

**STATE OF VERMONT
BOARD OF NURSING**

IN RE:

Brenda Drown-Gibbs
License No. 26-16159

)

)

)

Case File No. NU20-0801

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Introduction

The Vermont Board of Nursing ("the Board") held a hearing in this case on Monday, May 12, 2003, at 81 River Street in Montpelier, Vermont. Board members Linda Rice, Alan Weiss, Elayne Clift, Laurey Tyo, Sandra Norton, Donarae Metcalf, Susan Farrell and De-Ann Welch participated in the decision. Michael McShane, Assistant Attorney General, appeared for the State. Brenda Drown-Gibbs ("the Respondent") was not present for the hearing and did receive notice of the hearing. The Board received a copy of the Respondent's answer to the charges as part of the case.

Findings of Fact

1. Brenda Drown-Gibbs is a licensed registered nurse who holds license number 26-16159 issued by the State of Vermont.
2. The Respondent was convicted of Driving Under the Influence of Intoxicants ("DUI") on or about April 17, 2002.
3. As part of her conviction, the Respondent was ordered to undergo alcohol counseling.
4. According to the DUI Affidavit filed by Trooper Jason Letourneau, a breathalyzer test conducted at approximately 7:30 PM revealed a blood-alcohol content of .141%. The legal limit of intoxication while driving in Vermont is .08%.
5. The Respondent had been in a one car collision with her vehicle striking several guardrails at approximately 4:30 PM.

Opinion

Without the presence of the Respondent to address these charges against her, the Board has very little to go by other than what has been presented by the State. Based on the evidence of her conviction, the Respondent either has a significant drinking problem or, at the very least, exhibited poor judgment on this occasion as evidenced by the disturbingly high BAC three hours after the accident. Either a substance abuse problem or such a lack in judgment relate to the practice of nursing. Without more information from the Respondent the Board must make the inference that there is a substance abuse problem and the following order is drafted according to that assumption in order to safeguard the public.

Conclusions of Law

- A. The Board of Nursing may revoke, suspend, discipline or otherwise condition the license of a registered nurse who engages in unprofessional conduct as defined by 26 V.S.A. §1582 or 3 V.S.A. § 129a.
- B. Respondent, by her actions detailed above, has been convicted of a crime in violation of 3 V.S.A. § 129a(a)(9), having been convicted of a crime related to the practice of nursing.
- C. Based upon the above, the Respondent has demonstrated an inability to practice nursing competently by reason of any cause in violation of 26 V.S.A. §1582(a)(3) and Board of Nursing Administrative Rule IV(B)(3).

Order

A. In light of the above findings and conclusions, the Board hereby CONDITIONS the Respondent's license, effective as of the date of entry of this Order, below, as follows:

(1) Successful Completion of Probation

The Respondent shall provide satisfactory proof to the Board or its designee of successful completion of the terms of her probation, as ordered by the court for her DUI conviction, within 30 days from the date of entry of this order. Failure to do so or evidence that the Respondent has

not successfully completed the terms of her probation will result in an automatic suspension of her license and the conditions that follow will be null and void.

(2) Length of Time Conditions Imposed.

The conditions shall remain in place until Respondent has completed **twenty-four (24) months** of supervised nursing practice in which she works at least forty (40) hours every two (2) weeks in nursing [Part time hours of less than forty (40) hours every two (2) weeks shall be credited on a prorated basis].

(3) Completion of Counseling and Treatment Plan.

Respondent shall enter into and/or continue counseling with a treating professional approved by the Board's designee until the treating professional notifies the Board's designee in writing that such counseling is no longer necessary in her/his professional opinion and the Board (or its designee) agrees, in writing. Respondent shall comply with a treatment plan approved by the professional and the Board (or its designee). This shall be done as soon as possible, and in any event, no later than 30 days after entry. In the alternative, the Respondent may cause her treating professional to notify the Board that the counseling has already been successfully completed and treatment is no longer necessary.

(4) Approval of Changes of Treating Professional (if applicable).

Respondent shall obtain prior approval from the Board or its designee of all changes of treating professional. Failure to obtain prior approval of a change of treating professional may be grounds for a charge of violation of this Order.

(5) Substance Abuse Therapy and Notification to Treating Professional (if applicable).

Respondent shall provide a copy of this Order to her treating professional and cause her 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.

(6) Reports from Treating Professional (if applicable).

Respondent shall authorize and cause her treating professional to submit to the Board evidence of satisfactory progress with the treatment plan during the effective period of this Order. These reports shall be submitted in writing on forms issued by the Board. A preliminary report shall accompany the treatment plan and the first report thereafter is due commencing the month after the date of entry of this Order and subsequent reports are due every month thereafter.

Respondent shall authorize her treating professional to provide all information requested by the Nursing Board, or its designee, either orally or in writing, at any time during the period this Order is in effect.

(7) Random Alcohol Testing.

Respondent shall submit to random alcohol screening at the request of the Board. Respondent shall ensure an identified contact person, approved by the Board, shall administer random alcohol tests. All screens shall be negative except for drugs prescribed for her under the care of a physician, dentist, or nurse practitioner.

