

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE BOARD OF NURSING**

In the Matter of)	
)	
KRIS KILE)	OAH No. 19-0690-NUR
)	Agency No. 2019-000171/0387/056

DECISION

I. Introduction

The Division of Corporations, Business & Professional Licensing summarily suspended Kris Kile’s nursing licenses in July 2019 for failing to comply with a Consent Agreement approved by the Board of Nursing six months earlier. Specifically, the Division alleged that Ms. Kile violated the Agreement’s catch-all legal compliance provision when she (1) prescribed controlled substances to her live-in boyfriend, and (2) allowed staff to access her PDMP log-in information, both of which, the Division contended, were illegal acts.

Ms. Kile appealed the summary suspension, admitting both acts but denying that either was illegal. Following an expedited hearing and decision process, this decision concludes that Ms. Kile’s conduct violated the Consent Agreement, and her license was properly suspended. Because both violations implicate carelessness, at least, in the prescription of controlled substances, this decision recommends that Ms. Kile’s licenses remain suspended until the close of her previously-agreed probationary period, at which time she may resume practice subject to probation for an additional probationary period equal to the balance of the probationary period she failed to complete successfully.

II. Factual and Procedural History

A. Background

Kris Kile holds Registered Nurse NURR20410, first issued in October 2000, and Advanced Nurse Practitioner License NURU1356, first issued in March 2013. Because this matter alleges a violation of a prior consent agreement, the discussion begins with a history of that agreement.

In June 2018, the Division of Corporations, Business & Professional Licensing filed an Accusation against Ms. Kile, alleging unprofessional conduct – including unsupported prescribing of controlled substances and inadequate charting in the prescription of those substances – in her treatment of an individual identified as “Patient #1.” After the matter was

referred to the Office of Administrative Hearings, the Division and Ms. Kile entered into mediation to try to resolve the case.

The Division then issued an Amended Accusation on November 25, 2018, again setting forth a variety of allegations about Ms. Kile's prescribing practices with "Patient #1." The gravamen of the amended accusation was an alleged pattern of prescribing without in-person visits, charting, or evidence that Ms. Kile had warned or educated her patient about the risks associated with the scheduled substances she was prescribing.

On December 6, 2018, parties executed a consent agreement to resolve the claims against Ms. Kile as set forth in the Amended Accusation. In the consent agreement, Ms. Kile admitted narrow facts concerning just three prescriptions, as follows

- That prescriptions were written in Kile's name for an albuterol inhaler in December 2013 and an anti-yeast agent in February 2015, as to which "if [Kile] wrote the prescription, the basis for the prescription was inadequately charted in [Kile's] records;" and
- That she wrote a prescription for hydrocodone in October 2014 as to which the Division alleges (but Kile does not admit) that charting was inadequate.¹

Based on this narrow set of admissions, the parties' Consent Agreement provided that Kile's license would be placed under probation for 18 months, during which time she would be under the review of a practice monitor, with her patient files subject to quarterly audit, and that the Board would publicly reprimand her "for a single violation of inadequate charting."² The Division and Ms. Kile also agreed that she would complete an additional 35 hours of continuing education in "prescriptive medication, ethics, professional boundaries, pain management principles/practice, and substance abuse/addiction process with patients."³

The Agreement requires Ms. Kile to "obey all Federal laws and State statutes and regulations governing her license, or relating to her fitness to practice."⁴ As an enforcement mechanism, the Agreement allows the Division to summarily suspend Kile's license for failure to comply with the Agreement, as follows:

If Respondent fails to comply with any term or condition of this consent agreement, the division may enforce his agreement by immediately suspending

¹ Ex. A, p. 6.

² Ex. A, p. 11.

³ Ex. A, p. 10.

⁴ Ex. A, p. 11.

Respondent's license, without an additional order from the Board or without a prior hearing, for a violation of this agreement.⁵

The Board approved and adopted the Consent Agreement on March 28, 2019.

