

**STATE OF VERMONT
BOARD OF NURSING**

In re: June A. Clayton
License No. 026-23554

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}

Docket No. 2011-765(RN)

**Decision on
UNPROFESSIONAL CONDUCT CHARGE**

Participating Board Members:

Alan Weiss, Public Member
Donna Rae Metcalf, LPN
Sandra Norton, LNA
William G. White, Jr., Public Member
Deborah Swartz, RN
John Todd, APRN
Ellen Watson, APRN
Sheila Davis, LPN
Virginia Hudson, RN

Appearances:

for Petitioner, State of Vermont: Gabriel Gilman
for Respondent: Was not present

Presiding Officer: Larry S. Novins

Sanctions Decision

The Vermont Board of Nursing held a hearing in the above matter on November 5, 2012 at the Chapel in College Hall at the Vermont College of Fine Arts in Montpelier, Vermont. At our meeting on October 8, 2012 we found that the State had proved that Respondent engaged in unprofessional conduct. We declined to impose a sanction at that time. Rather, we gave Respondent one last chance to have a payment plan with the Department of Taxes so that she could be in good standing with them.

At today's hearing the Board was informed that Ms. Clayton was true to her word to us. She has arranged a payment plan with the Department, made an initial payment to them, and is now in "good standing" with them.

Order

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

Respondent's license is **reprimanded**, effective the date of this decision.

APPEAL RIGHTS

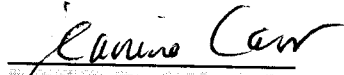
This is a final administrative determination by the Vermont Board of Nursing. A party aggrieved by a final decision of a board may appeal this decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Vermont Secretary of State, Office of Professional Regulation, National Life Bldg., North, FL2, Montpelier, Vermont 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.

To request a stay of the Board's decision, please refer to the attached stay instructions.

Vermont Board of Nursing

By:


Jeanine Carr, RN, Chair

Date November 5, 2012

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 11/6/12

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Appearances:

for Petitioner, State of Vermont: Gabriel Gilman
for Respondent: pro se

Presiding Officer: Larry S. Novins

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

The Vermont Board of Nursing held a hearing in the above matter on October 8, 2012 at the Capitol Plaza in Montpelier, Vermont.

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.

Background

The prosecution alleges in its Specification of Charges that Ms. Clayton, in violation of Vermont Statutes, was fraudulent or deceitful in acquiring a renewal to her license.

Findings of Fact

Based on the evidence presented, the Board finds as follows:

1. Ms. Clayton is a licensed registered nurse and is therefore subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, 26 V.S.A. § 1582(a), the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation.
2. On March 11, 2011 Ms. Clayton signed and submitted her renewal application to the Board. In response to the question, "*If you have ever lived or worked in the State of Vermont, are you in good standing with the Vermont Department of Taxes?*" 32 V.S.A. § 3113(b)?", Ms. Clayton answered "I am in compliance with a payment plan approved by the Vermont Department of Taxes."
3. At the time Ms. Clayton submitted her application, she was behind in her Vermont Taxes. She had not negotiated a payment plan with the Department of Taxes. She had no plan.
4. Ms. Clayton was questioned by an OPR investigator in February, 2012. At that time she again stated that she had a payment plan with the Department of Taxes. She did not.
5. Ms. Clayton promised to contact the Department of Taxes to remedy the situation, but as of this hearing she had not.
6. Ms. Clayton was aware of what she wrote in her renewal application. She knew that she owed back Vermont taxes, had no payment plan worked out with the tax department and was, therefore, not in compliance with any payment plan.
7. Ms. Clayton has faced severe financial and living challenges. She reported that she has moved four times in the recent past, recently got out of an abusive relationship. She is behind on taxes to not only the State of Vermont, but the IRS and the State of New York.
8. Ms. Clayton is currently employed as an emergency room nurse at Southwest Medical Center in Bennington, Vermont. She testified that she wants to arrange a payment plan with the tax department and can pay them money immediately.

Conclusions of Law

Based on the evidence presented and Facts found above we conclude as follows:

1. **Re: Alleged Violation of 3 V.S.A. § 129a(a)(1):** The State has proved by a preponderance of the evidence that Ms. Clayton engaged in fraudulent or deceptive procurement or use of a license. This is unprofessional conduct.
2. **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 separate/additional grounds for discipline. There is no independent violation of this statute.
3. **Re: Alleged Violation of 26 V.S.A. § 1595(3):** The State has proved by a preponderance of the evidence that Ms. Clayton (3) has been fraudulent or deceitful in procuring or attempting to procure a license. This is unprofessional conduct. 3 V.S.A. § 129a(a)(3).

Discussion

It was quite clear from the hearing that this matter would not have come to the Board had Ms. Clayton merely taken the time several months ago, perhaps longer ago than that, to call the Department of Taxes and negotiate a compliance plan. Her failure to do this, despite months of urging from OPR and others is troubling. The prosecuting attorney in this case urged us to impose a sanction at this time, then summarily suspend Ms. Clayton's license should she not follow through and comply with a payment plan. We decline to do so. The underlying issue in this case is Ms. Clayton's failure to meet her legal obligations and her decision to be untruthful about it.

Ms. Claytons' license to practice in Vermont is in jeopardy. While we are reluctant to see Ms. Clayton lose her ability to practice in Vermont, we are mindful of our responsibilities to the public and the laws of our state.

We elect to not impose a sanction against Ms. Clayton at this time. We will hold a brief sanctions hearing at our November meeting. We fully expect that Ms. Clayton will do as she promised: that she will report to the Board that she has made arrangements with the Department of Taxes and that she has made at least an initial payment to them. Whether that happens is up to Ms. Clayton.

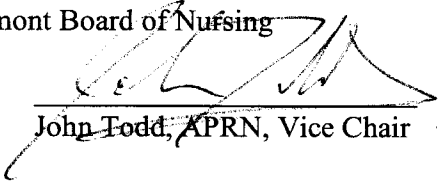
At our next hearing we will weigh Ms. Clayton's past dishonesty in her renewal application against her professed desire to correct her tax situation and continue practicing. We will determine whether her representations to us at the hearing show a continuation of her past dishonesty, or a final acceptance of her responsibilities. The sanction we impose will reflect how she remains true to her word. Her future is truly in her hands.

Order

A sanctions hearing in this matter will be held at our November 5, 2012 hearing. After that hearing a final decision in this matter will issue and the parties will be advised of their appellate rights.

Vermont Board of Nursing

By:


John Todd, APRN, Vice Chair

Date October 9, 2012

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 10/17/12