

**STATE OF VERMONT
BOARD OF NURSING**

In re: Robert Wendell Hutton
License No. 026-37972

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Docket No. 2009-544 (RN)

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 August 9, 2010 at the National Life Building in Montpelier, Vermont. Mr. Hutton did not attend and was not represented by counsel.

Findings of Fact

1. Mr. Hutton is licensed 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 June 9, 2010 Mr. Hutton was sent a Notice of Charges in this matter by certified mail to his 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 deliverable as addressed; unable to forward."
6. Mr. Hutton has not filed an answer to the charges.
7. On July 23, 2010 notice of the Default Hearing scheduled for this date was mailed to Mr. Hutton at that same address by certified mail. The file shows no return on this mailing.
8. Mr. Hutton has still not answered the charges.
9. Upon hearing the State's presentation and taking notice of its own file, the Board finds Mr. Hutton 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

Mr. Hutton 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 Mr. Hutton 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 Mr. Hutton 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, Mr. Hutton's license is hereby **Suspended Indefinitely** effective as of the date of the hearing. Should Mr. Hutton apply for reinstatement, the Board at that time will determine whether any conditions can permit her to resume 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, 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: August 9, 2010

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 8/10/10

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

IN RE:

ROBERT WENDELL HUTTON
License No. 026.0037972

Docket No. 2009-544

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Robert Wendell Hutton, 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. Robert Wendell Hutton (the "Respondent") of Centerville, Utah was licensed by the State of Vermont as a Registered Nurse under license number 026.0037972. This license was originally issued on or about June 15, 2007 and expired on or about April 14, 2010. Respondent was also licensed by the State of Idaho as a Registered Nurse under license number RN 37439.
3. On or about November 10, 2009, the Board received a NURSYS Speed Memo indicating that Respondent was denied renewal in Idaho and thereafter had his Idaho license revoked after the Idaho Board of Nursing learned that Respondent had been convicted in the State of Utah of Obtaining a Prescription Under False Pretenses.
4. Thereafter, court documents obtained reveal that on or about February 7, 2008, Respondent pleaded guilty to Obtaining a Prescription Under False Pretenses (a felony) in Davis County, Utah District Court, after he went to an emergency room and knowingly and intentionally attempted to procure a controlled substance by misrepresentation or failure to disclose to a doctor that he had already received a controlled substance from another doctor.
5. On or about January 1, 2010 in a response to this complaint by Respondent's wife, J.H., who has power of attorney over Respondent's affairs, J.H. admitted that Respondent had a medical condition and was prescribed Ritalin; that Respondent

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became increasing dependent on this medication; and that Respondent found his need for this medication to be in excess of the amount that his doctor had prescribed, so Respondent sought out other prescribing sources. Respondent stated he is currently in treatment, and in order to have his Idaho nursing license reinstated, he will be closely monitored by the Idaho Recovering Nurse's Program.

6. In Respondent's most recent renewal, he submitted to the Board a bad check for his renewal fee, in violation of 26 V.S.A. § 1582(a)(1) and 3 V.S.A. § 129a(a)(1).

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)(1) (Has made or caused to be made a false, fraudulent, or forged statement or representation in procuring or attempting to procure registration or renew a license to practice nursing);
 - b. 26 V.S.A. § 1582(a)(2) (Whether or not committed in this state, has been convicted of a crime related to the practice of nursing or a felony which evinces an unfitness to practice nursing);
 - c. 26 V.S.A. § 1582(a)(3) (Is unable to practice nursing competently by reason of any cause);
 - d. ARBN Chapter 4, Subchapter 4, Rule II(B)(2) ("Inability to practice nursing competently" includes failure to conform to the essential standards of acceptable and prevailing nursing practice);
 - e. ARBN Chapter 4, Subchapter 4, Rule II(C) ("Any cause" includes, but is not limited to, reasons of physical or mental disability or use of drugs, narcotics, chemicals, or any other type of materials);
 - f. 26 V.S.A. § 1582(a)(5) (Is habitually intemperate or is addicted to the use of habit-forming substances);
 - g. 26 V.S.A. § 1582(a)(7) (Engages in conduct of a character likely to deceive, defraud, or harm the public) which includes aiding, abetting or assisting any person in any act in violation of this chapter or acts against the best interest of the public pursuant to ARBN Chapter 4, Subchapter 4, Rule II(D)(10);
 - h. 3 V.S.A. § 129a(a)(1) (Fraudulent or deceptive procurement or use of a license);

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- i. 3 V.S.A. § 129a(a)(10) (Conviction of a crime related to the practice of the profession or conviction of a felony, whether or not related to the practice of the profession);
- j. 3 V.S.A. § 129a(a)(11) (Failing to report to the office a conviction of any felony or any offense related to the practice of the profession in a Vermont district court, a Vermont superior court, a federal court, or a court outside Vermont within 30 days); and
- k. 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 Robert Wendell Hutton should be revoked, suspended, reprimanded, conditioned, or otherwise disciplined.

DATED at Montpelier, Vermont this 2nd day of June, 2010.

STATE OF VERMONT
SECRETARY OF STATE

By: _____

Betsy Ann Wrask
State Prosecuting Attorney

nu.hutton.soc

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