

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

In re: TANYA I HUNTLEY	}	
License No. 025.0133700	}	Docket Nos. 2020-3
	}	

Appearances:

Prosecutor: Elizabeth St. James, Esq.
Respondent: Appeared *pro se* by telephone

Hearing Officer: George K. Belcher

DEFAULT ORDER

Findings of Fact

1. The Respondent is licensed in Vermont as an LPN.
2. The Hearing Officer held a hearing in the above matter on June 17, 2020 pursuant to 3 VSA Sec. 129(f). The hearing was held electronically pursuant to the Notice of Hearing dated May 4, 2020. The State requested a Default because the Respondent had not responded to the charges in this case. A notice of the hearing on the default was sent to the Respondent on May 4, 2020 by regular mail and by email.
3. Specification of Charges were filed in this case on January 10, 2020. The charges were sent to the Respondent at the address which is on file with the Office of Professional Regulation on January 15, 202 by certified mail and by regular mail. The Certified mail notice was returned "unclaimed" and the ordinary mail notice was not returned to the Office of Professional Regulation.
4. On or about May 12, 2020 the Respondent communicated with the OPR Office by email and stated in part, "I am in the process of retaining council (sic). I do not default. Please bear with me during this COVID-19 pandemic. The Corona virus has made it very difficult to retain counsel."
5. An order was made on May 14, 2020 extending the time for the Respondent to file an answer until June 10, 2020 and stated that if no answer were filed the default hearing would go forward.
6. No answer has been filed.
7. Under the Administrative Rules of the Officer of Professional Regulation, Rule 3.4, a default may be entered when an answer is not filed within the required time period.
8. The Respondent, during the default hearing, stated that she was confused and that she did not understand what was going on or what was being asked of her. She offered no persuasive meritorious defense to the Specification of Charges.
9. Respondent has not filed an answer to the charges, nor any communication concerning good cause for failure to answer.
10. Upon consideration of the Prosecution's presentation and taking notice of the OPR file, the Hearing Officer of the Board finds Respondent to be in Default. The

allegations contained in the Specification of Charges are therefore treated as the facts on which the Board may issue an order of professional discipline. OPR Rule 3.4, 3 V.S.A. § 809(d), and 3 V.S.A. § 814(c).

11. It is specifically found that in 2017 the Respondent was terminated from employment in Oklahoma where she was working as a charge nurse for inappropriate sexual behavior with a patient. She later voluntarily surrendered her Oklahoma LPN License. During the investigation of that matter, the Respondent displayed impaired behavior to the Nurse Investigator in Oklahoma.
12. It was the recommendation of the State of Vermont that the Respondent's license be indefinitely suspended with conditions imposed upon any reinstatement request and, if the Board later determines that the Respondent's license should be reinstated, then conditions should be imposed. Those recommended conditions follow in the proposed order below.

Conclusions of Law

Respondent has received adequate or constructive notice of the charges in this matter as indicated by the Board's file and the Prosecution's presentation. Because Respondent has failed to answer the charges, the factual allegations in the Specification of Charges are treated as if proved. O.P.R. Rule 3.4. Accordingly, the Board may find, based up the finding of Default from this Default Hearing held pursuant to 3 V.S.A. §809(d), that Respondent has engaged in the unprofessional conduct alleged in the Specification of Charges. The Board may discipline any licensee if the licensee is disciplined in another jurisdiction for behavior which would constitute unprofessional conduct in this jurisdiction. 3 VSA Sec. 129(a)(5). The Respondent committed unprofessional conduct by violating: 26 VSA Sec. 1582(a)(12) (Sexual exploitation of a patient); 3 VSA Sec. 129a(b)(2) [Failure to practice competently by performing unsafe or unacceptable patient care] 3 VSA Sec. 129a(b)(2) [Failure to conform to the essential standards of acceptable and prevailing practice] and 3 VSA Sec. 129a(a)(15) [Failure to exercise independent judgment in the performance of licensed activities].