B. 2019 complaint and investigation

In February 2019 – after the parties had signed the Consent Agreement but before the Board had adopted it – the Division received a complaint from a former contract employee of Ms. Kile. The February 18, 2019 complaint alleged:

[T]hat Ms. Kile has been prescribing narcotics/opioids without seeing patients in clinic and also has not completed chart notes to support prescribing. Ms. Kile has prescribed narcotics to her boyfriend, J.J. I believe Ms. Kile prescribes excessive amounts of controlled substances and may be a risk to patient safety.⁶

Attached to the complaint was document described as a 10-day list of controlled substances prescribed, not including those prescribed via “paper scripts.”⁷

The Division began an investigation based on this complaint.⁸ Because the complaint potentially implicated billing concerns, the Division also shared the complaint with the Medicaid Fraud Control Unit (MFCU). At some point, MFCU investigators asked the Division to pause its investigation.⁹ The Division's investigation then paused until June 2019, when Division investigator Jennifer Summers accompanied MFCU and FBI personnel serving a search warrant on Ms. Kile's clinic.

1. Documentary evidence obtained by the Division

The search warrant sought medical records of 21 patients, including J.J., as well as computers, cell phones, and electronic storage devices, prescription pads, DEA ordering forms, and other records, and indicated that the material sought was believed to be evidence of Misconduct Involving a Controlled Substance and/or Medical Assistance Fraud.¹⁰

a. *PDMP login information*

During the search of the clinic, Ms. Summers observed something that concerned her, and asked law enforcement to take a photo of it to document what she observed. Taped to the

⁵ Ex. A, p. 10. This same provision then allows Ms. Kile to request an expedited hearing in the event of such a suspension.

⁶ Ex. C, p. 2.

⁷ Ex. C, pp. 3-4.

⁸ Summers testimony.

⁹ Ex. D; Summers testimony.

¹⁰ Ex. D, pp. 3-5.

inside of an unlocked cabinet door in a hallway accessible to all staff were various sticky notes, one of which read as follows:

Due to the strict confidentiality requirements governing access to the Prescription Drug Monitoring Program (PDMP) database, the notion of log-on information posted in a location broadly accessible to unauthorized staff was concerning to Ms. Summers.¹¹

b. *PDMP provider record*

By way of background, the PDMP is established under AS 17.30.200 under operation by the Board of Pharmacy; it is administered by the Division. Access to the database is strictly limited, with the limitations to such access being set forth in AS 17.30.200(d). As to access by prescribing practitioners and their staff, AS 17.30.200(d)(3) provides that the database may only be accessed by:

[A] licensed practitioner having authority to prescribe controlled substances or an agent or employee of the practitioner whom the practitioner has authorized to access the database on the practitioner's behalf, to the extent the information relates specifically to a current patient to whom the practitioner is prescribing or considering prescribing a controlled substance; the agent or employee must be licensed or registered under AS 08.

In order to access the PDMP database, a provider must apply for and obtain individualized log in information.¹² And while a medical provider may authorize an agent or employee to access the PDMP as the provider's delegate, only an individual licensed under AS 08 may serve as such a delegate.¹³

A provider's PDMP records reflect whether the provider has delegates authorized to access the database on their behalf.¹⁴ The Division submitted a subpoena to the PDMP to determine whether Ms. Kile had any delegates authorized in the program to access the database with relation to her practice. The documentation received from the PDMP lists no delegates assigned to Ms. Kile.¹⁵

c. *PDMP prescribing records*

¹¹ Summers testimony.

¹² Summers testimony; *see also*, per 2 AAC 64.300, <https://www.commerce.alaska.gov/web/cbpl/ProfessionalLicensing/PrescriptionDrugMonitoringProgram/RegistrationInstructions.aspx> (last accessed 10/21/19).

¹³ Summers testimony; *see also*, per 2 AAC 64.300, https://www.commerce.alaska.gov/web/Portals/5/pub/PDMP_DelegateSignupInstructions.pdf (last accessed 10/21/19).

¹⁴ Summers testimony; Ex. K.

¹⁵ Ex. K.

