

BEFORE THE BOARD OF NURSING  
STATE OF MONTANA

IN THE MATTER OF CASE NO. 2014-NUR-LIC-942 REGARDING:

THE PROPOSED DISCIPLINARY ) Case No. 571-2015  
TREATMENT OF THE LICENSE OF )  
KRISTA FREENY, )  
Licensed Practical Nurse, License No. 33388. )  
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**PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW;  
AND RECOMMENDED ORDER**

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**I. INTRODUCTION**

On July 31, 2014, Sue Warren, a Montana licensed registered nurse (RN) and Director of Nursing at Benefis Senior Care Center/Benefis Health System, filed a complaint with the Montana Board of Nursing against the nursing license of Krista Freeny, a Montana licensed practical nurse (LPN).

On September 2, 2014, the Screening Panel of the Montana Board of Nursing (Screening Panel) considered information presented by the Montana Department of Labor and Industry (Department). On September 11, 2014, the Screening Panel found reasonable cause to believe Freeny had violated Mont. Code Ann. § 37-1-316(18) (conduct that does not meet the generally accepted standards of practice) and Admin. R. Mont. 24.159.2301(2) (failing to properly chart resident pain assessments and administration of pain medications to patients) and ordered the immediate summary suspension of Freeny's license. On September 29, 2014, Freeny requested a contested case hearing.

On October 3, 2014, the matter was transferred to the Office of Administrative Hearings (Hearings). On October 9, 2014, a Notice of Hearing and Telephone Conference was mailed to the parties setting the scheduling conference for October 20, 2014. Both parties appeared for the scheduling telephone conference.

On October 24, 2014, Hearing Officer David A. Scrimm issued a scheduling order setting pre-hearing deadlines and dates for the final pre-hearing conference and

contested case hearing in this matter. Hearings mailed the scheduling order to both parties at the addresses of record. Neither mailing was returned as undeliverable.

On November 25, 2014, Hearings staff sent an email to Freeny at her last known email address advising her of the necessity for rescheduling the hearing originally set for December 10, 2014. Freeny did not respond to the email or to attempts by Hearings staff to contact her by telephone.

On November 26, 2014, an order was issued transferring the matter to Hearing Officer Caroline A. Holien. The order noted that the final pre-hearing conference originally scheduled for December 2, 2014 would be held to set a new date and time for hearing.

On December 2, 2014, Hearing Officer Holien was not available for the telephone conference scheduled for 10:00 a.m., MST. Hearings staff called both parties and left detailed voice mail messages informing the parties the scheduling conference would be reset for 4:00 p.m. that same day.

Hearing Officer Holien attempted to convene a telephone conference in the matter at approximately 4:00 p.m. Freeny was not available and a voice mail message was left asking her to contact Hearings. The conference was delayed for approximately 15 minutes. Hearing Officer Holien attempted to reach Freeny again at the telephone number of record and Freeny was still not available. A second voice mail message was left requesting Freeny contact Hearings. Agency Counsel Kevin Maki indicated Freeny had been in contact regarding a potential settlement agreement but that he had no other contact with Freeny despite repeated attempts.

On December 3, 2014, the Hearing Officer issued an Order to Show Cause and set a telephone conference for December 16, 2014. Freeny had no contact with Hearings and did not appear at the telephone conference.

On January 6, 2015, the Hearing Officer issued a Default Summary Judgment Order and an Order Granting Motion to Compel Discovery, Directing Date for Production of Discovery, and Order Resetting Hearing. Freeny was ordered to respond to the Department's discovery requests no later than January 12, 2015. The order also set the contested case hearing for February 3, 2015 at 9:00 a.m., MST. Licensee did not respond to the Department's discovery requests and had no contact with either Maki or Hearings.

On January 29, 2015, the Hearing Officer issued an Order Entering Default on Issue of Unprofessional Conduct and granting the Department's motion to deem

admitted Requests for Admission No. 1 and No. 2 from the Department's first set of discovery requests.

The Hearing Officer convened a contested case hearing in this matter on February 3, 2015 at approximately 9:00 a.m., MST. Maki appeared on behalf of the Department. The hearing was delayed for 15 minutes to allow Freeny an opportunity to appear. The hearing was reconvened at approximately 9:15 a.m., MST, and proceeded in Freeny's absence. Freeny had no contact with Hearings during the course of the hearing or after the hearing was concluded.

Heidi Kaufman, Compliance Specialist with the Business Standards Division (BSD); Donna Peterson, Program Manager with the Montana Prescription Drug Registry; Amber Carpenter, Investigations Unit Supervisor with BSD; Emery Jones, LCPC/LAC, Director of the Montana Assistance Program; Jamie Leonard, PharmD, R.Ph., Pharmacist-in-Charge and Supervisor with Benefis Ambulatory Pharmacy; and Sue Warren, RN, MSN, NE-BC, Director of Nursing/Senior Services with Benefis Health System, presented sworn testimony. Portions of testimony offered by Peterson, Carpenter, and Jones were sealed upon a finding the information presented included private medical information in which the subjects' right to privacy outweighed the public's right to access that information.

