

**STATE OF VERMONT
BOARD OF NURSING**

In re: Kelly Lynn Higgins
License No. 026-42759 Temp.

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Docket No. NU24.-0908
2008-334

Appearances:

Petitioner, State of Vermont: Betsy Ann Wrask
Respondent: Did not appear

Presiding Officer: Larry S. Novins

DEFAULT ORDER

The Board held a hearing on the above matter on July 13, 2009 at the National Life Building in Montpelier, Vermont. Ms. Higgins did not attend and was not represented by counsel.

Findings of Fact

1. Ms. Higgins has received a temporary license as a registered 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 May 1, 2009 Ms. Higgins was sent notice of Charges in this matter by certified mail to her last known address. A copy of the Specification of Charges is attached to this Default Order.
3. OPR Rule 3.3 requires that an Answer be filed within 20 days of the date on which the notice of charges was mailed by the Director.
4. Licensees are required to notify the Board of any change of address within 30 days. 3 V.S.A. § 129a(a)(14).
5. Stamps on the envelope indicate the notice of charges was not delivered. It was returned marked "moved, left no forwarding address."
6. Ms. Higgins has not filed an answer to the charges.
7. On June 22, 2009 Notice of the default hearing scheduled for July 13, 2009 was mailed to Ms. Higgins at that same address by certified mail.
8. Ms. Higgins has still not answered the charges.
9. Upon hearing the State's presentation and taking notice of its own file, the Board finds Ms. Higgins to be in Default. The allegations contained in the State's Specification of Charges are therefore treated as the facts on which the Board's Order is based. OPR Rule 3.4, 3 V.S.A. § 809(d) and 3 V.S.A. § 814(c).

Conclusions of Law

Ms. Higgins has received adequate or constructive notice of the charges in this matter as indicated by the Board's file and the State's presentation. Because Ms. Higgins has failed to answer the charges, the State's factual allegations are treated as if proved. O.P.R. Rule 3.4. Accordingly, the Board finds, in this Default Hearing held pursuant to 3 V.S.A. §809(d), that Ms. Higgins has engaged in the unprofessional conduct alleged in the State's Specification of Charges.

Order

In accordance with the above Findings of Fact and Conclusions of Law, Ms. Higgins's license is hereby **Suspended Indefinitely** effective as of the date of the hearing.

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.

To request a stay of the Board's decision, please refer to the attached stay instructions.

Vermont Board of Nursing

By:

Ellen Leff
Ellen Leff, R.N., Chair

Date: July 13, 2009

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 7/15/09

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

IN RE:

**KELLY LYNN HIGGINS
License No. 026.0042759-TEMP**

Docket No. NU24-0908/2008-344

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Kelly Lynn Higgins, RN:

Board Authority

1. The Vermont State Board of Nursing (the "Board") has authority to issue warnings or reprimands; suspend, revoke, limit, or condition current licenses; or prevent the renewal of lapsed licenses if, after disciplinary hearing, the Board finds that the Respondent has engaged in unprofessional conduct. 3 V.S.A. § 129(a); 3 V.S.A. § 129a; 3 V.S.A. § 814(d); 26 V.S.A. § 1582; the Administrative Rules of the Board of Nursing (the "ARBN"); and the Rules of the Office of Professional Regulation.

Statement of Facts

2. Kelly Lynn Higgins (the "Respondent") of The Woodlands, Texas held a temporary license as a Registered Nurse, issued by the State of Vermont under license number 026.0042759-TEMP. This license was originally issued on or about July 10, 2008 and expired on or about October 10, 2008.
3. At all times relevant, Respondent was employed as a traveling nurse through TNS, and was employed as a Registered Nurse at Central Vermont Home Health & Hospice (the "Facility"), located in Barre, Vermont.
4. On or about August 22, 2008 in a Mandatory Report of Unprofessional Conduct, Facility Director of Home Care S.B. reported that Respondent was terminated from the Facility after it received two (2) complaints from patients in one week regarding Respondent's competency. S.B. advised that as the Facility was investigating these complaints, it was inadvertently discovered that Respondent documented care on a chart that she had not actually provided.
5. Respondent began employment at the Facility on or about July 14, 2008 and was terminated on or about August 21, 2008.
6. A review of the Facility's "Concern Log" regarding Respondent, compiled by Clinical Supervisor B.B., reveals in part the following:

