

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

In re: AUDRA LAMOTHE/BOUDREAU
License No. 026.0029783

}
} Docket No. 2016-426 (RN)
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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND PROPOSED DECISION ON
UNPROFESSIONAL CONDUCT CHARGE**

Appearances:

Prosecuting the case: Rachel Allen, Esq.
Respondent: Appeared *pro se*

Hearing Officer: George K. Belcher

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

A Hearing Officer of the Vermont Nursing Board held a hearing in the above matter on April 17, 2017 in Montpelier, Vermont. The matter was delegated by the Board of Nursing to the Hearing Officer pursuant to 3 V.S.A. Sec. 129(f). The Specification of Charges alleges that Respondent committed unprofessional conduct in violation of Vermont Statutes.

Findings of Fact

Based on the evidence presented, the Hearing Officer finds as follows:

1. Audra Lamothe (also known as Audra Boudreau, the "Respondent") has been a Licensed Registered Nurse and is therefore subject to the regulatory authority of this Board, pursuant to 3 V.S.A. §§ 129, 129a, 26 V.S.A. Chapter 28, the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation. Her license expired on March 31, 2017. The Respondent had not renewed her license as of the date of the hearing (April 17, 2017). Her Vermont license had been under conditions which form the basis of the unprofessional conduct charges.
2. Notice of the Specification of Charges was sent to the Respondent on September 20, 2016. The Respondent filed an answer on October 20, 2016. The Respondent's answer contested most of the allegations and asserted affirmative defenses.
3. A summary of the recent disciplinary history of the Respondent's license is as follows. On July 20, 2009 the Respondent's license was indefinitely suspended as a result of a conviction of Driving Under the Influence (Second), a felony. The Board found at that time that the Respondent did not contested the charges against her license. The Board further found that the Respondent had a substance abuse problem. See Board Order and

Findings of July 20, 2009.

4. In 2010, the Respondent secured a New York registered nursing license. According to her, she was able to secure the New York license despite the fact that her Vermont license was under suspension. She began working in Plattsburg, New York in a urology clinic.
5. On November 14, 2011 the Respondent's license was reinstated in Vermont under the standard substance abuse conditions in Docket M2009-214. From 2011 until about 2013 the Respondent worked in New York under supervision. She participated in drug screening, however, it appears that her working in New York was not approved by the Vermont Nursing Board. (She was later informed that her substance abuse screening time in New York did not count towards a continuous period of substance abuse screening since she was practicing in New York without prior Board approval.)
6. In May of 2012 the Respondent requested the Vermont Nursing Board to modify her conditions so that she could work under the supervision of a medical doctor in Northern Vermont. On August 15, 2012 her request to modify the conditions was denied by the Board with the Board finding that, "At this point Ms. Lamothe has not demonstrated even basic compliance with the conditions she agreed to." See Findings of August 15, 2012. In March 2013 the Respondent began working in Vermont again under her Vermont conditional license. In March 2016, the Respondent signed a Stipulation and Consent Order in which she acknowledged that she had not been in compliance with her random drug testing requirements due to nine (9) occasions in which she failed to appear for testing despite being noticed to appear for testing, and five (5) occasions in which she failed to call in to determine if she was required to be tested. Her agreement acknowledged her breach of the conditions of her license. The Board thereupon ordered that the conditions continue for a minimum of eight (8) months. (See Stipulation and Consent Order entered on May 2, 2016.)
7. The Respondent is now facing charges that she failed to comply with her license conditions by testing positive for alcohol biomarkers on certain tests in June and July of 2016 and that she has practiced nursing while medically and psychologically unfit to do so (due to the positive tests to alcohol.)
8. The Respondent's license lapsed on March 31, 2017 and she is currently working as a "scribe" for an orthopedic physician.
9. The conditions upon the Respondent's nursing license in 2016 included that "Respondent shall abstain completely from the consumption or possession of alcohol and drugs."
10. On June 23 and June 24, 2016 the Respondent's urine tested positive for ethyl glucuronide and ethyl sulfate which are biomarkers for alcohol consumption.
11. On July 22, 2016 the Respondent participated in a blood test in which her blood tested positive for phosphatidyl ethanol, an indicator of binge or prolonged alcohol consumption during the previous two or three weeks. (See State Exhibit 1, Page 3, and testimony of Dr. James L. Furguson.)
12. In March and April of 2017 the Respondent was evaluated by Bernadette Oneil, a Licensed Clinical Social Worker and Licensed Alcohol and Drug Counselor. Ms. Oneil reviewed a previous evaluation by Amy Adams, MS, LADC, LCMC which was done in May of 2011 and she reviewed the treatment records of Holly Tuck, MS, LADC from 2012-2016. Ms. Oneil also reviewed the records of random alcohol testing, testing compliance, the Vermont Nursing Board Orders, and court documents. She conducted

face to face interviews with the Respondent.

