STATE OF VERMONT
OFFICE OF THE SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
VERMONT BOARD OF NURSING

IN RE: RUTH JEUNE ALEXIS **Licensed Practical Nurse** **License No. 025.0009065**	)	**Case File No. 2010-73**

Decision on Request to Withdraw License as Licensed Practical Nurse

Appearances:
for Petitioner, State of Vermont: Edward G. Adrian, Esq.
for Respondent: Ruth Alexis, *pro se*

Hearing Officer:
George K. Belcher

Exhibits:
Ex. 1 Educational Credentials Evaluators, Inc. report dated February 8, 2005 with transcript and Certificate of completion from Mission Bon Samaritain International, S.A. dated Dec. 20, 2004
Ex. 2 Letter to State Boards of Nursing from CGFNS dated January 29, 2009
Ex. 3 Letter to Dr. Botter from Director of Evaluations, International Education Research Foundation, Inc. dated May 4, 2010
Ex. 4 Letter to Dr. Botter from CGFNS dated May 13, 2010
Ex. 5 Letter to Dr. Botter dated May 26, 2010 from CGFNS re Mission Bon Samaritain International
Ex. 6 License Renewal Application of Respondent dated December 10, 2009

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter was considered on June 25, 2010. Participating in the hearing were Edward G. Adrian, Esq. on behalf of the State of Vermont. The Respondent, Ruth Alexis, participated by telephone. The Hearing Officer on behalf of the Board was George K. Belcher.

Notice of the hearing was given to the Respondent by letter of Mary Botter, PhD, RN dated May 25, 2010. Evidence was taken. Upon the evidence presented the Board makes the following findings of fact, conclusions of law and order.

Findings of Fact

1. The Respondent, Ruth Alexis, was born in Haiti. She attended the Mission Bon Samaritain International S.A. school to become a licensed practical nurse. She attended classes for about one year and paid for the training she received. She graduated from this program in 1999 with a degree as a "Practical Nurse." (Ex. 1)

2. She worked in Haiti as a practical nurse before moving to Florida. She applied for a Vermont LPN license because she had relatives in Canada and she wanted to be close to them. She took the NCLEX-PN examination for Licensed Practical Nurse twice, once on August of 2005, and again in September of 2006. The second time she took the exam she passed. As part of her application she submitted a "General Evaluation Report" from Educational Credential Evaluators, Inc. from Milwaukee, Wisconsin. That report summarized that the Respondent has the United States equivalent of completion of a non-academic practical nurse training program in the United States from a one-year program of study at a vocational nursing school. (See Ex. 1, Page 2)

3. The Respondent was given a Vermont LPN License in August of 2008. She lived in Florida and worked there as a "graduate nurse" which is understood to be a nurse who has completed a training program but who is not yet licensed. She secured a Florida LPN license in January, 2009 and has been working as an LPN under that license in Florida since that date.

4. The Respondent's LPN license was set to expire on January 13, 2010. She applied to have it renewed by application filed on December 15, 2009. Her application stated that she had been working as an LPN "full time" from July 2007 to March 2009. (See State Ex. 6) At the hearing she conceded that she was not working as an LPN until January, 2009 and that the application for renewal was incorrect.

5. Her current Vermont license as an LPN was issued in January of 2010 and expires in January of 2012.

6. In January of 2009, The Executive Director of the Vermont Nursing Board was advised by CGFNS International (a credentials certification service) that Haiti had no licensure process for practical nurses. Thus, any Haitian educational program for this degree or diploma, would not have to satisfy local standards. (State Ex. 2). Another credential service later confirmed that the Mission Bon Samaritain International school in Haiti was not, and is not, recognized or accredited in Haiti for the training of licensed practical nurses. (State Ex. 3.)

7. The Respondent complained that she provided all of the information which was requested of her and that she had been "truthful." She would like to keep her Vermont LPN license.

8. The original educational program completed by the Respondent did not meet the Vermont educational requirements. The educational institution at which she received her basic LPN training is an institution which does not train Licensed Practical Nurses for licensing in Haiti because practical nurses are not licensed in Haiti. (Ex. 5) Moreover, it appears that the Mission Bon Samaritain International was approved for training Registered Nurses only as of April 14, 2009. Thus, the license which was granted to the Respondent by Vermont was mistakenly issued to her based upon the belief by the Vermont Nursing Board that she satisfied the Vermont educational requirements. "An applicant for licensure to practice as a practical nurse shall be a graduate of an approved educational program preparing persons for entry into practice of practical nursing." Administrative Rules of the Board of Nursing, Chapter 4, Subchapter 2, Rule II (C.) When it became apparent that the license had been issued though a mistake, the Vermont Board of Nursing took action to withdraw her license.

