

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

In re: Adrienne Borek }
Application Tracking No. LI-282178 } Docket No. 2018-98

**Decision on the Applicant's Appeal of Preliminary Denial
of Application for Licensure as a Registered Nurse**

Participating Board Members:¹

Ellen Watson, APRN, Chair
Jennifer Laurent, APRN
Jill Duell, LPN
Kelly Sinclair, LNA
Deborah Swartz, RN
Virginia Hudson, RN
Douglas Sutton, RN
Luana Tredwell, LPN
William G. White, Jr.
Jeanine Carr, ad hoc

Appearances:

Prosecutor: Elizabeth A. St. James, Esq.
Applicant: Adrienne Borek, appeared *pro se*.

Presiding Officer: Stephen A. Reynes

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

Adrienne Marie Borek (Applicant) filed an application for licensure as a Registered Nurse (RN) with the Office of Professional Regulation on June 6, 2018 and completed on August 1, 2018. The State issued its Notice of Preliminary Denial of the Application on August 28, 2018, on the basis of fraudulent or deceptive procurement or use of a license under 3 V.S.A. §129a(a)(1). The Applicant filed a timely appeal, together with a statement in response to each numbered statement in the Notice of Preliminary Denial.

The Vermont Board of Nursing, pursuant to notice, held an initial hearing in the above matter on October 8, 2018, at the Vermont Office of Fire Safety in Barre, regarding the Applicant's

¹ Participants at the Board hearing on October 8, 2018, were: Ellen Watson, Jennifer Laurent, Jill Duell, Kelly Sinclair, Douglas Sutton and William G. White. At the hearing on December 10, 2018, all of the foregoing were present and participated, except Jennifer Laurent, and with the addition of Deborah Swartz, Virginia Hudson, Luana Tredwell and Jeanine Carr.

Appeal of a preliminary denial of a license under 3 VSA § 129(e). The State was represented by Elizabeth A. St. James, Esq. The Applicant appeared but was not represented. At the conclusion of that hearing, the Board, after deliberation, by motion made and voted in public session, determined that if the Applicant obtained an independent evaluation by a pre-approved licensed professional specializing in alcohol and drug abuse and three clean random urine analysis (UAs) within ninety days, with that resulting information provided to the State and to the Board, the Board would give further consideration to the Applicant's appeal.

The Applicant obtained an independent evaluation by Christopher Rossey of Central Vermont Substance Abuse Services, and UA test results, which were faxed to Elizabeth A. St. James, Esq., Office of Prosecuting Attorney, on November 9, 2018.

On December 3, 2018, the State filed a Motion requesting that the matter be scheduled for hearing on December 10, 2018, the date of the Board's next meeting date. The State's filing included the Applicant's independent evaluation and the results of her three urine screens. The Motion also states that the parties have not reached an agreement and thus they jointly request to be heard at the Board's December meeting. The Hearing Officer granted the Motion on December 4, 2018.

Mindful that this matter includes evidence submitted over two hearings, including documents from other jurisdictions, and that the Hearing Officer in the second hearing, without objection, re-identified the Applicant's Exhibits by letters in the interest of clarity, it is helpful to specifically identify the documents admitted into evidence in this proceeding.

State's Exhibits ("Ex."):

Ex. 2:² Affidavit by the Executive Director and Custodian of Records for the Virginia Board of Nursing, dated September 14, 2018, submitted to the Virginia Board of Nursing, with document entitled, "Notice of Informal Conference Before An Agency Subordinate and Statement of Allegations," with Statement of Allegations dated April 26, 2017, with Report and Recommendation of Agency Subordinate, dated August 22, 2017, and with Ratification and Order entered and mailed on October 3, 2017, immediately followed by this statement: "This Order shall become final on November 5, 2017, unless a request for a formal administrative hearing is received as described above."

Ex. 3: Email of the Applicant dated July 19, 2018 to Vermont Board of Nursing Licensing Administrator, with copy of letter to Adrienne Marie Borek, R.N., signed by Jodi Power, R.N., J.D., Deputy Executive Director of the Virginia Board of Nursing dated October 3, 2017.

Ex. 4: Letter of the above Jodi P. Power, dated August 28, 2017, to Adrienne Marie Borek, RN, with Report and Recommendation of Agency Subordinate, with Recommended Findings of Fact and Conclusions of Law, and Recommended Order, dated August 22, 2017, and advising her that she may respond in writing or in person to same.

