

**STATE OF VERMONT
BOARD OF NURSING**

In re: Michele L. Brean
Application No. 025-71940

} Docket No. 2010-606
}
} Preliminary Denial of
} Application for Licensure

**Preliminary Denial Hearing
FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

Participating Board Members:

Ellen W. Leff, RN, Chair
Jeanine Carr, RN, Vice Chair
Alan Weiss
Donarae Metcalf, LPN
William G. White Jr.
John Todd, APRN

Appearances:

State of Vermont: Lauren Hibbert
Applicant: Pro se

Presiding Officer: Larry S. Novins

The Vermont Board of Nursing held a hearing in the above matter on February 14, 2011 at the National Life Building in Montpelier, Vermont. The preliminary denial is based on alleged unprofessional conduct, more fully set forth below.

The State bears the burden to prove unprofessional conduct by a preponderance of the evidence. Should it do so, Ms. Brean bears the burden to convince the Board that the preliminary denial should be reversed and that the license should be granted. 3 V.S.A. § 129(e).

Findings of Fact

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

1. Ms. Brean is an applicant for licensure as a practical nurse and is therefore subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, 26 V.S.A. §§ 1574, 1575, the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation.
2. By letter dated December 8, 2010 this Board denied Applicant's application for license as a licensed practical nurse. The letter stated: "You answered yes to the question 'have you

ever been convicted of a crime other than a minor traffic violation?' Official documents received in this Office revealed a conviction for criminal possession of a controlled substance, 7th degree and three years probation. Additional information also revealed that you fraudulently wrote a prescription for a controlled substance." The letter stated also: "The Board may deny an application for licensure if the applicant is habitually intemperate or is addicted to the use of habit forming drugs, engages in conduct of a character likely to deceive, defraud or harm the public, and/or has been convicted of a crime which evidences an unfitness to practice nursing."

3. Ms. Brean timely requested review of the preliminary denial.
4. The State filed a Specification of Charges alleging conduct in January 2009 which lead to a criminal conviction on September 10, 2010.
5. Ms. Brean testified at the hearing. We found her to be a credible witness.
6. On September 30, 2010 Ms. Brean signed her application for Vermont licensure as a practical nurse. In her application Ms. Brean acknowledge her criminal conviction.
7. Ms. Brean's New York State conviction on September 10, 2010 was for Criminal Possession of a Controlled Substance, 7th degree. As described in the hearing, her conduct which included bringing a signed prescription blank to her home, was conduct related to the practice of nursing.
8. January, 2009 the Ms. Brean was an employee of North Country Medical Group and accidently took home a pre-signed medical prescription. We note the unique and extenuating circumstances of her conduct. Under threat from her then boyfriend, Ms. Brean wrote a prescription for herself for Hydrocodone. Ms. Brean wrote a prescription for 120 Hydrocodone 10/650 with two refills. The next day Ms. Brean's boyfriend returned and filled the prescription. Ms. Brean seized a bottle of Hydrocodone from the boyfriend and held on to the pills.
9. Ms. Brean cooperated with law enforcement. She fully disclosed her conduct to the New York State licensing Board. She fully disclosed her conduct to this Board in her application.
10. The essential and prevailing standards of nursing do not permit a LPN to use prescription blanks for illegal purposes.
11. Taking a prescription, or even allowing one inadvertently retained to be used for personal use or illegally is a failure to conform to the essential and prevailing standards of nursing.
12. Her use of the prescription was deceitful.
13. Using the prescription as she did failed to conform to the essential standards of acceptable and prevailing practice.
14. Ms. Brean has been a nurse for 13 years. She has no other disciplinary history. The New York State licensing authorities imposed a fine for the conduct described above. Her license in New York State is unencumbered. There is no indication that Ms. Brean has abused or is in any way dependent on the use of addictive drugs. There is no indication that Ms. Brean's practice requires any restrictions or limitations for public safety.

Conclusions of Law

1. **Re: Alleged Violation of 26 V.S.A. § 1582(a)(2):** The State has proved by a preponderance of the evidence that, whether or not committed in this state, Ms. Brean has

been convicted of a crime related to the practice of nursing. This is unprofessional conduct. 3 V.S.A. § 129a(a)(3).

2. **Re: Alleged Violation of 26 V.S.A. § 1582(a)(3):** The State has not proved by a preponderance of the evidence that Ms. Brean is unable to practice nursing competently by reason of any cause. 3 V.S.A. § 129a(a)(3). This charge is dismissed.
3. **Re: Alleged Violation of 26 V.S.A. § 1582(a)(7):** The State has proved by a preponderance of the evidence that Ms. Brean has engaged in conduct of a character likely to deceive, defraud, or harm the public. This is unprofessional conduct. 3 V.S.A. § 129a(a)(3).
4. **Re: Alleged Violation of 3 V.S.A. § 129a(a)(10):** The State has proved by a preponderance of the evidence that Ms. Brean was convicted of a crime related to the practice of the profession. This is unprofessional conduct.
5. **Re: Alleged Violation of 3 V.S.A. § 129a(b)(1) and (2):** The State has proved by a preponderance of the evidence that Ms. Brean failed to practice competently. We find that Ms. Brean's conduct as found above constituted a failure to conform to the essential standards of acceptable and prevailing practice. This is unprofessional conduct.
6. **Re: Alleged Violation of 26 V.S.A. § 129a(a)(3):** 3 V.S.A. § 129a(a)(3) defines unprofessional conduct to include failing to comply with provisions of federal or state statutes or rules governing the practice of the profession. Any allegation of failure to comply with statutes or rules has been addressed above. This statute does not provide an independent grounds for discipline. There is no violation of this statute. This charge is dismissed.

Ms. Brean has met her burden to show that the preliminary denial of her application for licensure as a practical nurse should be reversed.

Order

The Board's preliminary denial of Ms. Brean's application is **reversed**. Her application for licensure is **granted**.

For the unprofessional conduct found above, Ms. Brean's license shall be issued a **reprimand**.

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, National Life Bldg., North, FL2, 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.

BOARD OF NURSING

By: Ellen Leff
Ellen Leff, RN, Chair

Dated: February 15, 2011

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 2-22-11