In response to the Division’s subpoena, the PDMP provided Ms. Kile’s prescribing records for J.J. and two individuals identified during the hearing as family members.¹⁶ These records show controlled substance prescriptions for two close relatives – for one relative, a single weight loss prescription; for the other, seven scheduled prescriptions, including Adderall and valium. Additionally, for J.J., the PDMP record shows 71 controlled substance prescriptions written by Ms. Kile. Beginning in June 2018 and through the last prescription written on July 16, 2019, the prescription records for J.J. list his address _____.¹⁷ The PDMP record shows 55 prescriptions to Mr. J. since he moved to the address. The evidentiary record also includes a handwritten prescription for Tylenol 30/300 (#60) signed by Ms. Kile for J.J.¹⁸

d. *Text messages*

MFCU personnel provided the division with certain materials retrieved through the search warrant. These included transcripts of text messages between Ms. Kile and certain staff members. In one of these texts, Ms. Kile asks Ms. Blake whether a particular patient has left a voice mail message. Ms. Blake responds that, to address the patient’s request for a refill of Percocet, she will check the PDMP and then prepare the prescription request for Ms. Kile to finalize.¹⁹

Also provided by MFCU was a compilation of texts exchanged between with Kile and an employee who is also an immediate family member.²⁰ The texts include Ms. Kile and the family member discussing Ms. Kile writing a controlled substance prescription (Adderall) for the family member.²¹

2. Interviews with FBI and MFCU Investigators

Ms. Kile was interviewed by law enforcement personnel during service of the warrant on June 26, 2019.²² The discussion was largely about billing and prescribing practices. Of relevance to this proceeding, they discussed whether she prescribes to family members, and her practices for using the PDMP.

¹⁶ Ex. I.

¹⁷ Ex. N, Request 3, Cell Nos. S:2-56; AG:2-56.

¹⁸ Ex. F, p. 6. (Pages 1-5 of Ex. F were not admitted into the record due to inadequate foundation).

¹⁹ Ex. M, p. 7 (“I just got off the phone with her. I will check her PDMP and sen[d] you a task it’s for her Percocet she wanted it sent to Walgreens on DeBarr.”).

²⁰ Ex. L.

²¹ Ex. L, pp. 2-18.

²² Ex. E.

Regarding her use of the PDMP, Ms. Kile indicated that she logs in every day. She also indicated that her office manager manages access to the PDMP by medical assistants, and that she is unsure who exactly has accounts to access the database.

Regarding prescribing practices, Ms. Kile was asked about her personal relationships with certain patients, for example her banker and her “IT guy.” She denied that there were “conflicts of interest” in these relationships, explaining: “no, I know how to split personal from professional, and that’s what I tell everybody. If you don’t know how to do that then we should not be friends.” She also described a situation of which she was aware in which another provider had previously prescribed narcotics to his spouse, but that such practices are no longer permissible. She expressed confidence in the ethics of her treatment practices, stating, “I do what I can to help people out but I do it legally and professionally.”²³

She admitted that J.J. was her boyfriend, and that she had been prescribing for him since April or May of 2018.²⁴ At various points during the interview she mentioned that J.J. was currently “doing compliance” for her business, that she and J.J. were working together to get a related wound care business up and running,²⁵ and that J.J. was “working for free because he lives with me.”²⁶ She denied any conflict of interest in her treatment of J.J., noting that she had “weaned him down” from higher doses previously prescribed by another provider, and suggesting there was no conflict because she was “not giving him medicine he doesn’t need.” Noting that J.J. could be treated elsewhere, but that she didn’t think it was necessary, Kile commented: “I could send him over there and spend money, but, why would I do that?”²⁷ She also stated that a newly hired doctor in her practice was going to take over his treatment “because that would make everything legal/professional.”²⁸

Ms. Kile was interviewed again by law enforcement on July 25, 2019.²⁹ Most of the discussion concerned a review of three specific patients’ records. Of relevance to this case, however, access to the PDMP was discussed, as was JJ’s situation.

²³ Ex. E, 1:26:20.

²⁴ Ex. E, 1:06:10.

