

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

In re Stacy M. Butler }
License No. 025-0007231 }
Docket No. NU19-1006 }

**FINDINGS OF FACT
CONCLUSIONS OF LAW & ORDER**

Introduction:

On Monday 10 September 2008, the Vermont Board of Nursing (Board) heard this contested case of alleged unprofessional conduct brought by the State of Vermont against Respondent Stacy Butler. Board members Susan O. Farrell (Chairperson),¹ Ellen W. Leff, Donarae Metcalf, Linda M. Y. Rice, Alan H. Weiss and DeAnn Welch were present and participated in the hearing.

The Respondent appeared on her own behalf. Edward G. Adrian represented the State of Vermont. Board counsel Kevin F. Leahy presided.

**Findings of Fact &
Conclusions of Law:**

1. The Respondent holds a Board issued State of Vermont practical nursing (LPN) license.
2. The Board licenses the Respondent and may exercise its disciplinary authority if the Board finds that the State has proven allegations of licensee unprofessional conduct. 26 V.S.A. Chapter 28; 3 V.S.A. § 129(a); the Admin. Rules for the Bd. of Nursing and the Admin. Rules for the Office of Prof. Reg.
3. The State filed a specification of charges ("Charges") dated 11 April 2007 against the Respondent alleging unprofessional conduct.
4. During the period relevant to the State's Charges, the Respondent worked at Middlebury Family Health (the "Facility") located in Middlebury, Vermont.
5. The Charges allege that the Facility suspected the Respondent had "alcohol on her breath" on two separate occasions while working at the Facility.
6. The primary factual allegation contained in the State's Charges are that:
 - (a) On 13 June 2006, a coworker at the Facility believed that the Respondent had alcohol on her breath. When confronted by the coworker, Respondent stated that she had consumed alcohol the previous evening; and

¹ Susan O. Farrell's term expired at the end of 2007. She participated in the deliberation of this matter and the consideration of the Board's order.

(b) On 5 September 2006, a coworker again believed the Respondent had alcohol on her breath.

See Charges at ¶ 4 and 5.

7. The State originally charged the Respondent with violating four professional conduct statutory provisions. At the hearing, the Board heard evidence in support of the State's charge that the Respondent violated 3 V.S.A. §129a (b)(2) (unprofessional conduct may include failure to conform to the essential standards of acceptable and prevailing practice).
8. In a disciplinary hearing, the state has the burden of proof. To satisfy its evidentiary burden, it must "show by a preponderance of the evidence that [a licensee] has engaged in unprofessional conduct." 3 V.S.A. § 129a (c).
9. At the board hearing on the merits, the Respondent testified about the two incidents.
10. She acknowledged consuming alcohol several hours prior to work, but contended that she was sober when she went to work.
11. In answering the State Charges, Respondent filed with the Board an acknowledgment that "I had consumed alcohol the night before on my own time, in my home." State's Exhibit 1.
12. When Respondent acknowledged consuming "alcohol the night before," she was referring to both the June and the September incident.
13. The evidence demonstrated and the Board finds that the Respondent did go to work with alcohol in her system.
14. In light of the Respondent's admissions, her testimony and the information contained in Exhibit 1, the Board finds that the State has met its burden of proof.
15. The Respondent worked at the Facility on two separate occasions, 13 June 2006 and 5 September 2006, while having alcohol (ethanol) in her system. This is a failure by the Respondent to conform to the essential standards of acceptable and prevailing practice.
16. Failing to conform to the essential standards of acceptable and prevailing practice on one or more occasions, regardless of whether there is any harm to the patient, may be unprofessional conduct in violation of 3 V.S.A. § 129a (b)(2).
17. The Board finds that the violation of acceptable and prevailing practice standards in this case rises to the level of unprofessional conduct.
18. Accordingly, the Board finds that the Respondent engaged in unprofessional conduct and the Board further finds that public safety requires the Respondent receive a conditioned license. The conditions shall require supervised practice for three years.

19. The Board will include the license conditions with this Order. *See Appendix* (setting forth conditions to Board's order).

20. The Board's order shall be based on its finding that the Respondent violated 3 V.S.A. § 129a (b)(2). Any other charges, other than the charge of violating 3 V.S.A. § 129a (b)(2), are dismissed.

