

**STATE OF VERMONT
OFFICE OF PROFESSIONAL REGULATION
BOARD OF NURSING**

In re: Kelly J. Hall	}	Docket No. 2016-8-1
	}	Preliminary Denial of
	}	Application for Licensure

**Preliminary Denial Hearing
FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

Participating Board Members:

Jeanine Carr, RN, Chair
Ellen Watson, APRN, Vice Chair
William G. White, Jr., Public Member
Douglas Sutton, RN
Sheila Davis, LPN
Virginia Hudson, RN
Luana Tredwell, LPN
Jennifer Laurent, APRN
Kelly Sinclair, LNA
John Welch, Public Member

Appearances:

Applicant: Kelly Hall, pro se

Presiding Officer: Larry S. Novins

The Vermont Board of Nursing held a hearing in the above matter on August 8, 2016 at the Office of Professional Regulation Conference Room in Montpelier, Vermont.

Ms. Hall, the applicant in this case, bears the burden to convince the Board that the preliminary denial of her application for licensure as a licensed practical nurse should be reversed and that the license should be granted. 3 V.S.A. § 129(e).

Background

By letter dated July 6, 2016 the Board, through its Executive Director, preliminarily denied Ms. Hall's application for license as a licensed practical nurse. The letter stated that Ms. Hall: 1) disclosed four criminal convictions occurring between 2011 and 2015, and 2) failed to disclose three criminal convictions which occurred in 1996, 1997, and 2015. The letter gave

Ms. Hall notice that her convictions are for crimes "related to the practice of the profession" and that her failure to reveal other convictions was seen as fraudulent or deceptive procurement of a license. Ms. Hall was given notice of her right to appeal the preliminary denial. Her appeal was timely filed.

Findings of Fact

Based on the evidence presented at the hearing and review of the file, the Board finds as follows:

1. Ms. Hall is an applicant 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. §§ 1574, 1575, the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation.
2. Ms. Hall's education meets the requirements of the Board's rules and is approved. Ms. Hall has successfully completed the NCLEX examination for practical nurses.
3. When Ms. Hall submitted her application for licensure, she certified "under the pains and penalties of perjury" that the information she provided in her application "is true and accurate." She signed her name below the certification and immediately below the following language: "I understand that furnishing false information may constitute unprofessional conduct and constitute unprofessional conduct and result in the denial of my application or further disciplinary action. The maximum penalty for perjury is fifteen years in prison and/or a \$10,000 fine. (13 V.S.A. § 2901)."
4. On her applications Ms. Hall revealed on her application the following convictions:
 - a. Retail theft conviction on October 5, 2011 for conduct occurring on March 24, 2011;
 - b. Careless or negligent operation of a motor vehicle conviction on February 4, 2013 for conduct occurring on September 8, 2012;
 - c. Driving while license suspended conviction (based on an alcohol while driving charge) on April 23, 2013 for conduct occurring on March 7, 2013; and;
 - d. Reckless endangerment conviction on March 19, 2015 for conduct occurring on June 4, 2014.
5. Ms. Hall was also convicted of the following:
 - a. Disorderly conduct on February 12, 1996;

- b. Simple assault on February 14, 1997;
 - c. Violation of Conditions of release (two counts) on March 19, 2015.
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- 6. Ms. Hall did not disclose any of the convictions from the preceding paragraph in her application. She stated she was focused on more recent events and did not intentionally omit the 1996 and 1997 convictions. Ms. Hall testified that she did not understand that the 2015 convictions were actually crimes because the conditions she violated were imposed in conjunction with another charge. She did not believe they were "criminal." We do not find that she intentionally intended to deceive the Board, even though her omission of them in response to the application question meant that her answer was false.
 - 7. Ms. Hall testified that she is currently still on probation and will remain on probation until Spring of 2017. She is complying with her probation conditions, is in counseling and attending AA. She submitted letters of recommendation which attest to her desire to become a nurse and her dedication to the field. It appears that Ms. Hall has made gains toward overcoming the influences, including alcohol, that led to much of her criminal history.
 - 8. Ms. Hall testified about the difficulties she has had. They include being involved in an abusive relationship and substance abuse. Her criminal convictions stemmed, in part, from alcohol abuse.
 - 9. An ability to abide by standards of conduct is essential to practice as a nurse. An ability to follow directions and keep a promise to behave in certain ways and to avoid certain conduct requires the same attention as a nurse's duty to follow instructions regarding patient care.
 - 10. The Board finds that Ms. Hall's disclosed convictions taken together with those she did not disclose show a pattern on non-compliance with standards set by law. Troublesome are the most recent convictions for violating conditions of release which were set by a judge. Her convictions, to the extent they show an inability to follow legal requirements and instructions, are related to the practice of nursing. To the extent that her convictions are related to the use or abuse of alcohol, they require conditions to assure her safe entry into nursing.

Conclusions of Law

Based on the facts found above, the Board concludes:

- 1. Ms. Hall made a false statement in attempting to obtain her LPN license. This is a violation of 26 V.S.A. § 1582. This is unprofessional conduct.