Proposed Order

In accordance with the above Findings of Fact and Conclusions of Law, and consistent with the recommendation by the State, the Board does **ORDER** that the Respondent's license be **Indefinitely Suspended**.

In the event that the Respondent seeks to regain her license, she must petition for reinstatement. At least forty-five (45) days prior to requesting reinstatement, Respondent must, at her own cost:

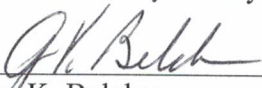
- (a) Obtain an independent evaluation report by a pre-approved licensed professional specializing in drug and alcohol abuse ("Independent Evaluator") who has verified receipt of the Default Order. The results of the Independent Evaluation must indicate that Respondent does not present a risk to the safety, health or welfare of Respondent's potential patients, as well as any recommendations that would ensure Respondent is safe to practice. The evaluation must be submitted to the Enforcement Unit Case Manager;

- (i) When Respondent is ready to petition for reinstatement, Respondent shall contact the Enforcement Unit Case Manager at the Office of Professional Regulation to set-up the urine analysis process and receive instructions. Once registered with the pre-approved person or entity, Respondent will have 45 days to submit to a minimum of three (3) random urine analyses. The process by which Respondent learns whether the Respondent is selected to provide a sample on any given day will be governed by the policy of the pre-approved person or entity conducting the testing at that time;
- (ii) The urine analyses must be collected in an observed setting, administered by a pre-approved lab qualified to analyze samples for forensic purposes, the results of which shall be negative;
- (iii) 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 positive;
- (c) If recommended by an Independent Evaluator, enter into a treating professional agreement and substance abuse treatment plan with a pre-approved treating professional(s) and follow all recommendations.

If reinstated, Respondent's license **SHALL BE CONDITIONED** pursuant to whatever terms are reasonable at the time of Respondent's reinstatement request, taking into account the independent evaluation, urine analysis results, the facts contained in the Default Order, and any other relevant factors at that time.

The Hearing Officer reports the above findings of facts, conclusions of law, and the proposed order to the Board or Director with the recommendation that the Board or Director approve them and enter the Order as above.

Dated this ^{19th} day of June, 2020.

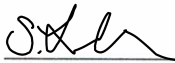

George K. Belcher
Hearing Officer of the Vermont Board of Nursing

The Vermont Board of Nursing, or the Director of the Office of Professional Regulation, considered the report of findings of fact and conclusions of law on _____. After considering the report, the Hearing Authority takes the following action:

- / / Rejects the report and schedules the matter for hearing.
- / / Schedules the matter for additional evidence.
- / ☒ / Accepts the report, adopts the findings of fact and conclusions of law, and orders the recommended discipline as set forth in the proposed order above.

SO ORDERED.

Vermont Board of Nursing or Director of the Office of Professional Regulation

By: 

Date: June 23, 2020

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 6/24/2020

There being a declared state of emergency, the Director of Professional Regulation finds that the Board cannot reasonably, safely, and expeditiously convene a quorum to transact business. By her signature, the Director enters the above Order on behalf of the Board.
• Act 91 (2020), Sec. 20(a) (eff. March 30, 2020)

APPEAL RIGHTS

This is a final administrative determination by the Vermont Board of Nursing or Director of the Office of Professional Regulation. A party aggrieved by a final decision of a board or hearing authority 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 Street, 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.

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IN RE:)
Tonya I. Huntley) Docket No. 2020-3
License No. 025.0133700)

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following charges against Respondent Tonya I. Huntley:

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. Chapter 28; the Administrative Rules of the Board of Nursing (the "ARBN"); and the Rules of the Office of Professional Regulation ("OPR").

Statement of Facts

2. Tonya I. Huntley ("Respondent") of Enid, Oklahoma is licensed by the State of Vermont as a Licensed Practical Nurse ("LPN") under license number 026.0099783. This license was originally issued on September 29, 2017 and expires on January 31, 2020.
3. During the relevant period, Respondent was licensed as an LPN in the State of Oklahoma.
4. In 2017, Respondent worked for Garland Road Nursing and Rehabilitation Center in Enid, Oklahoma (the "Facility").
5. While on shift at the Facility and working as a charge nurse, Respondent exhibited inappropriate behavior with a 45-year-old male resident ("Patient 1") by groping Patient 1's chest and taking photographs of Patient 1 with her personal cell phone without Patient 1's permission.
6. When Patient 1 asked Respondent to leave his room, Respondent refused to leave stating, "I want to see you naked."
7. Facility 1 terminated Respondent's employment on April 25, 2017 as a result of the incident.