Department's Exhibits 1 through 11 were admitted into the record. Department's Exhibits 4 through 11 were sealed upon a finding that the documents contained private information for the reasons stated above.

The Department declined the opportunity for post-hearing briefing. The matter was deemed submitted and the record closed at the end of hearing. Based on the evidence and argument adduced at hearing, the Hearing Officer makes the following findings of fact, conclusions of law, and recommended order.

## **II. ISSUE**

Whether disciplinary action should be taken against the license of Krista Freeny, under the provisions of Mont. Code Ann. § 37-1-136, and, if so, the proper discipline to be taken.

## **III. FINDINGS OF FACT**

1. At all times material to this complaint, Krista Freeny has been licensed by the Montana Board of Nursing (Board) as a Licensed Practical Nurse (LPN), holding Montana License No. 33388.

2. Benefis Senior Care Center (BSCC) employed Krista Freeny as an LPN for approximately one year before she resigned on July 17, 2014. BSCC is a senior assisted living facility serving residents with a wide variety of medical needs. Freeny worked on the East One Unit that is a 32-bed unit serving long-term and short-term surgical residents. Freeny typically worked 6:00 a.m. to 2:30 p.m.

3. Freeny was required to note on the patient's Medication Administration Record (MAR) when she administered medications to the patient. In the case of pain medications, Freeny was required to note her observations of the patient prior to and after the administration of the medication. Freeny had several years of experience as an LPN prior to working for BSCC and had never indicated she did not understand or was unable to perform her job duties according to the standards of the profession.

4. Hydrocodone/acetaminophen is a Schedule II narcotic used to treat acute pain that has a high potential for diversion and risk of harm to the user if the medication is not used properly. Schedule II narcotics are the highest classification of a drug that can be dispensed legally to the general public.

5. In June 2014, a BSCC Night Resource Nurse reported concerns to Sue Warren, RN, MSN, NE-BC, Director of Nursing/Senior Services with Benefis Health System, that Freeny was signing out PRN every four hours or "as needed" doses of hydrocodone/acetaminophen for residents more frequently than other nurses on staff. Warren notified Freeny's supervisor, who then met with Freeny.

6. In July 2014, a Consultant Pharmacist, who conducted monthly pharmacy audits of BSCC residents' records, notified Jamie Leonard, PharmD, R.Ph., Pharmacist-in-Charge and Supervisor with Benefis Ambulatory Pharmacy, that she had discovered a pattern of Freeny administering pain medications to BSCC residents at a higher frequency than other nursing staff. Leonard completed an audit of BSCC's medication pass records and confirmed Freeny was administering pain medication to residents more frequently than other nursing staff. Leonard forwarded the results of her audit to Warren before completing a more specific targeted audit.

7. Leonard's final audit had the following results:

- (a) 125 doses of hydrocodone/acetaminophen were "administered" to eight residents with physician orders for the medication every four hours or as needed.
- (b) Freeny was responsible for 95% of the doses administered at 6:00 a.m., 10:00 a.m., and 2:00 p.m.

- (c) The majority of PRN hydrocodone/acetaminophen doses Freeny signed out were noted on an individual narcotic record (INR) but not charted on a MAR to demonstrate the medication was administered to the resident.
- (d) Freeny listed leg, back, and shoulder pain as reasons for the administration of hydrocodone/acetaminophen on the MAR. The medication was noted as being effective on the charts, but no time was listed as to when the medication was administered suggesting the result was entered at the same time the dose was signed out by Freeny.
- (e) Freeny did not include an “ID note” that described the resident’s pain that correlated with the date or the dosage given to the resident.
- (f) Freeny’s notes in the residents’ restorative therapy notes state “Tolerated well, participated, ambulated” with no pain observations noted.
- (g) Freeny charted that she wasted two tabs of hydrocodone/acetaminophen after the medication a resident refused fell in the sink and began to melt. Freeny did not have a second nurse sign off to verify the medication had been wasted, as was the standard practice of the facility.
- (h) Freeny signed out hydrocodone/acetaminophen 14 times for a resident who was not actually present in the facility from July 4, 2014 through July 7, 2014.
- (i) Freeny did not consistently document the administration of medications she signed out or adequately chart pain assessments on BSCC’s records during the period of July 1, 2014 through July 8, 2014.

8. On or about July 17, 2014, Warren met with Freeny to discuss the results of Leonard’s audit. Freeny did not admit to diverting the pain medication. Freeny conceded she would test positive for Vicodin if she was tested. Freeny initially told Warren that she had been prescribed Vicodin by a physician and then stated she had been prescribed the medication by the Benefis Walk In Clinic.

9. On July 31, 2014, the Department received a complaint filed by Warren alleging Freeny had engaged in unprofessional conduct.