Ex. 5: A medical record of Fairfax Hospital in Fairfax Virginia pertaining to the Applicant, being

² The State did not offer what apparently had been pre-marked for identification as Exhibit 1.

page numbers 117 through 170.

Ex. 6: Copy of a subpoena issued by the Commonwealth of Virginia Department of Health Professions, dated July 29, 2016, addressed to specific persons at Potomac Health Services in Arlington, Virginia, seeking a copy of the Applicant's entire medical record.

Applicant's Exhibits:

Ex. A: Applicant's cover document, "To Whom It May Concern," addressed to the Secretary of State, dated September 7, 2018 and stamped "Received September 13, 2018," lists documents numbered 1 through 12. Document # 1 in Ex. A is cited herein as Ex. A1; document #2 is cited as Ex. A2, etc.

Ex. B: Letter of the President and CEO of Anna Jaques Hospital in Newburyport, Massachusetts to the Applicant, dated August 22, 2018.

Ex. C: Letter of Colin White, Psychiatric Nurse Practitioner at the Amesbury Psychological Center, Inc., To Whom It May Concern, dated October 4, 2018, regarding the Applicant.

Ex. D: Page 9 of the April 2018 "Newsbreak" publication of Pentucket Medical Associates (PMA), with comments regarding the Applicant and another RN under the heading Patient Kudos.

Ex. E: Independent Evaluation by Christopher D. Rossey LADC, LCMHC and NCTTP regarding the Applicant, submitted to the Office of Professional Regulation, Office of the Prosecuting Attorney, faxed November 9, 2018. The Exhibit consists of 15 unnumbered pages, including lab results, plus the cover fax sheet on the letterhead of Central Vermont Substance Abuse Services.

Findings of Fact

Based on a review of the pleadings in the file and the evidence presented to the Board at the hearing, the Board finds as follows:

1. The Applicant holds a Registered Nurse (RN) license in the State of Virginia. This license was first issued on December 4, 2014 and expired on July 31, 2016. The Applicant also holds an RN license in Washington, D.C., first issued on September 20, 2016 and expired on June 30, 2018. The Applicant holds a current RN license to practice professional nursing in Massachusetts.
2. In the online Application, the Applicant answered "No" to this question: "Has Vermont or any other state, federal authority, or other jurisdiction taken any DISCIPLINARY ACTION against (e.g., warned, reprimanded, fined, restricted, conditioned, suspended, revoked) a license, certificate, or registration that you hold or have held in any profession or occupation?"
3. The Applicant believes that she answered the above application question truthfully, pointing to the fact that the Virginia Board of Nursing expressly declined to issue any sanction. [Applicant's testimony and see State's Ex. 3, Applicant's Ex. A1.1 (Notice of Preliminary Denial,

at ¶ 5) and A1.2 at # 3 on unnumbered pages 1-2.]

4. The Applicant did not disclose that after an Informal Conference, the Virginia Board of Nursing entered an Order on October 3, 2017, that found the Applicant in violation of Virginia Code § 54.1-3007(6). [See Ex. 2, Report and Recommendation of Agency Subordinate, Recommended Findings of Fact and Conclusions # 2 and Ratification and Order which Accepts the attached Recommended Findings of Fact included in Ex. 2 and Adopts its Recommended Order in its entirety.] The Ratification and Order by the Virginia Board of Nursing became final on November 5, 2017 by its own terms, because the subject Adrienne Marie Borek did not request a formal administrative hearing. [Ex. 2 and Applicant's testimony].

5. The Applicant initially disclosed only the "NO SANCTION"³ page until OPR requested production of the full decision. [Ex. 3]. The recommended Decision, later accepted by the Virginia Board of Nursing, includes findings of fact and conclusions of law that would have been of interest to the governmental body considering an application seeking licensure as a Registered Nurse in Vermont. For example, Recommended Findings of Fact and Conclusions of Law # 2 state that the Applicant:

