

**STATE OF VERMONT
BOARD OF NURSING**

In re: Audra Lamothe
License No. 026-29783

}
}
}

M2009-214
Docket No.(2008-392(RN))

**Decision on
Motion to Amend Supervision Conditions**

Participating Board Members:

Jeanine Carr, RN, Chair
Alan Weiss, Public Member
Donna Rae Metcalf, LNA
Sandra Norton, LNA
Deborah Swartz, RN
John Todd, APRN
Ellen Watson, APRN
Sheila Davis, LPN
Virginia Hudson, RN

Appearances:

for Petitioner, State of Vermont: Gabriel Gilman
for Respondent: Pro se

Presiding Officer: Larry S. Novins

**Findings of Fact, Conclusions of Law,
and Order**

The Vermont Board of Nursing held a hearing in the above matter on August 13, 2012 at the Capitol Plaza in Montpelier, Vermont.

Background

On July 14, 2009 this Board indefinitely suspended Ms. Lamothe's license to practice as a registered nurse. The suspension remained in effect until it was modified by a Stipulation and Consent Order dated January 10, 2010. At that time Ms. Lamothe's license was suspended for six months minimum, retroactive to July 20, 2009. Before Ms. Lamothe's license would be reinstated, she was to meet conditions set forth in the Order. Once reinstated Ms. Lamothe's license would be subject to several conditions. The license was reinstated on November 14, 2011. Ms. Lamothe's license has been subject to those conditions since that date.

On June 22, 2012 Ms. Lamothe requested a change to her conditions. She asked that while employed in New York State she be permitted to practice under one or more physicians for

whom she works so that they could fill out her monthly reports.

Ms. Lamothe also asked that while employed at a facility in St. Albans, Vermont she be permitted to work under the direct supervision of a physician there.

The Board, through its subcommittee preliminarily denied Ms. Lamothe's request. She timely filed a request for a hearing.

Findings of Fact

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

1. Ms. Lamothe is a 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. As noted above, Ms. Lamothe has asked that condition # 12 be modified to replace the requirement that she work under the direct supervision of a registered nurse with a condition that she be permitted to work under the supervision of a physician.
3. Ms. Lamothe was originally disciplined following DUI charges and her admitted substance abuse. See, previous Orders.
4. Ms. Lamothe has been offered employment with a pediatric practice in northwest, Vermont.
5. Her potential employers intend to have her answer and triage calls for the evening and weekend hours for the doctor on call. Ms. Lamothe's proposed supervision would be by the physicians in the practice who are in the office during the evening and weekend hours. When not physically present in the office, the doctors would be available by telephone. No narcotics are kept at the practice. There would be about 30 minutes each evening shift where Ms. Lamothe would be working doing triage with no one else in the facility.
6. Ms. Lamothe has not fully complied with other conditions she agreed to in the Stipulation and Consent Order. She does not yet have in place a substance abuse plan approved by the Board. She is not in counseling at this time. She has submitted no documentation indicating that the counseling is not needed. She has provided no monthly reports since her license was reinstated. Between March 3, 2012 and June 23, 2012 Ms. Lamothe's Vermont license was on "inactive" status. Ms. Lamothe testified that she did not realize that the conditions imposed in her Stipulation and Consent Order could encompass her employment in New York State. At this point Ms. Lamothe has not demonstrated even basic compliance with the conditions she agreed to.

Conclusions of Law

An Order may be modified when there has been a real unanticipated change of circumstances. Ms. Lamothe bears the burden to show that modification of the conditions she agreed to in her Stipulation and Consent Order is appropriate. We start our review of this case by reference to Vermont Rule of Civil Procedure 60(b) which governs post decision proceedings. It states

“(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. -- On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be filed within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of bills of review are abolished as means of reopening judgments entered under these rules, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.”

We see no justification for relief under 60(b)(1),(2),(3),(4) or (5). We can grant relief if we find under Rule 60(b)(6) that there is a good reason for relief from the judgment, or as in this case, from the Stipulation and Consent Order which Ms. Lamothe signed and to whose conditions she agreed. We note that at the time she signed her stipulation some employment positions might provide her opportunities to work under supervision and some might not.

Ms. Lamothe has chosen to seek employment where the supervision she agreed to will not be available. There is no change of circumstances beyond Ms. Lamothe's control. No unanticipated event prevents her from complying with her Stipulated conditions. The facts set forth in the December 2009 Stipulation and Consent Order convince us that, at the very least, proof of basic compliance with the conditions Ms. Lamothe agreed to is necessary before any amendment to those conditions can be considered.

We conclude that Ms. Lamothe has not provided a sufficient reason to justify relief from the operation of the Stipulation and Consent Order.

Order

Based on the findings of fact and conclusions above, the Board **denies** Ms. Lamothe's request to modify the conditions of her Stipulation and Consent Order. The conditions previously imposed remain in effect.