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- a. On or about July 17, 2008, Respondent was not wearing a watch as she listened to a patient's apical heart rate, and was therefore unable to actually time the rate. On a second visit to another patient on this date, which required the use of a compression wrap, Respondent struggled in working with the wrap and required demonstration and instruction by her supervisor.
- b. On or about July 21, 2008, Respondent failed to draw a PT/INR, as was ordered.
- c. On or about July 23, 2008 in a visit to Patient D.C., Respondent provided weak documentation that did not reflect that the visit was skilled or billable. When brought to Respondent's attention, she provided additional documentation to correct her initial entry.
- d. After Respondent visited Patient B.F. on or about July 28, 2008, B.F. complained that Respondent did not do the medication pour properly, in that Respondent put all of the medications in one compartment; B.F. caught this and readjusted the medications on her own.
- e. On or about August 13, 2008, Patient E.K. complained that during a telephone call between Respondent and E.K. regarding setting up a visit on that day, E.K. informed Respondent that she would like her toenails cut, to which Respondent asked whether foot care was hard to do, and Respondent stated that Respondent didn't know how to cut toenails. E.K. stated that she is uncomfortable with Respondent and requested that Respondent not visit her again.
- f. On or about August 20, 2008, a physical therapist complained that a Facility patient that the physical therapist also sees requested that Respondent not visit him again. The physical therapist stated the patient complained that Respondent appeared fidgety and anxious.
- g. On or about August 20, 2008, Clinical Supervisor B.B. called this patient to discuss the above-referenced complaint made on this date. The patient advised that he felt Respondent was very inexperienced and "wouldn't even let her stick him with a needle." The patient stated that Respondent did not do a full assessment – in that Respondent did not take vital signs or blood pressure, or inspect his wound – but that the patient was not upset about this because he just wanted the visit to be over. Thereafter, B.B. inspected Respondent's documentation of the visit with this patient and found that Respondent had documented, falsely, that she had done vital signs; lung sounds; and wound inspection, which included documentation of the amount of wound drainage, staples, and what the incision looked like.

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Charges

7. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because the Respondent has committed unprofessional conduct in violation of:
- a. 26 V.S.A. § 1582(a)(3) (Is unable to practice nursing competently by reason of any cause) which includes performance of unsafe or unacceptable patient care pursuant to ARBN Chapter 4, Subchapter 4, Rule II(B)(1); and failure to conform to the essential standards of acceptable and prevailing practice pursuant to ARBN Chapter 4, Subchapter 4, Rule II(B)(2);
 - b. 26 V.S.A. § 1582(a)(7) (Engages in conduct of a character likely to deceive, defraud, or harm the public) which includes performing duties and assuming responsibilities within the scope of the definitions of nursing practice, 26 V.S.A. § 1572(2) and (3), when competence has not been achieved or maintained, pursuant to ARBN Chapter 4, Subchapter 4, Rule II(D)(2); and falsifying or altering clinical records or making inaccurate or misleading entries pursuant to ARBN Chapter 4, Subchapter 4, Rule II(D)(3);
 - c. 3 V.S.A. § 129a(a)(7) (Willfully making or filing false reports or records in the practice of the profession; willfully impeding or obstructing the proper making or filing of reports or records or willfully failing to file the proper reports or records);
 - d. 3 V.S.A. § 129a(b)(1) and (2) (Failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct, whether actual injury to a client, patient, or customer has occurred. Failure to practice competently includes: (1) performance of unsafe or unacceptable patient or client care; or (2) failure to conform to the essential standards of acceptable and prevailing practice); and
 - e. 3 V.S.A. § 129a(a)(3) (Failing to comply with provisions of federal or state statutes or rules governing the practice of the profession).

Relief Requested

WHEREFORE, the license of Kelly Lynn Higgins should be revoked, suspended, reprimanded, conditioned, or otherwise disciplined.

DATED at Montpelier, Vermont this 23rd day of April, 2009.

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SECRETARY OF STATE

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By:

Edward G. Adrian
State Prosecuting Attorney

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