

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF PROFESSIONAL LICENSING
BOARD OF NURSING
DISCIPLINARY SUBCOMMITTEE

In the Matter of

MARY NICOLE CHEATHAM, R.N.
License No. 47-04-320249,

File No. 47-20-002442

Respondent.

FIRST SUPERSEDING ADMINISTRATIVE COMPLAINT

The Michigan Department of Licensing and Regulatory Affairs, by Forrest Pasanski, Enforcement Division Director, Bureau of Professional Licensing, complains against Respondent Mary N. Cheatham, R.N. as follows:

1. The Michigan Board of Nursing is an administrative agency established by the Public Health Code, MCL 333.1101 *et seq.* Pursuant to MCL 333.16226, the Board's Disciplinary Subcommittee (DSC) is empowered to discipline licensees for violations of the Public Health Code.

2. Respondent holds a Michigan license to practice as a registered nurse.

3. On March 9, 2021, after consultation with the Board Chairperson, the Department found that the public health, safety, and welfare required emergency action. Therefore, pursuant to MCL 333.16233(5), the Department executed an Order of Summary Suspension against Respondent's license to practice as a registered nurse in

the state of Michigan in this matter. The Department also executed an Administrative Complaint on March 9, 2021 in this matter.

4. Hydromorphone (e.g., Dilaudid) is a frequently diverted and abused opioid schedule 2 controlled substance.

5. Hydrocodone-containing products (e.g., Norco) are frequently diverted and abused opioid schedule 2 controlled substances.

Interactions with Law Enforcement

6. On or about April 23, 2018, Respondent was pulled over by law enforcement officers. Officers discovered marijuana and 27 tablets of medication containing hydrocodone in a prescription bottle with no label. Respondent initially stated that she had a prescription for the hydrocodone but later stated that she had lied and that she did not have a prescription for the hydrocodone.

7. Law enforcement has recorded other incidents where it appeared Respondent was aware of ongoing illegal drug activity by a close family member.

Washtenaw County Criminal Prosecution

8. Stemming from the interaction with law enforcement on or about April 23, 2018, Respondent has been charged with possession of a controlled substance. Respondent was ordered to enroll in Community Corrections Standard Supervision and was released on bond. As part of her bond requirements, Respondent agreed to random drug testing.

9. From November 2, 2018 through July 21, 2020, Respondent tested positive for opiates on 35 different occasions and missed her random drug testing on 14

different occasions.¹

Sinai-Grace Hospital

10. Respondent worked as a registered nurse at Sinai-Grace Hospital (facility) located in Detroit, Michigan.

11. At all relevant times, the facility used Omnicell, an automated dispensing device, to provide computer-controlled storage, dispensing, and tracking of medications, including controlled substances.

12. Near the end of July 2020, a facility pharmacy technician noticed that some Dilaudid vials appeared as though they may have been tampered with. The technician pulled them out of stock for management to inspect.

13. Facility management instructed staff to retrieve all Dilaudid vials for inspection. The pharmacy manager and pharmacy director inspected all of the Dilaudid vials, tested their weight, and discovered that 116 vials of Dilaudid were tampered with, and it appeared that normal saline had been used to replace the Dilaudid.

14. Management ordered Omnicell activity reports to discover who may have tampered with the 116 Dilaudid vials. The Omnicell reports showed that a number of null transactions had been performed. A null transaction occurs when an Omnicell bin is opened by a user, and the user reports not withdrawing or returning anything to the bin. A null transaction can also occur if a bin's cycle count is not completed by the user.

15. The report indicated that between March 1, 2020 and August 31, 2020, sixty-one unique users had performed 526 null transactions on the two Omnicell

¹ On or about March 12, 2019 Respondent was prescribed a one-day supply of a hydrocodone containing medication. On or about May 23, 2019, Respondent was prescribed a 10-day supply of a hydrocodone containing medication. This would account for a small fraction of the positive drug tests.

machines in Respondent's assigned area of 1 East. Of the 526 null transactions, Respondent performed 212, which is over 40% of the null transactions. The second highest nurse had performed 23 null transactions during that same time frame. Of the 212 null transactions that Respondent had performed, 179 involved the bin containing Dilaudid.