(8) Abstain from Alcohol Use.

Respondent shall abstain completely from the consumption or the use or possession of any drugs or alcohol with the exception of prescribed medications.

(9) Drug Use Exception.

Respondent may take medications lawfully prescribed for a bona fide illness or condition by a physician, dentist, or nurse practitioner whose identity shall be made known to the Board in writing by Respondent within forty-eight (48) hours of the establishment of the practitioner/patient relationship. Respondent shall ensure that the physician, dentist or nurse practitioner informs the Board, in writing and on appropriate letterhead, of knowledge of Respondent's chemical dependency within one (1) week of entering into the practitioner/patient relationship. Respondent shall inform the Board in writing of all medications prescribed, including the name of the prescribing practitioner, within forty-eight (48) hours of receiving the prescription. The Board or its designee may request at any time that the practitioner document the continued need for prescribed medications. Respondent shall keep a written record of medications taken, including over the counter drugs, and produce such record upon the request of the Board or its designee.

(10) Interview with the Board or its designee.

Respondent shall appear in person for interviews with the Board or its designee upon request.

(11) Re-issue of License.

Within five (5) days of the date of entry of this Order, Respondent shall submit her license to the Board of Nursing for a re-issued license labeled "conditioned".

(12) Out of State Practice/Residence.

Before any out-of-state practice or residence can be credited toward fulfillment of these terms and conditions, Respondent shall first notify the Board before beginning such practice. If Respondent fails to notify the Board before, none of the time spent in out-of-state practice will be credited toward the fulfillment of the terms and conditions of this Order.

(13) 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 her current place of nursing employment (if she is employed as a nurse), personal address, and telephone number. Respondent shall further notify the Board, in writing, within forty-eight (48) hours of any change in nursing employment, personal address, or telephone number.

(14) Notification to Employers/Nursing School.

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

(15) Reports from Employers/Nursing School

Within one (1) month of the date of entry of this Order and every month thereafter, Respondent shall cause every employer for which she has been employed as a nurse during that month to submit to the Board an evaluation of Respondent's performance and attendance during that month. This report shall be submitted in writing on forms issued by the Board. In the event the Respondent attends nursing school, Respondent shall cause the Program Director to submit to

the Board, on a monthly basis, a written evaluation of Respondent's performance and attendance. This report shall be submitted in writing on forms issued by the Board.

Respondent shall authorize her employer and her nursing school administrator to provide all information requested by the Nursing Board, or its designee, either orally or in writing, at any time during the period the Order is in effect.

(16) Practice Under Supervision.

Respondent shall practice only in a setting where she has direct, on-site supervision for the entire shift by a registered nurse in good standing with the Vermont Board of Nursing, or is in good standing in all states that nurse is licensed.

(17) Prohibited Duties.

Respondent shall not work as a Charge Nurse

(18) Types of Employment Prohibited.

Respondent shall not work for a nurse registry, traveling nurse agency, float-pool, home health care agency, temporary employment agency or as a personal care provider during the effective period of this Order.

(19) Prohibited Hours of Work.

Respondent shall work only the day or evening shift during the effective period of this Order. Respondent shall not work the night shift during the effective period of this Order.

(20) Release of Information Forms.

Upon the establishment of all practitioner/patient relationships with (1) treating professionals for substance abuse treatment, and with (2) treating professionals who prescribe any medication to Respondent, Respondent shall execute all release of information forms which are necessary to authorize those practitioners to release information described in this Consent

Order to the Board of Nursing, its investigators, and the Attorney General's Office. All information disclosed to the Board shall be made available to its investigators and the Attorney General's Office. Respondent shall specifically execute a consent to disclosure form which meets the requirements of 42 C.F.R. §2.31 to permit disclosure of all information regarding respondent's substance abuse treatment to the Nursing Board, its investigators, and the Attorney General's Office.

(21) Costs.

Respondent shall bear all costs of complying with this Order.

(22) Violation of the Order.

If Respondent violates the terms of this Order in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke the terms of the conditional license and take further disciplinary action. If a complaint or charges are filed against Respondent during the term of this Order, the conditional license period shall be extended until the matter is final.

(23) Completion of Conditional License Period.

Upon completion of the conditional license period, Respondent may petition the Board to remove any and all conditions on her license and after formal review by the Board, Respondent's nursing license may be fully restored by appropriate Board action. Furthermore, Respondent must demonstrate, to the Board's satisfaction, that she can safely return to unrestricted practice, that she has safely and competently administered medications and that she has fully complied with all the terms of this Order.

B. This Order is a matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. §129(a).

C. This Order will remain part of Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

Appeal Rights

This is a final administrative determination by the Vermont Board of Nursing. You may appeal by sending a notice of appeal in writing to the Director of the Office of Professional Regulation within 30 days of the date of entry of this order. If you wish to request a stay of the Board's decision, please refer to the attached stay instructions.

By:

Susan Farrell

Susan Farrell, R.N.

Chair

Date:

5.21.03

OFFICE OF PROFESSIONAL REGULATION

Date of entry:

5/29/03