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, National Life Bldg., North, FL2, 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:

Jeanine Carr
Jeanine Carr, RN, Chair

Date August 15, 2012

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 8/20/12



State of Vermont
Office of the Secretary of State

Office of Professional Regulation
Board of Nursing
1 National Life Drive
Montpelier, VT 05620-3402

[phone] 802-828-2396
[fax] 802-828-2484
www.sec.state.vt.us

James C. Condos, Secretary of State
Brian H. Leven, Deputy Secretary

Christopher Winters, Director

RECEIVED

Vermont Board of Nursing

In re: Audra Marie Lamothe
License Number: 026-0029783

Vermont Secretary of State
Office of Professional Regulation

Docket Number: M2009-214 (NU2008-392)

Reinstatement Order with Conditions

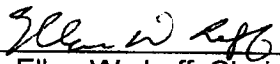
On November 14, 2011 the Vermont Board of Nursing considered Audra Marie Lamothe's request for Reinstatement of her license. The I-team recommended reinstatement. The State did not object to the reinstatement.

The Board finds that Audra Marie Lamothe has taken the necessary steps to allow her to safely return to practice

The Board votes to reinstate Audra Marie Lamothe's license to practice as a Registered Nurse, with the conditions imposed in the Board's Order of January 13, 2010.

So Ordered.

Vermont Board of Nursing


Ellen W. Leff, Chair

Date: 11-14-11

Date of Entry:

11/14/11

 VERMONT

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

IN RE:

AUDRA MARIE LAMOTHE
License No. 026.0029783

Docket No. M2009-214

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COME the State of Vermont, by and through State Prosecuting Attorney BetsyAnn Wrask, and the Respondent, Audra Marie Lamothe, RN, who stipulate and agree as follows:

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. Audra Marie Lamothe (the "Respondent") of St. Albans, Vermont is licensed by the State of Vermont as a Registered Nurse under license number 026.0029783. This license was originally issued on or about July 9, 2004 and is currently set to expire on or about March 31, 2011.
3. Respondent has also been licensed by the State of Vermont as a Licensed Nursing Assistant under license number 075.0008954; this license was originally issued on or about December 12, 1997 and lapsed on or about January 31, 1999. Respondent has also been licensed by the State of Vermont as a Licensed Practical Nurse under license number 025.0007961; this license was originally issued on or about August 31, 2000 and lapsed on or about January 31, 2006.
4. At all times relevant, Respondent was employed as a Registered Nurse at Franklin County Home Health Agency (the "Facility"), located in St. Albans, Vermont.
5. On or about October 17, 2008 in a Statement of Complaint to the Office of Professional Regulation, Facility Executive Director J.M. reported that on or about October 6, 2008, Respondent advised her manager at the Facility that Respondent had

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been cited for driving under the influence of alcohol. Moreover, J.M. reported that on or about October 9, 2008, Respondent notified the Facility of Respondent's intention to seek treatment in a residential setting.

6. On or about October 22, 2008 in a letter to the Board, Respondent revealed that on or about October 3, 2008, she had been charged with a DUI, and that on or about October 9, 2008, Respondent admitted herself into Valley Vista, an inpatient rehab facility for treatment of alcohol abuse. Respondent advised that after her stay in Valley Vista was complete, she planned to attend Alcoholics Anonymous and see a psychiatrist.
7. A review of police affidavits pertaining to Respondent's arrest reveals that on or about October 3, 2008 after Vermont State Police received reports about Respondent's erratic driving, Respondent was pulled over in Swanton, Vermont. Respondent had driven approximately 103 miles with her ten-year-old daughter (who has Downs' Syndrome) in the vehicle. Respondent's breath test revealed that Respondent was over the legal limit for alcohol. Respondent admitted to police that she had taken the medications Zoloft and Ativan. The Ativan was not prescribed to Respondent, but to her daughter. Respondent told the arresting officer that she had taken her daughter's Ativan to show her daughter that it was okay to take it.
8. A review of court documents stemming from Respondent's arrest reveals that on or about October 16, 2008, Respondent was charged with DUI #2 (a misdemeanor) and Reckless Endangerment (a misdemeanor) in Franklin County District Court.
9. On or about July 20, 2009, the Board indefinitely suspended Respondent's license to practice as a registered nurse. Attachment A.

Charges

10. 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)(5) (Is habitually intemperate or is addicted to the use of habit-forming drugs);
 - b. 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 interests of the public, pursuant to ARBN Chapter 4, Rule IV(II)(D)(10); and
 - c. 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).

Understandings

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7. Respondent admits the facts above are true and that the conditions below are necessary to protect the public.
8. Respondent understands that the Nursing Board must review and accept the terms of the Consent Order. If the Board rejects any portion, the entire Stipulation and Consent Order shall be null and void.
9. Respondent specifically waives any claims that any disclosures made to the full Board during its review of this agreement have prejudiced her rights to a fair and impartial hearing in future hearings if this agreement is not accepted by the Board.
10. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
11. Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation and Consent Order.
12. Respondent voluntarily enters into this agreement after the opportunity to consult with legal counsel and is not being coerced by anyone into signing this Stipulation and Consent Order.
13. Respondent voluntarily waives her right to a contested hearing before the Board of Nursing and waives any right to appeal from this Stipulation and Consent Order.
14. Respondent agrees that the Order set forth below may be entered by the Board.