16. Management looked more closely at Respondent's controlled substance practice and discovered that Respondent also had accessed other Omnicell machines in areas she was not assigned to work and performed many other null transactions for Dilaudid. Between March 23, 2020 and July 27, 2020, Respondent accessed Omnicell machines on 4 West and 6 East multiple times and performed null transactions accessing Dilaudid.

17. The facility's chief nursing officer confirmed that Respondent was not assigned to any unit other than 1 East, and if she had needed any medication that the 1 East Omnicell machines did not have, the proper procedure would be to contact pharmacy for a refill.

18. Through the internal investigation, management discovered Respondent documented that she often performed cycle counts with nurse RD,² or Respondent documented that nurse RD was her witness to controlled substance waste. However, management also discovered that for some of these occasions, nurse RD was either not working at the facility or was caring for patients in another part of the facility.

19. To log-in to the Omnicell a nurse has to use her fingerprint.

² Initials are used to protect privacy.
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Respondent uses her fingerprint, but Nurse RD's fingerprint has never worked, so nurse RD is allowed to use a password to access the Omnicell. The system does not require the password to be changed and nurse RD stated that she has never changed her password.

20. Respondent was placed on leave pending the facility's investigation into her controlled substance practice and for misappropriating nurse RD's log-in credentials.

21. Respondent failed to cooperate with the facility's investigation and was eventually terminated based upon her controlled substance medication withdrawal and administration practices that were indicative of diversion and non-compliance with the facility's controlled-substance policies.

22. A Department investigator attempted to contact Respondent by mail. Respondent called the investigator and left a voicemail message stating that she was calling regarding a letter she received about the investigation. Respondent provided a phone number and said she was available during the daytime.

23. The investigator called and left messages on three occasions from December 18, 2020 through January 6, 2021. To date, Respondent has not replied to the investigator regarding this case.

COUNT I

Respondent's conduct constitutes a violation of a general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, or any conduct, practice, or condition that impairs, or may impair, the ability to safely or skillfully engage in the practice of the health profession, in violation of MCL 333.16221(a).

COUNT II

Respondent's conduct, as set forth above, demonstrates Respondent's "departure from, or failure to conform to, minimal standards of acceptable and prevailing practice for the health profession, whether or not actual injury to an individual occurs", and accordingly "incompetence", in violation of MCL 333.16221(b)(i).

COUNT III

Respondent's conduct demonstrates Respondent's lack of a "propensity . . . to serve the public in the licensed area in a fair, honest, and open manner," MCL 338.41(1), and accordingly a lack of "good moral character," in violation of MCL 333.16221(b)(vi).

COUNT IV

Respondent's conduct constitutes obtaining, possessing, or attempting to obtain or possess a controlled substance or drug without lawful authority, and/or selling, prescribing, giving away, or administering drugs for other than lawful diagnostic or therapeutic purposes, in violation of MCL 333.16221(c)(iv).

The Administrative Complaint previously executed against Respondent on March 9, 2021, is WITHDRAWN and replaced in full by this First Superseding Administrative Complaint. The summary suspension executed March 9, 2021 remains in place.

RESPONDENT IS NOTIFIED that, pursuant to MCL 333.16231(8), Respondent has 30 days from the date of receipt of this Complaint to submit a written response to the allegations contained in it. Pursuant to section 16192(2) of the Code, Respondent is deemed to be in receipt of the complaint three (3) days after the date of mailing listed in the attached proof of service. The written response shall be submitted by email to the Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing to BPL-DMS@michigan.gov. If unable to submit a response by email, Respondent may submit by regular mail to the Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, P.O. Box 30670, Lansing, MI 48909.

Respondent's failure to submit an answer within 30 days is an admission of all Complaint allegations. If Respondent fails to answer, the Department shall transmit this complaint directly to the Board's Disciplinary Subcommittee to impose a sanction pursuant to MCL 333.16231(9).

MICHIGAN DEPARTMENT OF
LICENSING AND REGULATORY AFFAIRS



By: Forrest Pasanski, Director
Enforcement Division
Bureau of Professional Licensing

Dated: 4-5-2021

Pc/jp