VERMONT SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF NURSING

In re	Lori Lynn Ellis	}
License No.	025-0009388	}
Docket No.	NU 91-0508	}

FINDINGS OF FACT
CONCLUSIONS OF LAW & ORDER

On Monday 8 December 2008, the Vermont Board of Nursing (Board) heard this contested case of alleged unprofessional conduct. The State of Vermont brought a Specification of Charges ("Charges") dated 23 June 2008 against Respondent Lori Lynn Ellis.

Board members Jeanine Carr, Sandra J. Norton, Alan H. Weiss, DeAnn Welch (Board Secretary) and William White were present and participated in the hearing. Board members Ellen Leff and Linda Rice recused themselves from participation.

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

Summary:

This matter arises out of allegations of unprofessional conduct related to Respondent's enrollment in the Board's "Alternative Program." The Alternative Program is a Board monitored program to assist professionals in recovery from substance abuse.

After a review of the full evidentiary record in this matter, the Board finds the facts demonstrate unprofessional conduct by the Respondent.

The Board's order shall therefore include a finding of unprofessional conduct and license conditions imposed on the Respondent's license to protect the public.

Findings of Fact &
Conclusions of Law:

1. 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.

2. Respondent holds a Board issued State of Vermont practical nursing (LPN) license.

3. The Respondent admits the factual allegations set forth in the State's Charges.

4. The material factual allegation of unprofessional conduct is that Respondent enrolled in the Alternative Program in January 2006 as a condition of licensure. The Charges allege, however, that she has not been compliant with the terms of the Alternative Program contract. *See* Charges at ¶ 3.

5. 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).

6. The Respondent does not dispute the material factual allegations, which the State contends support a finding of unprofessional conduct.

7. The Respondent both testified and acknowledged in her written answer to the Charges that she entered into an Agreement with the State of Vermont pursuant to the Board of Nursing's Alternative Program. *See* Vt. Bd. Nursing Admin. R., Chapter 6 ("The Board of Nursing may provide for a non-disciplinary alternative in situations involving chemical dependency; provided, that the nurse agrees to voluntarily participate in a program of treatment and rehabilitation").

8. To enter the Alternative Program, a participant must sign a contract acknowledging that failure to abide by the terms of the Alternative Program's contractual requirements may subject the participant to disciplinary proceedings.

9. The Respondent entered into the Alternative Program contract due to her admitted opioid addiction, which she explained resulted from the long-term use of lawfully prescribed medication taken to treat pain caused by a chronic illness.

10. Respondent further acknowledges that she did not follow through with the terms of the Alternative Program contract.

11. The State therefore meets its statutory burden of proof and the Board finds that the State proved the factual allegations contained the Charges.

12. The Respondent explained that she is currently in a treatment program and in school fulltime. She further testified that she is not working as a nurse currently but wants to maintain her nursing license.

13. Due to Respondent's non-compliance, the State asked the Board to impose a three year conditioned license with substance abuse conditions.

14. The Respondent testified that she wanted to maintain her nursing license. She stated that there were several factors related to her non-compliance although she also said that she fully accepted responsibility for not adhering to the contract. She explained that her compliance with the contract lapsed during a period when she was not working as a nurse and during a time when she was overwhelmed with obligations caused by a serious family illness.

15. Respondent also stated that she continues to receive treatment and counseling for substance abuse, and that she "had no excuse for not following all of the requirements of the [Alternative Program contract]."

16. Respondent stated that she has no objection to the State of Vermont's request for a conditioned license for a period of three years.

17. The Board also finds that the Respondent's failure to abide by the terms of the Alternative Program contract's terms constitutes unprofessional conduct in violation of 3 V.S.A. §129a.

18. The nature of the unprofessional conduct, and the evidence received at the hearing, support the appropriateness of a conditioned license for a period of three years to protect the public.

19. The Board's order will therefore impose substance abuse related conditions on the Respondent's LPN license. The Board's conditions are set forth in "Appendix A" to this Order.

20. The Board further notes that it expects the Respondent to follow conditions regardless of whether she is working as a nurse. Although some of the requirements of this Order apply only to professional employment, all other conditions apply as long as the Respondent is licensed and until further notice by this Board.

ORDER

Based on the findings of fact and conclusions of law set forth above, which includes a finding of UNPROFESSIONAL CONDUCT, the Board of Nursing:

ORDERS that the Respondent's LPN license be CONDITIONED for a period of THREE (3) YEARS consistent with the terms set forth in APPENDIX A to this order.

- END -

(signature page to follow)

Vermont Board of Nursing:

By: _____ Date: 3/5/09
DeAnn Welch, LPN
Board Secretary

OFFICE OF PROFESSIONAL REGULATION
DATE OF ENTRY: 3/5/09

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 A

1. Re-issue of License.

Upon the commencement of these conditions, Respondent Lori Lynn Ellis, License No. 025-0009388 (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 (LPN). 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.

4. Notification to Treating Professional.

Respondent shall provide a copy of this Order and its conditions to Respondent's substance abuse treating professional. Respondent's treating professional must confirm for the Board, in writing and on professional letterhead, receipt of this Order and the treating professional's ability to comply with the treatment related conditions 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. The treating professional shall submit reports on forms issued by the Board. The first report is due the month after the date of commencement of the conditions. 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 with ten (10) days of obtaining any subsequent nursing employment, Respondent shall cause Respondent's 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. The employer report will be on a Board issued form.

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. The report will be on a Board issued form 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 nurse in good standing

9. Administration of Medications

Respondent may not administer controlled substances. However, the Respondent may petition to have this condition removed or modified after completing twelve (12) weeks of licensed nursing work.

A petition seeking removal or modification of this condition must demonstrate to the Board, or its designee for monitoring condition compliance, 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. Interview with Board or Board Designee

Respondent shall cooperate in good faith and appear for interviews or phone calls from Board investigators or other designees.

11. Participation in Recovery Group.

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

12. 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.

13. 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.

14. 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 knowledge, in writing and on appropriate letterhead, 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 medications prescribed, including the name of the prescribing health care professional, within forty-eight (48) hours of receiving the prescription medication.

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

15. 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.

16. 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.

17. 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 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.

18. 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 (a) current place of employment, (b) personal address, (c) email address and (d) telephone number. Respondent must notify the Board, in writing, within forty-eight (48) hours of any change in (a) employment or any change in (b-d) contact information.

19. Notification to Other States.

If the Respondent holds a nursing license from another jurisdiction(s), Respondent must inform the licensing authority of the jurisdiction(s) where Respondent is also licensed of the conditional status of Respondent's Vermont nursing license. This notice must occur within thirty (30) days of the date of entry of this Order.

20. License Renewal.

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

21. Release of Information Forms.

In fulfilling the conditions of this Order, the Respondent must authorize various persons indentified 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.

22. Violation of this Order.

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

23. Completion of Conditional License Period.

After the conditional license period, the Respondent may petition the Board to remove the license conditions. The Respondent must present proof that Respondent has complied with the terms of this Order. As a requirement for reinstatement, Respondent shall demonstrate successful rehabilitation.

(- END -)