STATE OF VERMONT
BOARD OF NURSING

In re: Scott Knudsen	}	Docket No. 2014-188 (RN)
License No. 026.0031787	}	

Decision on
UNPROFESSIONAL CONDUCT CHARGE

Participating Board Members:
Ellen Watson, APRN, Vice Chair
William G. White, Jr., Public Member
Douglas Sutton, RN
Sheila Davis, LPN
Virginia Hudson, RN
Luana Tredwell, LPN
Kelly Sinclair, LNA
John Welch, Jr., Public Member

Appearances:
Prosecuting the case: S. Lauren Hibbert
Respondent: pro se

Presiding Officer: George K. Belcher

Exhibits Admitted:
State Exhibits:
Ex. 1 C.V. of Dr. James L. Ferguson, Medical Director, FirstLab, Inc.
Ex. 2 First Chronological Test Report
Ex. 3 First Test History Report (summary)

Respondent Exhibits:
Ex. A Emails of 10/22/13 and sample collection receipt
Ex. B Emails of 12/30 and 12/31/13 and sample collection receipt
Ex. C Emails of 1/8/14 and sample collection receipt
Ex. D Email to Marie Regul and FirstLab, Inc. Summary of suspension
Ex. E Letter of Jean Liu, MD, dated 11/17/14
Ex. F Letter of Christopher Malone, RN, dated 3/19/14
Ex. G Letter of Chris Allen, MD dated 12/29/14
Ex. H Car repair receipt
Ex. I FirstLab History Report (summary) annotated by Respondent
Ex. Z Benjamin Welch, LICSW, LADC Clinical History (first page only)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Vermont Board of Nursing held a hearing in the above matter on March 9, 2015 in Montpelier, Vermont.

The prosecution has the burden of proof in this matter. To prevail on any unprofessional conduct charge, it must prove the charge by a preponderance of the evidence.

Findings of Fact

Based on the evidence presented, the Board finds as follows:

1. Scott Knudsen, (the "Respondent") is a licensed registered nurse and is therefore subject to the regulatory authority of this Board, pursuant to 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. His license was originally issued on or about September 9, 2005 and is currently set to expire on or about March 31, 2015. He was previously licensed as a Licensed Practical Nurse in August of 2000.
2. In December of 2011 the Vermont Nursing Board indefinitely suspended the license of the Respondent (Docket No. 2011-142) due to (1) Respondent being disciplined in New Hampshire on the basis of a positive drug screen for cocaine and (2) for deceptive conduct surrounding his March 31, 2011 license renewal application in Vermont.
3. On October 8, 2012 the Respondent agreed to a stipulated consent order whereby his license was reinstated on conditions for a minimum of two years from October 9, 2012. The conditions of that order, to which the Respondent agreed by written stipulation, included that he submit to random drug and alcohol screenings at the request of the Board or its designee and that all of the screens should be negative. The order further stated that "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 presumptively positive." The conditions stated further that, "Any positive screen shall act as a violation of this Order." (See Paragraph (3) of Order of October 8, 2012)
4. The conditions of that Order further stated that the Respondent "shall abstain completely from the consumption or possession of alcohol and drugs with the exception [of certain identified medications]" (See Paragraph (4) of Order of October 8, 2012; emphasis added)
5. The Respondent admitted in his answer or in his testimony that he tested positive for alcohol biomarkers in his urine screens on November 11, 2013, January 3, 2014, April 22, 2014, June 17, 2014, July 8, 2014, July 16, 2014, and August 29, 2014. These positive test results were also proven by the reports of the testing agency which tested the urine of the Respondent. (See State Exs. 2 and 3)
6. Dr. James L. Ferguson, DO, FASAM, is the medical director of FirstLab, Inc. which is the testing agency for the Respondent's urine testing program. It was the opinion of Dr. Furguson, and the Board so finds, that the test results for the Respondent show a

significant and consistent alcohol ingestion by mouth.

7. In a substance abuse evaluation on February 17, 2012 by Benjamin Welch, LICSW, LADC, the Respondent indicated to the evaluator that he "endorsed having two glasses of wine in the evenings" and that "he drinks as a way to unwind at the end of the day." (See Respondent Exhibit Z)

8. At the hearing, the Respondent indicated that, despite the conditions and order of the Board, he drank alcohol during the conditional period as a way to unwind at the end of the day on occasions.