13. Ms. Oneil concluded that "I believe Audra is an exceptional nurse but I am concerned about her lack of sobriety and believe there is some degree of risk because of that." (See State Exhibit 2.) Ms. Oneil was concerned that the Respondent could not demonstrate abstinence and that the alcohol use to which the Respondent admitted was not consistent with the test results. Ms. Oneil suggested seven (7) recommendations including abstinence, a psychiatric evaluation after documented sobriety, self-help attendance three times per week, substance abuse counseling, random urine testing, and treatment for an eating disorder. (See State Exhibit 2, Page 4)
14. There was no evidence offered by the State that the Respondent had, in fact, practiced nursing while she was intoxicated or under the influence of alcohol or other substance.
15. The Respondent testified and argued that she is "a good nurse" and has a good reputation with her employers. The attorney for the State admitted that the Respondent's employer reports were "stellar".
16. The Respondent argued that she has been "fully rehabilitated" and should not continue to be disciplined for events which occurred eight years ago and which did not involve nursing malpractice. (See Respondent's answer.)
17. Also, the Respondent argued that the blood test of July 22, 2016 was inadmissible since her license conditions did not require her to submit to a blood test.
18. Most importantly, the Respondent argued that the protracted burden of the conditions, both financially and temporally, are overwhelming to her and, seemingly, will never end. She is doubting her ability to return to nursing since it appears to her that the conditions and their burdens will perpetually interfere with her ability to practice nursing and any other profession she might choose.
19. Despite the arguments of the Respondent, it is unlikely that the Respondent is fully rehabilitated in light of the report by Ms. Oneil.
20. The blood test results were admissible since they were consensual by the Respondent. She conceded to the admission of State Exhibit 1 which showed the test results.
21. While the substance abuse conditions, including random testing, have gone on for eight years since her DUI conviction in 2008, the Respondent is the person who has failed to be compliant with the conditions. It is inconsistent for her to argue that the conditions have existed for too long when she has not complied with the conditions.
22. Finally, the object of substance abuse conditions is not punishment or the creation of onerous obstacles to relicensing. Rather, the object of such conditions is to assure that past behavior of unprofessional conduct is remedied so that the public is protected. The power to resolve the conditions in this case is with the Respondent. Documented abstinence would have resolved this case several years ago.
23. The State has argued that the license of the Respondent should be indefinitely suspended with the ability for her to petition for reinstatement upon certain terms. This remedy would allow the Board to thoughtfully evaluate the "next steps" and any proposed plan for reinstatement.

Conclusions of Law

Based on the evidence presented and Facts found above it is concluded as follows:

1. The prosecution has the burden of proof in this matter. To prevail on any unprofessional conduct charge, it must prove the charge by a preponderance of the evidence. 3 VSA Sec. 129a(c).
2. A board which has jurisdiction to conduct proceedings and impose sanctions in connection with the conduct of a licensee shall not lose jurisdiction if the license is not renewed prior to initiation of such proceedings. 3 VSA Sec. 814(d).
3. Re: Alleged Violation of 3 VSA Sec. 129a(a)(4): The Prosecution has proven by a preponderance of the evidence that Respondent failed to comply with an order of the Board and violated conditions of a license restricted by the Board. This is unprofessional conduct.
4. Re: Alleged Violation of 3 VSA Sec. 129a(a)(5): The Prosecution has not proven by a preponderance of the evidence that Respondent practiced the profession while medically or psychologically unfit to do so.

Proposed Order

For the violations above, to protect the public, health, safety and welfare, the following sanction is necessary.

Respondent's license is hereby **INDEFINITELY SUSPENDED from the date of entry below**. Her license shall remain suspended until such time as she applies for reinstatement and the Board decides, in its sole discretion, that she qualifies for reinstatement. If the Board decides that the Respondent's license should be reinstated, the license may be conditioned upon such terms as the Board deems reasonable, taking into account the findings herein.

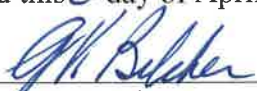
Within forty-five (45) days of requesting reinstatement the Respondent must:

- (a) Obtain an independent evaluation report by a licensed psychologist or licensed alcohol and drug abuse counselor pre-approved by the Board ("Independent Evaluator") who has verified the receipt of this order and a copy of the evaluation by Ms. Oneil. The independent evaluation must indicate that the Respondent does not present a risk to the safety, health or welfare of Respondent's potential patients and that she is safe to practice;
- (b) Submit to the Board the results of three (3) random urine analysis collected in an observed setting, administered by a person or entity that has been pre-approved by the Board, and analyzed by a lab qualified to analyze samples for forensic purposes and pre-approved by the Board, the results of which shall be negative (failure to appear for, provide, or adulterate, dilute or tamper with a sample shall cause that screen to be presumed to be positive).
- (c) If recommended by the Independent Evaluator, the Respondent shall enter into a treating professional agreement and substance abuse treatment plan with a treating professional(s) pre-approved by the Board or its designee, as well as follow any other treatment plan recommended regarding mental health care.

The Hearing Officer reports the above findings of facts and conclusions of law to the

Board with the recommendation that the Board approve them and enter the Order as above.

Dated this ^x20 day of April, 2017.


George K. Belcher
Hearing Officer of the Vermont Board of Nursing

The Vermont Board of Nursing considered the report of findings of fact and conclusions of law at its meeting on MAY 8, 2017. After considering the report, the Board takes the following action:

- / / Rejects the report and schedules the matter for hearing.
- / / Schedules the matter for additional evidence.
- /x/ Accepts the report, adopts the findings of fact and conclusions of law, and orders the recommended discipline as set forth above.

SO ORDERED.

Vermont Board of Nursing

By: 
Jeanine Carr, RN, Chair
Vermont Board of Nursing

Date: 5/8/17

DATE OF ENTRY: 5/8/17

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.