ORDER

Based on the findings of fact set forth above, the Board of Nursing finds that the Respondent engaged in unprofessional conduct in violation of 3 V.S.A. § 129a (b)(2).

The Board ORDERS that the Respondent's license be CONDITIONED for a PERIOD OF THREE (3) YEARS consistent with the terms set forth in this order and in compliance with the Appendix to this order.

- END -

(signature page to follow)

Vermont Board of Nursing:

By: Linda Rice APRN Date: 4-21-08
Linda M. Y. Rice, APRN

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 5/7/08

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, FL2, 1 National Life Drive, Montpelier, Vermont 05602-3402 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> and the Rules are also available at the Office of Professional Regulation.

If you file an appeal, the Director of the Office of Professional Regulation shall assign the case to an appellate officer. The appellate officer will review the record (the tape recording, exhibits etc.) created before the board during the hearing of your case. In cases of alleged irregularities in procedure before the board, not shown in the record, proof related to that issue may be taken by the appellate officer. 3 V.S.A. §§ 129(d) and 130a.

APPENDIX
(License conditions *In re Butler* No. 025-0007231)

1. Re-issue of License.

Following the entry of this order, Respondent Stacy Butler, License No. 025-0007231, (Respondent) shall be issued a license labeled "conditioned."

2. Length of Time Conditions Imposed.

The conditions shall remain in place until Respondent completes three (3) years of supervised nursing practice in which Respondent works forty (40) hours every two (2) weeks as a licensed practical nurse. Respondent shall receive credit for part-time work (*i.e.* work that is less than forty (40) hours every two (2) weeks) on a prorated basis. The Respondent may not work more than forty (40) hours per week.

3. Completion of Drug and Alcohol Abuse Counseling and Treatment Plan.

Respondent shall enter into and continue drug and alcohol abuse counseling with a treating professional approved by the Board until the treating professional certifies that counseling is no longer necessary. Respondent shall comply with the substance abuse treatment plan approved by the Board and the treating professional.

Respondent must comply with this provision within six (6) weeks of the entry of this order. Respondent's treating professional must also supply the Board with the treatment plan no later than six weeks after the entry of this order.

4. Notification to Treating Professional.

Respondent shall provide a copy of this Order to Respondent's substance abuse treating professional and cause Respondent's treating professional to inform the Board, in writing and on professional letterhead, of receipt of the Order and the treating professional's ability to comply with the conditions related to treatment and with all other terms of this Order.

5. Reports from Treating Professional.

Respondent shall authorize and cause Respondent's treating professional to submit evidence of satisfactory progress with the treatment plan during the effective period of this Order. These reports shall be submitted on forms issued by the Board. The first report is due commencing the month after the date of the commencement of the conditions and subsequent reports are due every month thereafter.

Respondent shall authorize Respondent's treating professional to provide information requested by the Nursing Board while this Order is in effect.

6. Notification to Employers/Nursing School.

Respondent shall provide a copy of this Order to all employers in any current or future setting in which Respondent practices nursing and inform them of Respondent's conditional license status. Within ten (10) days of the date of entry of this Order or of any subsequent nursing employment, Respondent shall cause Respondent's immediate supervisor to write to the Board, on the employer's letterhead, acknowledging receipt of the Order and acknowledging the ability to comply with its conditions. In the event Respondent attends a nursing program, Respondent shall cause the Program Director to write to the Board, on school letterhead, acknowledging receipt of the Order and ability of the program to comply with the conditions in the Order during clinical experience.

7. Reports from Employers.

Within one (1) month of the date of entry of this Order or within one (1) month of the commencement of nursing employment and monthly thereafter, Respondent shall cause every nursing employer for which Respondent worked during that month to submit an evaluation of Respondent's work performance and number of days worked. This report shall be submitted in writing on forms issued by the Board.

In the event the Respondent is attending a nursing program, Respondent shall cause the Program Director to submit to the Board, on a monthly basis, a written evaluation of Respondent's performance and days attended. This report shall be submitted in writing on forms issued by the Board and accompanied by a cover letter on the school's letterhead.