Conclusions of Law

1. The Vermont Board of Nursing has authority to issue licenses to registered nurses, licensed practical nurses and licensed nursing assistants. It also has the authority to issue warnings, reprimands, suspensions, revocations, limitations, or conditions concerning current licensees; or prevent the renewal of lapsed licenses if, after disciplinary hearing, the Board finds unprofessional conduct. 3 VSA Sec. 129 (a); 3 VSA Sec. 129a; 3 VSA Sec. 814 (d); 26 VSA Sec. 1582; the Administrative Rules of the Board of Nursing; and the Rules of the Office of Professional Regulation.

2. The Vermont Nursing Board has the authority to appoint a hearing officer to hear particular cases, report findings and conclusions to the Board, and to recommend to the Board action to be taken concerning a particular license or licensee. (3 VSA Sec. 129(f))

3. The purpose of the Vermont licensing program for licensed practical nurses is to "safeguard the life and health of the people of this state." 26 VSA Sec. 1571. The purpose of the Administrative Rules of the Nursing Board governing the licensing of nurses is "to safeguard the life and health of the people of Vermont by empowering the Board to ... register and license qualified applicants from other states." (See Administrative Rules of Vermont Nursing Board, Chapter 1, Rule II(D)) It is the public interest and the police power of the state which stands as the authority for the legislature to authorize administrative licensure of Licensed Practical Nurses. "In the absence of constitutional limitations, the ultimate authority from which a license to carry on a particular activity derives, has inherent power to withdraw the license." 51 Am Jur 2d Licenses, Sec. 88, Page 92, (citations omitted).

4. There is no constitutional limitation upon the withdrawal of a license where the license was issued through mistake, unless a fundamental interest is at stake. The balance between the interest of the Respondent in keeping her license on the one hand, and the interests of the public in having adequately trained nurses on the other hand, only requires a rational basis as justification to withdraw the license. Gersch v. Illinois Department of Professional Regulation, 720 N.E. 2d 672 (1999). In that case, a social worker was granted a high level license in error. The court held that the State "has the authority to rescind or cancel a license which has been improperly or erroneously issued when the statutorily mandated educational requirements have not been satisfied." Id. In short, the loss to the licensee was justified by the overriding public interest in having educated professionals deliver safe professional services.

5. It is also recognized that even though the licensing scheme may call for suspension or revocation of a license for specific unprofessional acts, it is within the implied authority of a licensing agency to cancel a license which was mistakenly issued. Id. See also State v. City of Milwaukee, 207 Wis. 199, 240 N.W. 847, 79 ALR 281 (1932) where a mayor revoked a license given for a "marathon dance" which he had mistakenly issued, despite the fact that preparations for the dance had been made.

6. In the case now before the Vermont Board of Nursing, there is ample authority to withdraw the license of Ruth Alexis.

7. While the hearing officer does not make a finding that the original license was procured through any misrepresentation by the Respondent, it is quite troubling that the Respondent, in her license renewal application stated that she had worked as a full time LPN from July, 2007 until the present when in fact this turned out to be false. This fact should be considered in any further request by the Respondent to be licensed in this state.

ORDER

The Licensed Practical Nursing license of Ruth Alexis referenced above is deemed withdrawn and is no longer valid.

Dated this 2d day of August, 2010.

George K. Belcher
Hearing Officer

Considered by the Vermont Board of Nursing and Approved
SO ORDERED August 9, 2010

Ellen Leff, Chair
Vermont Board of Nursing

8-25-10 Date entered

Appeal Rights

This is a final administrative determination by the Vermont Board of Nursing. A party aggrieved by a final decision of a Board may appeal the decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Secretary of State's Office, National Life Building, Fl. 2, 1 National Life Drive, Montpelier, Vermont 05620-3402 within 30 days of the entry of the order. For more information about the procedure for filing an appeal. please see the Administrative Rules for the Office of Professional Regulation, which you can find at http:// www.vtprofessionals.org/opr1/opr/admnrule.pdf The Rules are also available at the Office of Professional Regulation.