STATE OF VERMONT
BOARD OF NURSING

In re: Roger J. Furman	}	
License No. Application pending	}	Docket No. 2010-465
	}	Preliminary Denial (LPN)

Decision on
UNPROFESSIONAL CONDUCT CHARGE
and Preliminary Denial of License

Participating Board Members:
Ellen W. Leff, RN, Chair
Jeanine Carr, RN, Vice Chair
Alan Weiss
De-Ann Welch, LPN
William G. White Jr.
Deborah Swartz, RN
John Todd, APRN, recused during the hearing, did not participate in decision.

Appearances:
for Petitioner, State of Vermont: Betsy Ann Wrask
for Respondent: Brad W. Wilder

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 November 8, 2010 at the National Life Building 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. If unprofessional conduct is proved, the Board may deny or condition a license. 3 V.S.A. § 129a(3).

Background

The prosecution alleges in its Specification of Charges that Mr. Furman in violation of Vermont Statutes is, because of his substance abuse, unable to practice nursing competently.

Findings of Fact

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

1. Mr. Furman has applied for licensure as a 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. On June 9, 2010 Mr. Furman had been consuming alcohol. He threw a tomato at his wife. He was arrested and charged with simple assault.
3. Mr. Furman was released on conditions of release which included a ban on consumption of alcohol and a ban on contacting his wife. Before his release Mr. Furman acknowledged receipt of the conditions and notice of the penalties for their breach.
4. Less than one day later, on June 10, 2010 according to the police complaint, Mr. Furman breached those conditions. He was charged and later convicted for sending an expletive-filled text message to his wife. At the time of his arrest his alcohol concentration was reported to be over .20%. He was also charged and later convicted for the alcohol consumption violation as well.
5. Mr. Furman admitted he had been drinking and that he was an alcoholic and dependent on alcohol.
6. On June 11, 2010 Mr. Furman was charged with another violation of the no alcohol condition. That charge was dismissed in August when he plead to the two charges above. The June 9, 2010 simple assault charge was also dismissed in August.
7. Mr. Furman said his last drink of alcohol was June 12, 2010.
8. On June 16, 2010 Mr. Furman began an intensive 16 week out-patient Intensive Substance Abuse program at Head Rest in Lebanon, N.H. He successfully concluded the program on October 15, 2010.
9. Mr. Furman testified that he has been going to AA meetings 7 times per week and that he has a sponsor.
10. On August 9, 2010 Mr. Furman applied to this Board for licensure as an LNA.
11. Mr. Furman was convicted of the two violation of condition offenses on August 17, 2010. His 2 thirty-day consecutive day jail sentences were suspended on the condition that for the next 24 months that he not commit any violation, felony or misdemeanor offense and continue his current Head Rest counseling.
12. During the license application process, Mr. Furman called the Office of Professional Regulation. He was rude and foul-tempered and used inappropriate language and tone with Board staff.
13. Mr. Furman's demeanor at the hearing revealed little remorse over his conduct in June or his interaction with Board staff.
14. The essential standards of acceptable and prevailing nursing practice require self-control, in word and in deed. Mr. Furman was unable or unwilling to control his temper, conduct in June. He was unable to contain his temper in August, even after he stopped drinking. The extent to which his rehabilitation from alcohol abuse will improve his conduct remains to be seen.
15. Mr. Furman's alcohol abuse has rendered him unable to practice nursing competently.
16. Mr. Furman presented a one paragraph summary of a psychiatric evaluation he had on October 20, 2010. The evaluation summary reflects that Mr. Furman discussed his history of depression and substance abuse. The report confirms that Mr. Furman was habitually intemperate. The evaluation summary does not persuade the Board that Mr.

Furman is ready or able to resume practice.

17. Mr. Furman's conduct has shown significantly compromised judgment. When drinking, he demonstrated a frightening inability to control his conduct and stay within the requirements of the law. His rehabilitation is still in its early stages. It is not sufficiently documented. Mr. Furman is unable to practice nursing competently.

Conclusions of Law

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

1. **Re: Alleged Violation of 26 V.S.A. § 1582(a)(3):** Board Rule Chapter 4, Rule IV(II)(C) defines "any cause" to include, reasons of physical or mental disability or use of drugs, narcotics, chemicals or any other type of materials. The State has proved by a preponderance of the evidence that Mr. Furman is unable to practice nursing competently by reason of any cause. This is unprofessional conduct. 3 V.S.A. § 129a(a)(3).

2. **Re: Alleged Violation of 26 V.S.A. § 1582(a)(5):** The State has proved by a preponderance of the evidence that Mr. Furman is habitually intemperate or is addicted to the use of habit-forming drugs. This is unprofessional conduct. 3 V.S.A. § 129a(a)(3).

Discussion

If Mr. Furman was a current licensee appearing before this Board on the same set of facts, he would be required to make a real, verifiable, and well-documented showing that he has sufficiently overcome his alcohol addiction. Only then would we consider his request to resume practice. Our prior decisions provide a very clear statement of expectations for applicants and licensees who battle substance abuse.

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

Order

The preliminary denial of Mr. Furman's application for licensure is **affirmed.** Mr. Furman's application for licensure as a licensed practical nurse is **denied.**

Before the Board will consider Mr. Furman's application again, he must satisfy the following conditions:

Within forty-five (45) days of his request to reconsider his application:

1) Mr. Furman shall obtain an independent evaluation report by a licensed professional specializing in drug and alcohol abuse, pre-approved by the Board or its designee and who has verified receipt of this Order;

2) The results of the report with the drug and alcohol independent evaluator must

indicate that Mr. Furman does not present a risk to the safety, health, or welfare of his potential patients; and

3) Mr. Furman must submit to the Board or its designee the results of a minimum of three (3) random urine analyses, collected in an observed setting; administered by a person or an entity that has been pre-approved by the Board or its designee, and analyzed by a lab pre-approved by the Board or its designee which is qualified to analyze samples for forensic purposes.

4) The results of the random urinalyses shall be negative. Failure to appear for, refusal to provide, adulteration of, dilution of, or tampering with a sample for any urine analysis shall cause that screen to be presumed to be positive.

5) Mr. Furman shall enter into a treating professional agreement with a treating professional pre-approved by the Board; and enter into a substance abuse treatment plan approved by the Board with the pre-approved treating professional.

The Board will take no further action on Mr. Furman's application until these prerequisites are met. At that time, the Board will reconsider his application, whether it can be approved, and if approved, what conditions can permit him to practice while protecting public health and safety.

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.

Vermont Board of Nursing

By: _____
Ellen Leff, RN, Chair

Date November 9, 2010

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 11/12/10