9. On April 22, 2014, May 13, 2014, and May 28, 2014 the urine samples of the Respondent showed low levels of creatinine or showed dilution. Low levels of creatinine show that the Respondent was hydrating and possibly diluting his urine test which would possibly invalidate the test. The Respondent was, in fact, hydrating himself as a method of self-treatment for an umbilical hernia. By the terms of the conditions and the order a dilution is deemed to be a positive test result.

10. The testing program for random tests of the Respondent required that he call in to the testing facility to determine whether a test was required or not. If a test were required, then he would be asked to give a urine sample. On the following dates the Respondent was scheduled to take a urine test but did not do so: October 21, 2013, December 30, 2013, January 2, 2014, May 5, 2014, August 18, 2014. The Respondent explained his failure to test on these dates as follows: that he failed to test on October 21, 2013 for an unknown reason but that he tested the next day; that he had automobile issues on December 30, 2013 and that he tested the next day; that there was an ice storm on January 2, 2014 and that he tested the next day; and that he had an automobile breakdown on August 18, 2014 and was unable to test. (See Respondent Exs. A, B, C, H)

11. The scope or time period of validity of the alcohol screening tests is approximately 80 hours previous to the time of the test. A test conducted on "the next day" calls into question the validity of the test for his condition on the date upon which the random urine screen was to be done.

12. On the following dates the Respondent did not call in to see if he was scheduled for a test: December 7, 2013, February 4, 2014, February 5, 2014, February 6, 2014, February 7, 2014, March 8, 2014, April 26, 2014, and August 2, 2014. The Respondent explained that between February 3, 2014 and February 7, 2014 the testing arrangement with the tester, FirstLab was "suspended" in error due to a billing mistake by the financial account manager at FirstLab. (See Respondent Ex. D) Thus, the failures to call during this period are not to be held to be his fault since his account was suspended in error. Likewise, the Respondent pointed out that the facility to which he was to call on certain dates was not open on Saturdays. The following dates were Saturdays and are not considered by the Board to be the Respondent's fault; December 7, 2013, March 8, 2014, April 26, 2014, and August 2, 2014.

13. Mr. Knudsen argued that the errors by the FirstLab in billing and their being unavailable, show a lack of capability by the lab. He argued that this should invalidate their test results and their data. The Board rejects this argument.

14. In view of the Respondent's admission that he was consuming alcohol in direct violation of the conditions of his license, and in view of the multiple positive test results for alcohol, it is the view of the Board that the lab results are valid and show a clear and intentional violation of the conditions by the Respondent. Likewise, the self-hydration of

the Respondent as a treatment for his medical condition was not persuasive since he offered no corroborating evidence that hydration was medically required or that there was no other method of relief for his condition. Since a diluted sample would be deemed to be a positive test, there were at least three added positive tests due to dilution or low creatinine levels. Likewise, the multiple missed tests are persuasive that the Respondent was not carefully following the conditions of the order.

15. There was no evidence that the Respondent's behavior jeopardized patient care or his professional performance.

Conclusions of Law

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

1. Re: Alleged Violation of 3 VSA Sec. 129a(a)(4): The Prosecution has proved by a preponderance of the evidence that Respondent failed to comply with an order of the Board and violated conditions of a license restricted by the Board. This is unprofessional conduct.
2. The other alleged grounds for discipline, 26 VSA Sec. 1582(a)(3) (Inability to practice competently); 26 VSA Sec. 1582(a)(7) (Engaging in conduct of a character likely to deceive, defraud or harm the public); 3 VSA Sec. 129a(a)(3) (Failing to comply with provisions of federal or state statutes or rules governing practice of the profession); and 3 VSA Sec. 129a(b)(2) (Failure to practice competently or to conform to essential standards of practice) have not been proven and are dismissed.

Order

For the violations above, to protect the public, health, safety and welfare, the following sanction is necessary.

Respondent's license is suspended on the effective the date of this decision and shall remain suspended until the Respondent successfully completes an evaluation by an addiction specialist approved by the Board. The evaluation must result in a recommendation for reinstatement and a recommendation that the Respondent is not impaired from safe practice of nursing. The evaluation must be performed within 120 days of the date of this order and be completed at the expense of the Respondent. Following the evaluation, if the license of the Respondent is successfully reinstated his reinstated license shall be conditioned for a minimum period of two years from the date of reinstatement upon the same conditions as set forth in the previous Board Order of October 8, 2012 (attached hereto) with the exception that the casemanager may require urine testing and/or blood testing at the election of the casemanager.

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, Office of Professional Regulation, 89 Main Street, Fl. 3, Montpelier, Vermont 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: _____ Date: March 19, 2015
Ellen Watson, APRN, Vice-Chair

DATE OF ENTRY 3/23/15