²⁵ Ex. E, 1:23:30.

²⁶ Ex. E, 1:23:48.

²⁷ Ex. E, 1:26:10.

²⁸ Ex. E, 1:06:10.

²⁹ Ex. H.

Regarding JJ's situation, Ms. Kile asked for the FBI's help in securing the return of JJ's computer, which was seized during the execution of the search warrant. Without the computer, she stated, he was unable to work, "so we have no income."

Regarding the PDMP, Ms. Kile was asked, "Who in the office is authorized to check the PDMP?"³⁰ She responded that in addition to herself, two of her employees had passwords that they used to check the PDMP.³¹ She identified the "authorized people" as "the medical assistants." She indicated that her business manager took care of whatever was required to get the medical assistants the passwords they needed to access the PDMP, and that she was not sure how that process worked other than that "they have to go online and get a password for that." Ms. Kile affirmed her understanding that her Medical Assistants were checking the PDMP with their own passwords. When asked about the username and password information found taped to an unlock cabinet door, Ms. Kile claimed to be unaware it was there. She also indicated she was unaware that she had no registered delegates under the PDMP program.

Investigators at the July 31 interview explained to Ms. Kile that the publicly available log in information was problematic because she was knowingly allowing her staff to access the PDMP. The investigators described knowingly allowing staff to access the PDMP as "a pretty big deal," and, referencing Medical Assistant Brittany Blake, told her: "We know that Brittany has been accessing it and you need she was accessing it."³²

C. Summary suspension

As noted above, the Consent Agreement allows the Division to summarily suspend Ms. Kile's license for any violation of the Agreement. On July 31, 2019, one week after the second FBI interview, the Division exercised its authority under this Agreement. After noting the Agreement's requirement that Ms. Kile "obey all federal laws and State statutes and regulations governing her license, or relating to her fitness to practice," the Division's summary suspension letter identified three alleged bases for suspension: prescribing to J.J., leaving PDMP log in information accessible, and a Medicaid billing issue. Shortly before the hearing in this matter,

³⁰ Ex. H, 23:35.

³¹ Id., at 23:50 ("I have two people that have their own passwords, and then I have a password. So if a patient needs a refill, they log in to the PDMP and then they send me a message.")

³² Ex. H, 26:20 – 27:30.

the Division withdrew its claim about Medicaid billing.³³ The two bases still at issue were described in the division's suspension letter as follows:

As to J.J., the letter states:

On June 26, 2019, during an interview with the Medicaid Fraud Control Unit (MFCU) and the Federal Bureau of Investigation (FBI), you admitted that you have been prescribing narcotics to [J.J.] since April 2018. Mr. [H] is your boyfriend with whom you share a residence. This is a violation of AS 08.68.270(7) and 12 AAC 44.770(9).

As to the PDMP, the letter states:

On June 26, 2019, during a MFCU and FBI search warrant of your clinic, your login information for the Prescription Drug Monitoring Program (PDMP) was found in a common work space accessible to all clinic staff. This is a violation of AS 17.30.200(1)(1)(c).

The Division's letter informed Ms. Kile that it was suspending both of her nursing licenses "for failing to remain in compliance with your 2019 Consent Agreement, a violation of Alaska Statute (AS) 08.68.270(8), by the above[-]noted violations."

D. Request for hearing

As noted above, the consent agreement allows the Division to summarily suspend Ms. Kile's licenses, but also provides for an expedited hearing (within seven calendar days of the notice of suspension) as well as to an expedited final decision by the Board (to be issued within fourteen calendar days after the hearing), or the suspensions are lifted until the Board issues a decision.

Ms. Kile, through counsel, submitted a notice of defense and request for hearing on August 5, 2019. However, her request expressly waived the 7-day provision, asking for additional time to prepare.³⁴ Nonetheless, the Office of Administrative Hearings set and held an expedited case planning conference.