- a. had suffered six concussions and was diagnosed by her neurologist on October 7, 2015 with post-concussive syndrome, anxiety, emotional lability, and ADHD;
- b. was observed on February 10, 2016, slurring her speech and was taken to a local hospital where she was diagnosed with ADHD and intoxication by drug;
- c. had voluntarily entered into an intensive detox treatment program on March 19, 2016;
- d. was transferred to a residential treatment where she was diagnosed with alcohol dependence, sedative dependence, general anxiety disorder, opioid dependence, and attention deficit disorder, and was discharged on May 16, 2016;
- e. returned to work as an RN on June 7, 2016 at a facility in Virginia and subsequently reported to that employer that she was unable to perform her job duties because she felt anxious and overwhelmed and was referred to Employee Health;
- f. received mental health treatment at a facility in Virginia from June 27, 2016 through July 28, 2016, and was diagnosed with major depressive disorder, bipolar disorder, benzodiazepine sedative dependence, and a history of cannabis and alcohol abuse; and
- g. denied in her Informal Conference receiving treatment for post-concussive syndrome and also denied ever having a substance abuse issue.

6. The Applicant voluntarily entered into an intensive detox program in March of 2016, under her own initiative, as she was terrified with the extensive list of prescribed medications and facing an infusion of medications into her brain. It appears that her condition was in significant part the result of severe medication mismanagement which also played a part in her seeking entry into a detox program, which in turn led to her transfer into a treatment facility in Florida. The Applicant is grateful for the treatment she received at the Florida facility for getting her off all the dangerous medications and their interactions in a safe way but disagrees with certain diagnosis regarding

³ The capitalization was in the referenced Agency Subordinate's Recommended Order, which the Virginia Board adopted in its entirety.

opiates, alcohol and sedatives as being occasioned by the business and insurance side of such treatment centers. [Applicant's testimony and *see* Ex. A2(c), (d) and (e) on unnumbered pages 6, 7 and 8 and A2 under #4 on unnumbered page 3].

7. In a letter dated June 10, 2016, Applicant's medical doctor wrote a letter To Whom It May Concern stating that in his opinion Ms. Borek may return to work on June 13, 2016 and requesting that she be allowed 10-minute break every two hours during a 12-hour shift, as she is still recovering from PTSD. The letter also states that she will be re-evaluated by her physicians on a regular basis. [Letter included in packet filed with OPR on August 23, 2018 by the Applicant].

8. The Applicant's most recent work as a Registered Nurse has been at the Anna Jaques Hospital in Newburyport, Massachusetts. The Applicant has performed well in her work as an RN in Massachusetts and has been recognized for her skillful and compassionate work there, including by the President and CEO of that hospital. She continues to take short breaks as needed but that has not interfered with her overall successful service as an RN. [Exs. B and D; Applicant's testimony]. There is also documentary evidence of her good work as an RN in Washington, DC. *See* Ex. A4.

9. The Applicant has also continued her professional training. [Exs. A5 through A12].

10. The Applicant is now a resident of Calais, Vermont, with her husband and children. She wants to continue to reside in Vermont. The Applicant, who is pregnant, has continued to leave home for days at a time for nursing work in Massachusetts because that is where she is licensed. The Applicant has been offered a nursing position at a hospital in Vermont, dependent upon her being licensed in Vermont, but that offer is set to expire soon in the absence of her being licensed as an RN in Vermont.

11. The Applicant has been a client of Colin White, a Psychiatric Nurse Practitioner for medication management visits at a Psychological Center affiliated with the Anna Jaques Hospital since her initial psychiatric/medical evaluation on February 28, 2017. In a "To whom it may concern" letter dated October 4, 2018, Mr. White states that he has never had a concern with the Applicant misusing substances and that if there were concerns about her ability to practice safely, she would not have been able to hold her position as an RN at the Anna Jaques Hospital in Newburyport, Massachusetts. [Ex. C; Applicant's testimony].

12. Christopher Rossey concluded that the Applicant "is highly likely to be able to practice her profession without risk to public safety." [Ex. E].

13. The UA results were all clean, with uniform results of "not detected".

14. The Applicant practices and performs safely and competently as a Registered Nurse.

Conclusions of Law and Discussion

The Applicant has the burden of proof that the preliminary denial should be reversed and that the license should be granted. 3 V.S.A. § 129(e). The Vermont State Board of Nursing has authority to deny an applicant's license if it finds that the applicant has engaged in unprofessional conduct in any jurisdiction. 3 V.S.A. § 129(a); 3 V.S.A. § 129a; 26 V.S.A. Chapter 28; the Vermont Administrative Rules of the Board of Nursing; and the Rules of the Office of Professional Regulation ("OPR").