10. From December 2011 through November 2014, Freeny received approximately 46 prescriptions for hydrocodone/acetaminophen from 18 different physicians and one dentist. Freeny had her prescriptions filled in various pharmacies in the area. Freeny obtained and filled six prescriptions for hydrocodone/acetaminophen during the course of her employment with BSCC. Freeny also obtained and filled approximately 22 prescriptions for Suboxone, a Schedule III controlled substance prescribed for maintenance treatment of opioid/opiate dependence. Freeny often filled the prescriptions for Suboxone during periods in which she had obtained multiple prescriptions for hydrocodone/acetaminophen.

11. On September 11, 2014, the Board's Screening Panel found reasonable cause to believe Freeny had committed unprofessional conduct by failing to properly chart resident pain assessments and the administration of pain medications to residents as required. The Board's Screening Panel also found reasonable cause to believe Freeny had diverted PRN hydrocodone/acetaminophen from residents. The Board's Screening Panel then issued a summary suspension of Freeny's license and directed the issuance of a Notice of Proposed Board Action and Opportunity for Hearing.

#### **IV. CONCLUSIONS OF LAW**

1. The Board has subject matter jurisdiction and legal authority to bring this action under Mont. Code Ann. §§ 37-1-131; 37-1-136; 37-1-307; 37-1-309; and Title 37, ch. 12.

2. A regulatory board may impose any sanction provided for by Montana Code Annotated Title 37, Chapter 1, upon a finding of unprofessional conduct. Mont. Code Ann. § 37-1-307(e).

3. Montana Code Annotated § 37-1-312(2) provides that in determining which sanctions are appropriate, the Board must first consider sanctions that are necessary to protect the public and only after that determination has been made may the Board then consider and implement requirements designed to rehabilitate the licensee. Among other things, Montana Code Annotated § 37-1-312 provides that a regulatory board may impose a private reprimand and that the Board may further stay the imposition of a sanction.

4. A licensee may be found to have violated a provision of Mont. Code Ann. § 37-1-136 or a rule of unprofessional conduct enacted by a governing board without proof that the licensee acted purposefully, knowingly or negligently. Mont. Code Ann. § 37-1-320.

5. A licensee engages in unprofessional conduct by engaging in “conduct that does not meet the generally accepted standards of practice.” Mont. Code Ann. § 37-1-316(18).

6. A licensee engages in unprofessional conduct under Admin. R. Mont. 24.159.2301 by engaging in “behavior (acts, omissions, knowledge, and practices) which fails to conform to the accepted standards of the nursing profession and which could jeopardize the health and welfare of the people and shall include, but not be limited to, the following:

- (b) failing to exercise technical competence in carrying out nursing care.
- (c) failing to follow policies or procedures defined in the practice situation to safeguard patient care . . .
- (h) falsifying patients’ records, intentionally charting incorrectly or failing to chart;
- (i) diversion of a medication for any purpose.”

7. Freeny violated Mont. Code Ann. § 37-1-316(18) and Admin. R. Mont. 24.159.2301 by failing to properly chart resident pain assessments and the administration of pain medications to residents as required and by failing to follow proper procedures when documenting “wasted” medication. Reasonable cause exists to find Freeny deliberately diverted residents’ pain medications for her personal use.

## **V. RECOMMENDED ORDER**

Upon careful consideration of what sanction, if any, is necessary to protect the public, it is respectfully recommended that the Board suspend Freeny’s license indefinitely and order Freeny to enroll and participate in monitoring under the Montana Nurses’ Assistance Program (NAP).

It is necessary to note this recommendation is being made with several reservations. The Hearing Officer is concerned with many aspects of this case. Freeny did not appear before the Board’s Screening Panel on September 2, 2014, and did not respond to the complaint. There is no indication Freeny was cooperative during the investigation. Freeny has appeared at only one telephone conference after the matter was transferred to Hearings and has failed to respond to the Department’s discovery requests. Freeny did not contact NAP after being referred by the Board

despite knowing her license was in jeopardy. Finally, and perhaps most troubling, is what appears to be Freeny's long term use of prescription pain medications. A review of the Montana Prescription Drug Registry (MPDR) shows Freeny obtained approximately 46 prescriptions for hydrocodone/acetaminophen from 18 different physicians and one dentist from December 2011 through November 2014. The MPDR also shows Freeny has a history of taking Suboxone, a Schedule III controlled substance used as a prescribed treatment for opioid/opiate dependence, while continuing to obtain prescriptions for hydrocodone/acetaminophen.

However, the Hearing Officer is persuaded by the testimony of Emery Jones, NAP Director, that he believes Freeny is amenable to treatment. Jones testified Freeny would receive the services she so clearly requires and would be subject to long-term monitoring and review before she would be allowed to return to work independently as an LPN. It appears the public's safety would be protected with this type of sanction and Freeny would receive the help she needs. It is, therefore, recommended that the Board suspend Freeny's license indefinitely and she be ordered to enroll and participate in services and monitoring offered by NAP.

DATED this 27th day of February, 2015.

DEPARTMENT OF LABOR & INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ CAROLINE A. HOLIEN  
CAROLINE A. HOLIEN  
Hearing Officer

**NOTICE**

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.