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8. While the above-referenced incident was under investigation by the Oklahoma Board of Nursing ("Oklahoma BON"), Respondent attended an Investigative Conference with the Nurse Investigator of the Oklahoma BON in August 2017.
9. At the Investigative Conference with the Nurse Investigator, Respondent displayed impaired behavior, evidenced by slurred speech, disheveled appearance, inability to focus, and non-responsiveness.
10. During the course of the Oklahoma BON investigation of Respondent's conduct at Facility 1, Respondent voluntarily surrendered her Oklahoma LPN license.
11. Pursuant to 3 V.S.A. §129(a)(5), the Board may discipline any licensee or refuse to license any person who has had a license application denied or license revoked, suspended, limited, conditioned or otherwise disciplined by a licensing agency in another jurisdiction for conduct which would constitute unprofessional conduct in this state, or has surrendered a license while under investigation for unprofessional conduct.

Violation One: 3 V.S.A. §129a(b)(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 care.

12. The State re-alleges and incorporates Paragraphs 4 through 10 above.
13. As an LPN, Respondent is required to perform safe and acceptable patient care.
14. Paragraphs 4 through 10 above demonstrate that Respondent failed to perform safe and acceptable patient care in her interactions with Patient 1.
15. 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 3 V.S.A. §129a(b)(1).

Violation Two: Sexually harassing or exploiting a patient, client, or consumer, or doing so to a coworker in a manner that threatens the health, safety, or welfare of patients, clients or consumers; failing to maintain professional boundaries; or violating a patient, client, or consumer's reasonable expectation of privacy.

16. The State re-alleges and incorporates Paragraphs 4 through 10 above.
17. As an LPN, Respondent must refrain from sexually harassing or exploiting patients, must maintain professional boundaries, and must not violate a patient's reasonable expectation of privacy.

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18. Paragraphs 4 through 10 above demonstrate that Respondent sexually harassed Patient 1 in a manner that threatened the health, safety and welfare of the patient; failed to maintain professional boundaries with Patient 1; and violated Patient 1's reasonable expectation of privacy.
19. 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 3 V.S.A. §129a(a)(26).

Violation Three: 3 V.S.A. §129a(b)(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: (2) failure to conform to the essential standards of acceptable and prevailing practice.

20. The State re-alleges and incorporates Paragraphs 4 through 10 above.
21. The essential standards of acceptable and prevailing practice require that an LPN treat patients with respect and dignity.
22. Paragraphs 4 through 10 above demonstrate that Respondent failed to conform to the essential standards of acceptable and prevailing practice in her interactions with Patient 1.
23. 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 3 V.S.A. §129a(b)(2).

Violation Four: 3 V.S.A. §129a(a)(15) Failing to exercise independent professional judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession.

24. The State re-alleges and incorporates Paragraphs 4 through 10 above.
25. As an LPN, Respondent is required to exercise her own independent professional judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession.
26. Paragraphs 4 through 10 demonstrate that Respondent failed to exercise independent professional judgment in her interactions with Patient 1.
27. Paragraphs 4 through 10 demonstrate that Respondent failed to exercise independent professional judgment when she attended an Investigative Conference for the Oklahoma BON in an impaired state.

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28. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent committed unprofessional conduct in violation of 3 V.S.A. §129a(a)(15).

Relief Requested

WHEREFORE, the license of Tonya I. Huntley should be revoked, suspended, reprimanded, conditioned, or otherwise disciplined.

DATED at Montpelier, Vermont this th10 day of January, 2020.

STATE OF VERMONT
SECRETARY OF STATE

By: _____

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