8. Practice Supervision.

Respondent shall practice only in a setting where Respondent has direct supervision for the entire shift by a licensed registered nurse who is in good standing.

9. Administration of Medications

Respondent may not administer controlled substances. The Respondent may petition to have this condition removed or modified after completing twelve (12) weeks of work as a nurse. A petition seeking removal or modification of this condition must demonstrate that Respondent can safely administer controlled substances. Support for the petition shall include an explanation of Respondent's employer/school administrator inventory control procedures, and the Board may also require documented support for removing this condition from any applicable treating professional.

10. Participation in Recovery Group.

Respondent shall participate in a substance abuse recovery group as recommended by Respondent's treating professional.

11. Random Drug and Alcohol Testing.

Respondent shall submit to random drug and alcohol screenings at the request of the Board or its designee pursuant to Board procedures. Testing shall be random. Urine specimens collected for tests shall be collected in an observed setting. All screens shall be negative.

12. Abstain from Drug and Alcohol Use.

Respondent shall abstain completely from the consumption or possession of alcohol and drugs with the exception of prescribed medications while these conditions are in place.

13. Drug Use Exception.

The Respondent may only use lawfully prescribed medications. Respondent shall inform the Board in writing of a prescribing, physician, dentist, or nurse practitioner's identity within forty-eight (48) hours of the establishment of the practitioner/patient relationship. Respondent shall ensure that the prescribing health care professional confirms, in writing and on appropriate letterhead, knowledge of Respondent's substance abuse history within one (1) week of entering into the practitioner/patient relationship. Respondent shall inform the Board in writing of all scheduled/controlled medications prescribed, including the name of the prescribing health care professional, within forty-eight (48) hours of receiving the prescription.

The Board or its designee may request that Respondent's practitioner document the continued necessity for scheduled medications prescribed for an extended term.

14. Records.

Respondent shall keep a record of all medications that the Respondent takes including over-the-counter medications, and Respondent shall produce the record upon reasonable request of the Board or its designee.

15. Types of Employment Prohibited.

Respondent shall not work in a supervisory role with the exception of supervising unlicensed assistive persons. Respondent shall not work for a nurse registry, traveling nurse agency, float-pool, home health care agency, temporary nursing employment agency or as a personal care provider during the effective period of this Order.

16. Out of State Practice/Residence.

Before the Board credits any out-of-state practice or residence toward fulfillment of these terms and conditions, Respondent must obtain Board approval prior to Respondent leaving the State of Vermont. If Respondent fails to receive approval, the Board will not credit time spent out-of-state toward the fulfillment of the terms and conditions of this Order. The Board will approve out-of-state practice so long as the Respondent can still comply with the provisions of this Order.

17. Notification of Place of Employment/Personal Address/Telephone Number.

Within five (5) days of the date of entry of this Order, Respondent shall notify the Board, in writing, of Respondent's current place of employment, personal address, email address and telephone number. Respondent must notify the Board, in writing, within forty-eight (48) hours of any change in employment or contact information.

18. Notification to Other States.

If Respondent holds a nursing license in another state(s), Respondent must inform the nursing licensing board of the state(s) in which the Respondent is licensed of the conditional status of Respondent's Vermont nursing license within thirty (30) days of the date of entry of this Order.

19. License Renewal.

Respondent must timely apply for renewal and otherwise comply with the requirements for license renewal.

20. Release of Information Forms.

In fulfilling the conditions of this Order, the Respondent must authorize various persons identified in this order to report information or to discuss the Respondent with the Board. This includes treating professionals and employers. The Respondent must execute a consent form that allows disclosure to the Board or its designee.

21. Violation of this Order.

If the Respondent violates the terms of this Order, the Board, after giving the Respondent notice and an opportunity to for a hearing, may impose additional disciplinary actions.

22. Completion of Conditional License Period.

After completion of the conditional license period, the licensee may petition the Board to remove the license conditions. The Respondent must present proof that Respondent has complied with and successfully completed the terms of this Order. The Respondent must also present proof of successful rehabilitation. Upon a showing of rehabilitation and successful completion of Board ordered license conditions, the Board will reinstate the Respondent's license.