A new attorney entered the case on Ms. Kile's behalf the day of the case planning conference; he too waived the expedited hearing. Thereafter, multiple status conferences were

³³ Division's Prehearing Brief, p. 3 ("Regarding the Division's allegation that Respondent admitted to fraudulently billing Medicaid Services rendered through a separate non-Medicaid provider, the Division is not pursuing this allegation at this stage because facts are still developing.").

³⁴ See August 3, 2019 Letter of Brian Heady, Esq. to Division Director Sara Chambers ("Ms. Kile *does* request a hearing in this matter but is unable to be prepared for a hearing by August 7, 2019, or seven calendar days from receiving the notice of suspension. Accordingly, Ms. Kile requests an extension of the seven-day deadline") (emphasis in original).

set and held during August and September, during which time the hearing was initially set for October 2019, and then rescheduled to December 2019 at the request of Ms. Kile's counsel.³⁵

On September 27, 2019, counsel for the Division requested a status conference, notifying OAH that two different attorneys had recently contacted her purporting to represent Ms. Kile in this matter – including one who had filed a new notice of defense attempting to invoke the 7-day expedited hearing provision. A status conference was held on September 30, 2019, to address the issue of Ms. Kile's changing representation. At that conference, Ms. Kile's newest counsel sought to invoke the expedited hearing right set out in the parties' consent agreement, despite her prior counsel having waived that provision and having, most recently, selected a hearing date in mid-December.

Because Ms. Kile's prior counsel had repeatedly and expressly waived, on her behalf, the right to a hearing within seven days of the suspension notice, counsel's request for a hearing within seven days was denied. However, given the significance of the rights at issue, and out of respect for the parties' and the Board's prior designation of summary suspensions under the Consent Agreement as a matter warranting expedited review, it was agreed that the hearing could return to the previously-set October dates.

E. Hearing

The Division's prehearing brief explained it was only proceeding at this time on the claims regarding (1) prescriptions to a domestic partner and (2) allowing improper access to the PDMP. In her prehearing brief, Ms. Kile admitted prescribing narcotics to Mr. J., but argued she was unaware until recently that this was prohibited. As to the PDMP, she admitted leaving her access codes in a public area, but denied that this was prohibited by law.

The hearing was held on October 14, 2019. Ms. Kile was represented by Kevin Fitzgerald; the Division was represented by Assistant Attorney General Ashley Brown. Testimony was taken from a single witness: Division investigator Jennifer Summers. Exhibits A, B, C, D, E, F (p. 6 only), G, H, K, L, M and N were admitted into evidence, and portions of two MFCU/FBI interviews (Exhibits E and H) were played at the hearing. The record closed at the end of the hearing.

³⁵ See Interim orders dated August 15, 2019, September 4, 2019, and September 19, 2019; Scheduling Order dated August 21, 2019; Revised Scheduling Order dated September 19, 2019.

III. Discussion

A. *Did Ms. Kile violate the 2018 Consent Agreement?*

The Division bears the burden of proof that its suspension of Ms. Kile's nursing licenses should be upheld. The Division must show that Ms. Kile more likely than not committed the conduct of which she is accused, and that that conduct constitutes a violation of the Consent Agreement.

1. Prescriptions to family member J.J.

The first basis on which the Division justified its suspension of Ms. Kile's license was an alleged violation of 12 AAC 44.770(9). That section defines unprofessional conduct in the nursing profession to include:

[V]iolating state or federal laws regulating drugs, including ... prescribing controlled substances for self or the nurse's immediate family members; in this paragraph; "immediate family member" means a parent, sibling, spouse, child, parent-in-law, sibling-in-law, step child, or same-sex or opposite-sex domestic partner.

Ms. Kile argues that the suspension on this ground is invalid because there is insufficient evidence that J.J. is Ms. Kile's "opposite-sex domestic partner" as a matter of law.

While there is no dispute that Ms. Kile prescribed scheduled drugs to J.J., Ms. Kile argues that there is insufficient evidence that her relationship with J.J. falls within the proscription against prescribing for family members. She urges that the Board should apply a marriage-like standard to the determination of whether an opposite sex domestic partnership exists. Such a standard, she argues, would require findings that Ms. Kile and J.J. share the various attributes of a legal marriage.