2. Ms. Hall has been convicted of misdemeanor crimes related to the practice of nursing. This is unprofessional conduct. 3 V.S.A. § 129a(a)(10).
3. Ms. Hall has demonstrated that she should be granted a license. She has shown that the preliminary denial of her application for licensure should be reversed. 3 V.S.A. § 129(e).

The Board is permitted by statute to deny Ms. Hall's application for licensure, or it may take other disciplinary action against an applicant. 3 V.S.A. § 129a(a)(1). Ms. Hall's unprofessional conduct does not require denial of her application for licensure. Her conduct does require that her practice as a nurse be conditioned to assure public health, safety and welfare. Conditions on her license will help monitor her conduct and assure that the recovery she has begun is supported and will continue.

Order

For the reasons set forth above, we grant Ms. Hall's application for licensure. The preliminary denial of licensure is **reversed**. Ms. Hall's license may be issued, and for no less than **one year** it shall be **conditioned** as set forth in the Appendix attached hereto.

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, 89 Main St., Fl. 3, 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, RN, Chair

Dated: August 8, 2016

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 8/12/16

**Vermont Board of Nursing
Preliminary Denial
Finding of Unprofessional Conduct
Conditions Imposed**

In re: Kelly Hall
Docket No. 2016-8-1

**Appendix to Order
License Conditions**

(1) Issuance of License

Ms. Hall shall be issued a license as an LPN. It shall be "conditioned" until further Order of the Board.

(2) Length of time of Conditions Imposed

These conditions shall remain in place until Ms. Hall has completed all conditions ordered. Ms. Hall shall be subject to the conditions until Ms. Hall completes a **minimum of one year** of supervised practice in which she works at least forty (40) hours every two (2) weeks as a licensed practical nurse. Part time employment of less than forty (40) hours every two (2) weeks shall be credited on a pro-rated basis. Ms. Hall shall be prohibited from working more than forty (40) hours per week.

(3) Completion of Substance Abuse Counseling and Treatment Plan

Ms. Hall shall enter into and continue substance abuse counseling with a treating professional pre-approved by the Board until the treating professional shall certify in writing to the Board that such counseling is no longer necessary. Ms. Hall shall enter into and comply with the substance abuse treatment plan approved by the Board and the treating professional.

(4) Notification to Treating Professional

Ms. Hall shall provide a copy of this Order to the treating professional and cause the treating professional to inform the Board, in writing 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.

(5) Reports from Treating Professional

(a) Ms. Hall shall authorize and cause the treating professional to submit to the Board evidence of satisfactory progress with the treatment plan during the effective period of this Order. The first report is due commencing one month after the date of the commencement of the conditions. Subsequent reports are due **monthly** thereafter.

(b) Ms. Hall shall authorize the treating professional to provide all information requested by the Board of Nursing, or its designee, either orally or in writing, at any

time during the period this Order is in effect.

(6) Participation in Recovery Group(s)

Ms. Hall shall participate in substance abuse recovery group(s) as recommended by the treating professional, and shall submit **quarterly** reports to the Board documenting such attendance on forms issued by the Board.

(7) Random Drug and Alcohol Testing

(a) Ms. Hall shall submit to random substance abuse screenings at the request of the Board or its designee. Ms. Hall shall designate a person, who has been pre-approved by the Board or its designee, to administer random substance abuse screens. All testing shall be done on a random, unannounced basis and be analyzed by a laboratory which is qualified to analyze samples for forensic purposes and which is approved by the Board. All urine specimens collected for tests shall be collected in an observed setting. All screens shall be negative.

(b) Failure to appear for, refusal to provide, adulteration of, dilution of, or tampering with a sample for any urine screen shall cause that screen to be presumed positive. Any positive screen shall constitute a violation of this Order.

(8) Abstain from Drug and Alcohol Use

Ms. Hall shall abstain completely abstain from the consumption or possession of alcohol and drugs with the exception of drugs as outlined in Paragraph 9 for the duration of this Order.

(9) Drug Use Exception

(a) Ms. Hall shall not take controlled substances unless necessary. Ms. Hall may take scheduled/controlled 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 Ms. Hall within forty-eight (48) hours of the establishment of the practitioner/patient relationship. Ms. Hall shall ensure that the physician, dentist or nurse practitioner informs the board, in writing and on appropriate letter head, of knowledge of Ms. Hall's substance abuse issue(s) within one (1) week of entering into the practitioner / patient relationship. Ms. Hall shall inform the Board in writing of all scheduled/controlled medications prescribed, including the name of the prescribing practitioner, within forty-eight (48) hours of receiving the prescription.

(b) The Board or its designee may request at any time that the practitioner document the continued necessity for the prescribed scheduled/controlled medication during the term of this Order for a period greater than fourteen (14) days, but if so, then the conditions herein may be revoked by the Board.

(c) Ms. Hall shall keep a written record of all medications taken, including over the counter drugs, and produce such record upon the request of the Board or its designee.

(10) Notification to Employers/Nursing School

(a) Employer Ms. Hall shall provide a copy of this Order to all employers in any current or future setting in which Ms. Hall practices as a licensed practical nurse and inform them of the conditional license status.

