Barnes, JD, RPH; A. Sprague, ASN, RN; Lisa Wu, MBA, RN

Recused: None

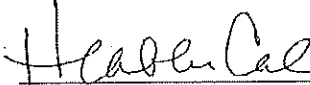
EFFECTIVE DATE OF ORDER

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,

 BSN, RN, JD
Heather Cambra, BSN, RN, JD

Acting Executive Director

Board of Registration in Nursing

Date Issued: 9/25/2023

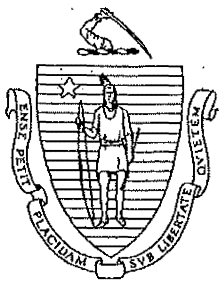
Notified:

Via First Class & UPS Overnight Mail Tracking No. 1z a3v 757 22 1006 351 3,

Brendan Reardon, Esq.
Reardon Law Office, LLC
One International Place
Suite 1400
Boston, MA 02110

Via Interoffice

Beverly Kogut, Esq. Administrative Magistrate
Jessica Uhing-Luedde, Esq., Prosecuting Counsel



Commonwealth of Massachusetts
Department of Public Health
Bureau of Health Professions Licensure
Board of Registration in Nursing
239 Causeway Street • Boston, Massachusetts 02114

**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.

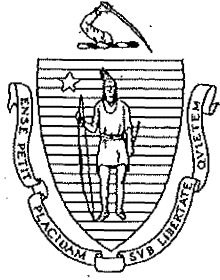
I further certify that I am a RN / LPN (circle one), have completed at least one (1) year of clinical nursing practice, and that I do not have any open administrative or criminal complaint by any Board of Nursing.

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
239 Causeway Street, 5th Floor



Commonwealth of Massachusetts
 Department of Public Health
 Bureau of Health Professions Licensure
Board of Registration in Nursing

239 Causeway Street • Boston, Massachusetts 02114
**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
239 Causeway Street, 5th Floor
Boston, MA 02114**