Ms. Kile's arguments are not persuasive. As a legal matter, Ms. Kile too narrowly construes the regulation by trying to read the various attributes of legal marriage into the definition of "opposite-sex domestic partner." The regulation's reference to "same-sex or opposite-sex domestic partner" must mean something other than "spouse," because the regulation separately identifies spouses as immediate family members. The regulation also identifies various more distant relatives – parents-in-law and siblings-in-law – as other "immediate family members," as well as including various relatives who do not typically reside with adult professionals – such as their parents and sibling. The inclusion of this range of relatives supports an interpretation of the regulation as broad, not narrow.

As a factual matter, there is ample evidence to satisfy the division’s burden of showing that her relationship to Mr. J. is of the type contemplated within the scope of the regulation. Since they were living together in July 2019, and Mr. H’s PDMP records show him having had the same physical address since July 2018 (and for the last 55 scheduled prescriptions written by Ms. Kile), it is more likely true than not true that by the time of the suspension they had living together for at least a year. Ms. Kile also described their incomes as intermingled, telling investigators Mr. J. “works for free because he lives with me” and that they were working together to start a wound care business, as well as complaining that, due to the confiscation of his computer, “we have no income.”

Because the evidence thus supports the conclusion that Mr. H is more likely than not Ms. Kile’s opposite-sex domestic partner, her prescribing controlled substances to him violated 12 AAC 44.770(9), and therefore constituted a breach of her agreement under the Consent Agreement to obey all laws governing her license or relating to her fitness to practice.

2. PDMP database access

The Division’s summary suspension letter separately justified the suspension of Ms. Kile’s nursing licenses based on her PDMP login information having been discovered, during execution of the search warrant, “in a common workspace accessible to all clinic staff.” The letter alleged that Ms. Kile had violated AS 17.30.200(l)(1)(c), which prohibits persons with authority to access the PDMP from knowingly allowing unauthorized persons to access it.

As noted above, AS 17.30.200(d)(3) provides that the database may only be accessed by “a licensed practitioner having authority to prescribe controlled substances or an agent or employee of the practitioner whom the practitioner has authorized to access the database on the practitioner’s behalf,” but that such a delegate “must be licensed or registered under AS 08.” Here, the evidence establishes that Ms. Kile’s medical assistants were accessing the PDMP on her behalf. This evidence is problematic for two separate reasons. First, because medical assistants are not a licensed profession under AS 08, Ms. Kile would not have been able to authorize her medical assistants as delegates.³⁶ Further, as a factual matter, Ms. Kile had *no* authorized PDMP delegates able to access the database on her behalf.³⁷

³⁶ Summers testimony.

³⁷ Summers testimony; Ex. K.

Against this backdrop by which the medical assistants were not and could not be legally authorized delegates, the following evidence exists that Ms. Kile has allowed medical assistants to access the PDMP – not as authorized delegates with their own log in information, but using Ms. Kile’s log in information:

- Ms. Kile’s June and July 2019 statements to investigators that her two medical assistants access the PDMP;
- Medical assistant Brittany Blake’s text message to Ms. Kile that she would access the PDMP to address a patient inquiry (and the lack of evidence of any objection by Ms. Kile);
- The PDMP records showing Ms. Kile has no authorized delegates in the PDMP program; and
- Ms. Kile’s PDMP login information being taped to the publicly-accessible unlocked cabinet door.

The Division argues that, by knowingly allowing medical assistants in her practice to authorize the PDMP, Ms. Kile violated AS 17.30.200(l)(1)(c), which provides that “[a] person with authority to access the database under (d) of this section who knowingly ... allows another person who is not authorized to access the database to access the database commits a class C felony.”

Ms. Kile’s argument in response to these allegations is a technical one. She argues that the Division’s notice of suspension was insufficient to state a claim for violation of AS 17.08, which is the basis on which the violation is alleged. Specifically, she argues that the letter only alleges that Ms. Kile left her PDMP log in information unsecured. Because the letter did further allege that this unsecured information was being used to allow staff to improperly access the PDMP, Kile avers, her license cannot be suspended for having allowed such access.

