

**BEFORE THE BOARD OF NURSING
STATE OF MONTANA**

_____)	Docket No. CC-02-132-NUR
IN THE MATTER OF THE PROPOSED)	Hearings Bureau Case No. 2026-2002
DISCIPLINARY TREATMENT OF THE)	
LICENSE OF BERNADINE EAGLE, RN,)	FINDINGS OF FACT;
License # 27032.)	CONCLUSIONS OF LAW;
_____)	AND PROPOSED ORDER

INTRODUCTION

In this matter, the Department of Labor and Industry (hereinafter Department) seeks to impose sanctions against Bernadine Eagle's (hereinafter Licensee) nursing license, License No. 27032, issued by the Montana Board of Nursing. The hearing in this matter occurred on October 2, 2002. Lori Ballinger, agency legal counsel, represented the Department. The licensee failed to appear despite having received proper notice of the hearing. Exhibits A through M were admitted into evidence. Barbara Swehla and Carol Sem testified under oath on behalf of the Department. Based on the evidence and arguments adduced at the hearing in this matter, the hearing examiner makes the following findings of fact, conclusions of law, and proposed order recommending suspension of the licensee's nursing license.

FINDINGS OF FACT

1. The licensee is a registered nurse holding License No. 27032. At all times relevant to this proceeding, the licensee has been a registered nurse in the state of Montana.

2. Due to the licensee's history of substance abuse, the Board of Nursing required the licensee to enroll in the non-disciplinary track of the Nurse's Assistance Program (hereinafter NAP) as prerequisite to obtaining her license (See Exhibit A, Letter of July 17, 2000 from Janice Bowers, Board of Nursing Compliance Specialist to the licensee). The NAP provides needs assessments and resources such as counseling, group support, and drug screen monitoring for licensees who suffer from substance abuse problems.

3. The licensee enrolled in NAP in November 2000. As a part of her enrollment, the licensee entered into a contract with NAP that required her to, among other things, (1) abide by the terms of the contract for a period of one year, (2) to completely abstain from the use of alcohol and mind altering drugs, (3) to report any relapse, and (4) to submit to one urine test for drug screening every four weeks and to remain at that level of testing frequency for a period of six months. In addition, the licensee agreed that she would comport with any recommended change in the level of testing frequency which might be dictated based upon compliance history, relapse, or other changed circumstances.

4. By March 2001, the licensee had already violated the terms of her contract by failing to appear for a required drug screening on February 23, 2001 and failing to attend her Nurses Support Group on February 23, 2001. The licensee's noncompliance resulted in NAP notifying the

licensee that her screening level frequency would be raised to two screenings per month. In addition, the licensee was admonished that further "noncompliances" would result in her discharge from NAP.

5. By May 8, 2001, the licensee had accumulated four instances of noncompliance with NAP. The licensee was notified on that date that because of her instances of noncompliance, her frequency of testing would remain at two tests per month.

6. On July 18, 2001, the licensee had a fifth noncompliance with her contract when she tested positive for metabolites of a controlled substance, propoxyphene, a narcotic. This fifth noncompliance met with a letter from NAP which admonished the licensee that her continued pattern of noncompliances with NAP was imperiling her work as a nurse since she had "demonstrated a pattern of noncompliances that one can only interpret as you don't care about being a nurse because your behavior has come so close to causing a loss of your license" (Exhibit J, letter dated August 10, 2001). The licensee was required to submit to increased frequency of drug screening and to attend two Alcoholic Anonymous meetings per week.

7. Despite the August 10 letter, the licensee had yet a sixth instance of noncompliance on August 22, 2001. On that date, she submitted to a drug screening which tested positive for a metabolite of marijuana, an illicit substance. Based on the licensee's repeated instances of noncompliance with NAP, she was discharged from the program.

8. Carol Sem, a licensed Montana RN and the licensee's monitoring nurse in NAP, testified regarding the danger to the public that the licensee represents in her present condition. Sem has been a licensed chemical dependency counselor in Montana since 1986. She founded the NAP program and acts as the NAP consultant to the Board of Nursing. She is qualified by her experience and training to testify about the effects of chemical dependency upon a person. Sem testified that based on her experience and training, the licensee's repeated failure to adhere to the dictates of her NAP contract was indicative of an unstable recovery and relapse. She testified that in a hospital or medical setting, the role of the nurse in caring for patients necessarily leaves him or her in a position to have easy access to controlled substances. The dangers of having a chemically dependent nurse whose addiction cannot be controlled in such a setting are obvious. There are, of course, the well known impairing effects of the drugs found in the licensee's drug screening tests. In addition, there are well founded concerns that the licensee's addiction might lead her to take controlled substances from work for her own use. Unquestionably, given the presently uncontrolled and unmonitored status of the licensee's chemical dependency, she represents a threat to the public.

CONCLUSIONS OF LAW

1. Jurisdiction of this matter is vested in the Montana Board of Nursing under § 37-1-121, MCA, Title 37, Chapter 1, Part 3, MCA, and § 37-8-202, MCA.

2. As the Department seeks to impose sanctions against a license, it must demonstrate the existence of the allegations contained in the complaint by a preponderance of the evidence. § 37-

3-311, MCA; *Ulrich v. State ex rel. Board of Funeral Service*, 289 Mt. 407, 961 P.2d 126 (1998). 3. Section 37-1-316, MCA, provides in pertinent part:

The following is unprofessional conduct for a licensee . . . governed by this chapter:

* * *

(18) conduct that does not meet generally accepted standards of practice.

* * *

4. A.R.M. 8.32.413(2)(r) defines unprofessional conduct to include "failing to comply with the contract provisions of the nurse's assistance program."

5. The uncontroverted evidence presented in this matter shows that the licensee has committed unprofessional conduct under § 37-1-316 (18), MCA and A.R.M. 8.32.413(2)(r). The licensee failed to comply with the terms of her NAP contract and relapsed into use of narcotics and marijuana as demonstrated by her drug screening tests. Her noncompliance with her NAP contract resulted in her termination from the NAP program. Her license is thus vulnerable to the imposition of the sanctions provided in § 37-1-312, MCA.

6. Section 37-1-312, MCA, provides that upon a determination that the licensee has violated Title 37, Chapter 1, Part 3, the board may issue an order providing for, among other things, suspension of a professional license for a fixed or indefinite term, compliance with conditions of probation, and satisfactory completion of a specific program of treatment.

7. Suspension of the licensee's Montana nursing license until such time as the licensee re-enrolls and is fully compliant with the requisites of the nurse's assistance program is appropriate in this case. In the absence of the monitoring and demonstrated compliance with NAP, the public cannot be assured of the fitness of the licensee to practice nursing in a safe and competent manner.

PROPOSED ORDER

Based on the foregoing, it is recommended that the Montana Board of Nursing suspend the professional nursing license of Bernadine Eagle, License No. 27032 until such time as she has re-enrolled and is fully compliant with the terms of her Nursing Assistance Program contract. Upon proof that the licensee has become fully compliant, the licensee may then petition the Board of Nursing for reinstatement of License No. 27032.

DATED this 15th day of October, 2002.

DEPARTMENT OF LABOR & INDUSTRY

HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT

GREGORY L. HANCHETT

Hearing Examiner

NOTICE

The parties to this proceeding are notified that §2-4-621, MCA, provides that the proposed order in this matter, if adverse to a party other than the agency itself, 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.