

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

In re: Melissa A. Kempton
License No. 026.0076136

}
} Docket No. M2018-99
}

DECISION CONCERNING REQUEST TO MODIFY CONDITIONS OF PRIOR ORDER

Participating Board Members:

Jennifer Laurent, APRN, Acting Chair
Deborah Swartz, RN
William G. White, Jr., Public Member
Kelly Sinclair, LNA
Jill Duell, LPN
Virginia Hudson, RN

Appearances:

Prosecuting the case: Jennifer B. Colin, Esq.
Respondent: appeared *pro se*

Presiding Officer:

George K. Belcher

Exhibits:

Petitioner's Exhibits Admitted:
B, C, D, E, G, H, I, J, K
State's Exhibit Admitted
#1

**Petition to Amend Conditions of Prior Order
FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

This matter came before the Board of Nursing on Petitioner's Request to amend conditions in a prior order of the Board. The hearing was held on August 13, 2018 at the Office of Professional Regulation in Montpelier, Vermont. Respondent appeared *pro se*.

Findings of Fact

Based on the evidence the Board finds as follows:

1. Respondent is a Registered Nurse, licensed in Vermont under a conditional license. Her license is currently set to expire on or about March 31, 2019. She is therefore subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, 26 V.S.A. Chapter 28, the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation.
2. The Respondent's license was conditioned for three years by stipulated order of the Board dated April 11, 2017. The admitted facts in the stipulated order involved diversion of drugs for unauthorized use and making false nursing reports. (See paragraphs 8-10 of the April 11, 2017 order.)
3. Paragraph #10 of that order stated, "Respondent shall practice as a nurse only in a setting where Respondent has direct supervision for the entire shift by a licensed registered nurse that is in good standing with the Board." (emphasis added)
4. The Petitioner filed a request to amend the April 11, 2017 order on or about December 20, 2017. The requested amendment was sought in order to facilitate the Petitioner's search for work as a Registered Nurse. Accordingly, the Board, by a second stipulated order, amended condition #10 to read, "Respondent shall practice as a nurse only in a setting where Respondent has on-site supervision for the entire shift by a licensed registered nurse that is in good standing with the Board." (emphasis added)
5. The Petitioner now seeks to have Condition #10 amended again to allow her to practice nursing if she has on-site supervision by a Registered Nurse or a Licensed Medical Doctor. She seeks this amendment in order that she might be hired for a particular job as a part-time registered nurse for Central Vermont Medical Center, contracted to work as part of a Medication Assisted Therapy (MAT) Team through Treatment Associates in Montpelier.
6. In essence, if she were to secure this job she would be hired by Central Vermont Medical Center and supervised partially by the Treatment Associates MAT team and partially by the LCSW supervisor at Central Vermont Medical Center. While it is likely that the Petitioner would only be working at the MAT Team office setting while medical doctors are on-site, there is no guaranty that she might not be working on-site without a registered nurse or medical doctor in attendance. The MAT Team physicians are not Central Vermont Medical Center employees, so it is uncertain whether they would, or would not, agree to comply with a requirement that she only work with on-site supervisors who are medical doctors.
7. Also, the testimony of Evan Smith (the overseer of the relationship between Central Vermont Medical Center and Treatment Associates established that, if she were hired, the Petitioner might be assigned temporarily, or permanently, to another job posting, other than the MAT Team office in Montpelier. This, again, raises the possibility that the work assignment might not allow for compliance with the conditions on her license.
8. If hired, one of the functions of the MAT Registered Nurse is to supervise medication "call-backs" where patients who are prescribed medications are required to bring in their prescribed medications for inventory and verification. (See State Exhibit 1, paragraph H.)
9. The State objected to the amendment of conditions. (See State Response to Respondent's Petition to Modify Conditions.) Among other arguments, the State argued that

- supervision by a medical doctor is not the same as supervision by a registered nurse; the scope of practice and standards of practice for a medical doctor are different from those of a registered nurse. Additionally, the State argued that the two prior stipulations contained clear conditions which were accepted by the Petitioner. The State argues that constant revision of conditions depending upon various job possibilities would not promote finality or consistency of orders by the Board. Finally, the State argued that the original conditions were established (by the Petitioner's own stipulation) to protect the public. The State argued that the proposed amendment lessens that protection.
10. The Board is concerned that the amendment sought by the Petitioner would possibly place her in an unsupervised setting (since it was unclear whether her hiring employer could guaranty constant on-site supervision). Likewise, there was no firm assurance by the hiring employer that she might not be "floated" to another agency or MAT team without knowledge of, or agreement to, the supervision condition.
 11. The Petitioner testified that the job would not put her in contact with any narcotics, but the testimony about her role in prescription "call backs" and pill counts, contradicted her testimony.

Conclusions of Law

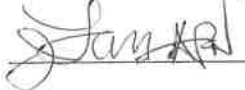
Based on the evidence presented and the facts found above, we conclude as follows:

1. The Vermont Board of Nursing has authority to condition the practice of a registered nurse following a finding of unprofessional conduct. 26 VSA Sec. 1582 A board may deny reinstatement of a license which has been limited or conditioned. 3 VSA Sec. 129(a)(5). The burden of proof is upon the licensee to show that she is entitled to modification of conditions contained in a final order and stipulation to which the Petitioner agreed.
2. The Respondent has failed to persuade the Board that she is entitled to modification of the condition or that the modification she has requested will adequately protect the public.

Order

Petitioner's Request for Modification of the Conditions set forth in the "Second Stipulation and Consent Order" is DENIED.

Vermont Board of Nursing

By: 
Jennifer Laurent, APRN, Acting Chair

Date: August 29, 2018

DATE OF ENTRY: 8-30-18

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 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.