But Ms. Kile’s argument ignores the factual and procedural posture of this case. The evidence is that Ms. Kile was improperly allowing and relying on unlicensed personnel to access the PDMP. The fact that her log-in information was found taped to the unlocked cabinet door is evidence that those employees were using Ms. Kile’s log in information to access the program. This was explained to Ms. Kile and her counsel during the July 24 interview. It was in the context of the impropriety of Brittany Blake accessing the PDMP on Ms. Kile’s behalf that law enforcement raised the issue of Ms. Kile’s log in information being taped to the cabinet door.

Ms. Kile argues that, as a matter of due process, the Division’s failure to fully describe the ways in which she was violating the PDMP access statute precludes a suspension for those

violations. But the record in this case leaves no doubt that Kile was on notice of the nature of the alleged violations. Further, Ms. Kile's "notice" argument is particularly unconvincing in the context of the Consent Agreement, which incorporated a summary suspension mechanism to allow the Division to act swiftly in the face in evidence of further legal violations. The Division's suspension on this ground was legally proper and grounded in fact; it is therefore upheld.

B. What is the appropriate sanction for Ms. Kile's violation?

The Board's charge in this case is two-fold. It must determine whether Ms. Kile has violated the Consent Agreement, and, if it determines that she has, it must determine what measure of discipline is appropriate.

The Division asks the Board to uphold the suspension and continue it in place until November 2020, when Ms. Kile's current licenses expire. As to Ms. Kile's violation of the consent agreement by prescribing to J.J., the Division notes:

- That improper prescribing of controlled substances was at the heart of the issue raised in the earlier case;
- That even if the consent agreement does not contain factual admissions relating to improper prescribing, the agreement's requirements for 35 hours of continuing education around topics including boundary issues and controlled substance prescribing support the characterization of the agreement as related to these topics; and
- That the evidence that Ms. Kile has also been prescribing to other family members – as shown in the PDMP records and in texts between Ms. Kile and an employee/family members – show that the issue with J.J. is "not a one-off problem."

Ms. Kile urges that further suspension is improper and unnecessary. She characterizes the summary suspension as "a gotcha," arguing that someone from the Division or law enforcement should have expressly told her in June that she should not be prescribing to her live-in boyfriend. This argument is without merit.

All licensees are presumed to be aware of the code of professional conduct, and required to follow it. This is even more obviously so in the case of a licensee who has only months earlier signed a consent agreement promising to adhere to the laws governing her fitness to practice. If there is anyone seeking to exploit a "gotcha" moment under these facts, it is Ms. Kile.

Ms. Kile’s inexcusably lax practices with regards to the PDMP further support suspension in this case – again, particularly when those practices are viewed, as they must be, in the context in which this case arose: violation of an existing consent agreement.

It is the existing Consent Agreement, too, which informs the appropriate sanction in this matter. Having previously consented to an 18-month period of probation, but quickly violated the terms of that probation, the appropriate sanction for Ms. Kile’s violations of her probation is (1) that her licenses remain suspended for the remainder of the 18-month term of probation to which she originally agreed, and (2) that thereafter she may resume practice subject to probation for a period equal to the probationary term that she initially failed to complete.

IV. Conclusion

The Division met its burden of proving that Ms. Kile more likely than not violated the Consent Agreement, both by prescribing to J.J. and by allowing staff to access the PDMP via her account. Even if both of these violations arose out of a misguided attempt to do good, they reflect – both individually and together – a carelessness in the prescription of controlled substances that would be concerning under any circumstances but that is particularly concerning on the heels of an earlier consent agreement. The evidence supports an ongoing suspension until October 1, 2020, followed by a 14-month probationary term.

Dated: October 21, 2019

Signed

Cheryl Mandala

Administrative Law Judge

Adoption

The BOARD OF NURSING adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of distribution of this decision.

DATED this 28th day of October 2019.

By: Signed
Signature
Danette Schloeder
Name
Board of Nursing, Chair
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]