Within ten (10) days of the date of entry of this Order or of any subsequent employment, Ms. Hall shall cause Ms. Hall's immediate supervisor to write on the employer's letterhead to the Vermont Board of Nursing acknowledging receipt of this Order and acknowledging the employer's ability to comply with the conditions required by this Order.

(b) Nursing School Should Ms. Hall attend a nursing program which has a clinical portion that involves actual patient care, Ms. Hall shall provide a copy of this Order to the Program Director. Ms. Hall shall cause the Program Director to write to the Board on school letterhead acknowledging receipt of the Order and the ability of the program to comply with the terms of this Order during Ms. Hall's clinical experience.

(11) Reports from Employers/Program Director

Within one (1) month of the date of entry of this Order and monthly thereafter, Ms. Hall shall cause every employer Ms. Hall has worked for during the relevant period as a licensed practical nurse to submit to the Board an evaluation of Ms. Hall's performance during that period. This report shall be on forms issued by the Board.

(12) Practice Under Supervision:

Ms. Hall shall practice only in a setting where Ms. Hall has "on-site supervision" for the entire shift by a licensed registered nurse or a licensed practical nurse in good standing.

(13) Administration of Medications

(a) Ms. Hall is prohibited from administering any controlled substances. This condition may be removed only by Ms. Hall filing a petition with the Board after she has worked as a licensed practical nurse for twelve (12) weeks of at least forty (40) hours every two weeks (or the part time equivalent) after the date of [reinstatement] this Order.

(b) In any such petition, Ms. Hall must demonstrate to the satisfaction of the Board, that she can safely and competently administer such medications. In any such petition, Ms. Hall must include appropriate support from the treating professional and employer or nursing school administrator and a description of the documentation and inventory control procedures in place.

(c) The removal of this prohibition shall not automatically result in reinstatement of all medication privileges. The Board may gradually restore those privileges through intermediary steps it deems appropriate.

(14) Types of Employment Prohibited

Ms. Hall 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.

(15) Interview with Board or its Designee.

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

(16) Out-of-State Practice

Out-of-state practice can be credited toward fulfillment of this Order only if Ms. Hall shall first obtain prior approval from this Board for out-of-state practice. If Ms. Hall fails to obtain prior approval before practicing out-of-state, none of the out of state practice time will be credited toward fulfillment of this terms of this Order. The Board will approve out-of-state practice so long as Ms. Hall can still comply with the provisions of this Order.

(17) Notification of Place of Employment, Personal Address, Telephone Number

Within 5 days of the entry of this Order, Ms. Hall shall notify the Board in writing, of her current place of employment, personal address, and telephone number. Ms. Hall shall further notify the Board, in writing, within forty-eight (48) hours of any change of employment, personal address, or telephone number.

(18) Notification to Other States

In the event that Ms. Hall is licensed in any other state(s), Ms. Hall must, within thirty (30) days, inform the nursing licensing board there of the conditioned status of Ms. Hall's license in Vermont. Failure to provide such notification will constitute a violation of this Order.

(19) License Renewal

If Ms. Hall's license expires while this Order remains in effect, this Order does not automatically extend the license. To continue to practice Ms. Hall must timely apply for renewal, pay the applicable fee, and demonstrate that all renewal requirements have been satisfied.

(20) Release of Information Forms

This Order requires Ms. Hall to authorize substance abuse treating providers to report to the Board or its designee and provide information verbally or in written form and to

discuss Ms. Hall and all treatment rendered. This Order requires that any and all information from Ms. Hall's treatment providers be provided to Office of Professional Regulation investigators. Information acquired by the Board, its designees, or the Office of Professional Regulation investigators may be used for further prosecution, if it is determined that the terms of this Order, or any rules or laws governing the practice of nursing have been violated.

(21) Costs

Ms. Hall shall bear all costs of complying with this Order.

(22) Probation

Ms. Hall shall comply with the conditions of her court probation. Any violation of those conditions will constitute a violation of this order.

(23) Violation of this Order

If Ms. Hall violates the terms of this Order in any respect, the Board, after giving Ms. Hall notice and an opportunity to be heard, may rescind or modify this Order and impose additional appropriate disciplinary sanctions. If a complaint of unprofessional conduct is made against Ms. Hall during the term of this Order, the Order shall be automatically extended until the unprofessional conduct matter is concluded.

(23) Completion of Conditional License Period

(a) After the conditional license period, one year, Ms. Hall may petition the Board to remove any and all license conditions. Ms. Hall must present proof that all terms of this Order have been met. Ms. Hall must also present proof of successful substance abuse rehabilitation. Ms. Hall must demonstrate to the satisfaction of the Board that she poses no danger to the public or the practice of nursing and that she can safely and competently perform her licensed duties.

(b) Notwithstanding any provision above, Ms. Hall must continue to meet all Board of Nursing requirements for maintaining a license, license renewal, and license reinstatement.

Vermont Board of Nursing, by

By:


Jeanine Carr, RN, Chair

Dated: August 8, 2016