The State's position, as set out in its Notice of Preliminary Denial of the Application for licensure as a Registered Nurse, is on the basis of fraudulent or deceptive procurement or use of a license, citing 3 V.S.A. § 129a(a)(1):

§ 129a. Unprofessional conduct

(a) In addition to any other provision of law, the following conduct by a licensee constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of a license or other disciplinary action. Any one of the following items or any combination of items, whether or not the conduct at issue was committed within or outside the State, shall constitute unprofessional conduct:

(1) Fraudulent or deceptive procurement or use of a license.

In its Notice of Preliminary Denial, the State cited that the Applicant responded "No" to the Application question of whether any jurisdiction has "taken any DISCIPLINARY ACTION against (e.g., warned, reprimanded, fined, restricted, conditioned, suspended, revoked) a license ...that you hold or have held in any profession or occupation?" The Applicant's response to that question was truthful and reasonable, given that the Virginia Board of Nursing adopted the recommendation of NO SANCTION on her license. Indeed, the State's Notice of Preliminary Denial expressly recognizes that "the Virginia Board of Nursing declined to impose a sanction." The Applicant also reasonably asserted that if the question had been whether there had ever been an investigation and/or informal hearing/conference, she would have answered Yes and explained the situation in detail, but the question was limited to asking whether any Disciplinary Action had been taken against her license, to which her truthful answer was No.

In support of its position of deceptive conduct involving procurement of a license, the Notice of Preliminary Denial also states that "[w]hen requested to submit the Virginia Order, Applicant only submitted the last page containing the order, which indicates no sanction was issued" and that the "Applicant did not disclose the full Virginia Order until requested to do so by OPR." In this regard the State notes that the Recommended Findings of Fact and Conclusions of Law by the Agency Subordinate, which were accepted by the Virginia Board of Nursing, included a determination that "Ms. Borek violated Virginia Code §54.1-3007(6) in that she has a history of physical and/or mental illness and/or substance abuse," which then recites seven instances in support of that conclusion. [Ex. 2].

That said, it is also true that the Virginia Board, in its Ratification and Order entered and mailed on October 3, 2017, "ADOPT[ED] the Recommended Order in its entirety," which states "NO SANCTION shall be imposed against Adrienne Marie Borek, R.N." While initial submission of the entire Report and Recommendations of Agency Subordinate, as accepted by the Virginia Board, would have been of interest to OPR, it was not required, and the Applicant reasonably believed she was submitting what was asked for.

It is notable that the State has not argued that the Applicant lacks the professional nursing skills and knowledge to be a Registered Nurse. The State has not sought outright denial of the subject Application for licensure as a Registered Nurse. In its closing argument following the October hearing, the State asked for an Independent Evaluation and random UAs, which the Board ordered. The professional opinion of the Independent Evaluator is that it is highly likely that the Applicant is able to practice her profession without risk to public safety. The UAs were uniformly clean. In its closing argument at the December hearing, the State recommended issuance of the license with disciplinary conditions for a period of time.

Based on the evidence, the Board concludes that the Applicant has met her burden of proof that the Preliminary Denial should be reversed and that the Registered Nurse license should be issued to the Applicant. The Board also concludes that disciplinary conditions on the license are not warranted.

Accordingly, the Board does hereby **ORDER**:

The Notice of Preliminary Denial, dated August 28, 2018, of the application for licensure as a Registered Nurse submitted by Adrienne Marie Borek is **REVERSED** and the subject application for licensure as a Registered Nurse is **GRANTED**.

Vermont Board of Nursing

By: EW
Ellen Watson, Chair

Date: December 17th, 2018

DATE OF ENTRY: 12.28.18

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 this decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Vermont Secretary of State, 89 Main St., Fl. 3, Montpelier, VT 05620-3402 within 30 days of the entry of this Order. If an appeal is filed, the Director of the Office of Professional Regulation shall assign the case to an appellate officer. The review shall be conducted on the basis of the record created before the board. In cases of alleged irregularities in procedure before the board, not shown in the record, proof on that issue may be taken by the appellate officer. 3 V.S.A. §§ 129(d) and 130a.

