

**STATE OF VERMONT
BOARD OF NURSING**

In re: Jane Dorrian	}	
Preliminary Denial of	}	
Request to Modify License Conditions	}	Docket No. NU06-0707 (RN) M2009-134

**DECISION ON
PRELIMINARY DENIAL OF
MOTION TO MODIFY LICENSE CONDITIONS**

Participating Board Members:

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

Appearances:

for Petitioner, State of Vermont: Lauren Hibbert
for Respondent: Pro se

Presiding Officer: Larry S. Novins

**Findings of Fact, Conclusions of Law,
and Order**

The Board of Nursing held a hearing in the above matter on February 14, 2011 at the National Life Building in Montpelier, Vermont pursuant to 3.V.S.A. § 129(e). Ms. Dorrian appeared before the Board after its preliminary denial of her request to modify conditions on her license.

Ms. Dorrian as the person requesting modification of license conditions set by Board Order bears the burden to convince the Board that the preliminary denial should be reversed and that her request should be granted. 3 V.S.A. § 129(e).

Findings of Fact

1. Ms. Dorrian is licensed as a licensed practical 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. By Default Order entered by the Board in October 2008, Ms. Dorrian's license was suspended indefinitely.

3. By Stipulation and Consent Order accepted by the Board in June, 2009 Ms. Dorrian's license was reinstated with conditions.
4. Condition #7 requires the following:

"For the first year of the conditioned period, Ms. Dorrian shall practice nursing only in a setting where Ms. Dorrian has the direct supervision for the entire shift by a registered nurse that is licensed and in good standing with the Board. Thereafter, Ms. Dorrian shall practice only in a setting where Ms. Dorrian has on-site supervision for the entire shift by a registered nurse that is in good standing with the Board."
5. By letter dated October 30, 2010 Ms. Dorrian asking if it would be possible to modify Condition #7. She wrote: "I am aware that this is a lot to ask but I am asking. I truly love nursing and miss it a great deal. This was the first time in my forty year nursing career that I was reported to the board and the original changes occurred over a period of five years and never endangered a resident's life. My biggest mistake was to ignore the summons to the meeting when the charges were being heard, and I have been working with my therapist to enable myself to face my problems and not ignore them as I have in the past." Ms. Dorrian attached a letter of support which spoke of Ms. Dorrian's inability to find employment with the conditions as they were imposed.
6. On November 30, 2010 Mary Botter, on behalf of the Board wrote to Ms. Dorrian denying her request. "The sub-committee reviewed your compliance with the Order since the date of entry. There is no basis for granting the request for modification since you have not practiced since the Order was issued."
7. Ms. Dorrian's Stipulation and Consent Order required her to take courses in medication administration and in documentation. She has successfully completed those courses.
8. Ms. Dorrian has been a nurse for over 40 years. She appears to have learned how to avoid the errors that brought her before the Board.
9. On-site supervision should provide Ms. Dorrian with the support she needs while under her conditioned license. Because she has taken her remedial courses, the requirement that she practice under direct supervision is no longer seen as necessary.

Conclusions of Law

We consider Ms. Dorrian's request, as a motion for relief from a judgement or order. V.R.C.P. 60(b) provides:

Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) **any other reason justifying**

relief from the operation of the judgment.

We conclude that Ms. Dorrian has shown justification for amending the Stipulation and Consent Order.

Order

The preliminary denial of Ms. Dorrian's request for modification is **reversed**. Her request to strike the direct supervision requirement is **granted, with a condition**.

Ms. Dorrian shall practice only in a setting where Ms. Dorrian has **on-site supervision** for the entire shift by a registered nurse that is in good standing with the Board. She may practice with on site supervision **only on day or evening shifts**, not night shifts.

The remaining conditions imposed as part of the Stipulation and Consent Order shall remain in effect as originally ordered.

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:

Jeanine Carr
Jeanine Carr, RN, Vice Chair

February 15, 2011

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY:

2-18-11