ORDER

Based on the Stipulation above, it is **ORDERED AND ADJUDGED** as follows:

- A. Respondent's license to practice as a registered nurse remains **INDEFINITELY SUSPENDED** for a **MINIMUM OF SIX (6) MONTHS** retroactive to the date of indefinite suspension, July 20, 2009. Before applying for reinstatement, Respondent must: 1) obtain an independent evaluation report by a licensed professional specializing in drug and alcohol abuse pre-approved by the Board; 2) the results of the report with the drug and alcohol abuse independent evaluator must indicate that the Respondent does not present a risk to the safety, health or welfare of her potential patients; 3) Respondent must submit to the Board the results of a minimum of three (3) random urine analyses, collected in an observed setting, administered by a person who has been pre-approved by the Board, and analyzed by a lab qualified to analyze samples for forensic purposes and pre-approved by the Board; and 4) the results of the random urine analyses shall be negative; 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. The Respondent's license shall not be reinstated until these prerequisites are met, regardless of whether more than six (6) months have passed since

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the suspension went into effect. Once reinstated, Respondent's license will be **CONDITIONED FOR A MINIMUM OF THREE (3) YEARS** commencing with the date of reinstatement. The conditions will be as follows:

(1) Re-issue of License.

Upon the commencement of these conditions, Respondent shall be issued a license labeled "conditioned."

(2) Length of Time of Conditions Imposed.

The conditions shall remain in place until Respondent has completed all conditions ordered. Respondent shall be subject to the conditions until Respondent completes a **minimum of three (3) years** of supervised registered nursing in which she works at least forty (40) hours every two (2) weeks as a registered nurse. Part time hours of less than forty (40) hours every two (2) weeks shall be credited on a prorated basis. Respondent shall be prohibited from working more than forty (40) hours per week.

(3) Completion of Substance Abuse Counseling and Treatment Plan.

Respondent shall enter into and continue substance abuse counseling with a treating professional pre-approved by the Board until the treating professional shall certify in writing to the Board that such counseling is no longer necessary. Respondent shall enter into and comply with the substance abuse treatment plan approved by the Board and the treating professional.

(4) Notification to Treating Professional.

Respondent shall provide a copy of this Stipulation and Consent Order to her treating professional and cause her treating professional to inform the Board, in writing and on professional letterhead, of receipt of the Stipulation and Consent Order and the treating professional's ability to comply with the conditions related to treatment and with all other terms of this Consent Order.

(5) Reports from Treating Professional.

Respondent shall authorize and cause her treating professional to submit to the Board evidence of satisfactory progress with the treatment plan during the effective period of this Consent Order. These reports shall be submitted in writing on forms issued by the Board. The first report is due commencing the month after the date of the commencement of the conditions and subsequent reports are due **monthly** thereafter.

Respondent shall authorize her treating professional to provide all information requested by the Nursing Board, either orally or in writing, at any time during the period this Consent Order is in effect.

(6) Participation in Recovery Group(s).

Respondent shall participate as recommended by her treating professional in substance abuse recovery group(s), and shall submit **quarterly** reports documenting such attendance on forms issued by the Board.

(7) Random Drug and Alcohol Testing.

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Respondent shall submit to random drug and alcohol screenings at the request of the Board or its designee. Respondent shall designate a person, who has been pre-approved by the Board or its designee, to administer random drug and alcohol screens. All testing shall be done on a random, unannounced basis and analyzed by a lab qualified to analyze samples for forensic purposes and approved by the Board. All urine specimens collected for tests shall be collected in an observed setting. All screens shall be negative.

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 presumed positive. Any positive screen shall act as a violation of this Order.

(8) Abstain from Drug and Alcohol Use.

Respondent shall abstain completely from the consumption or possession of alcohol and drugs with the exception of medications as outlined in paragraph A.(9) for the period of time described in A.(2).

(9) Drug Use Exception.

Respondent shall not take controlled substances unless necessary. Respondent may take scheduled/controlled medications lawfully prescribed for a bona fide illness or condition by a physician, dentist, or nurse practitioner whose identity shall be made known to the Board in writing by Respondent within forty-eight (48) hours of the establishment of the practitioner/patient relationship. Respondent shall ensure that the physician, dentist or nurse practitioner informs the Board, in writing and on appropriate letterhead, of knowledge of Respondent's substance abuse issue(s) within one (1) week of entering into the practitioner/patient relationship. Respondent shall inform the Board in writing of all scheduled/controlled medications prescribed, including the name of the prescribing practitioner, within forty-eight (48) hours of receiving the prescription.

The Board or its designee may request at any time that the practitioner document the continued necessity for the prescribed scheduled/controlled medications if the term exceeds fourteen (14) days. This includes medications to be administered as necessary. It is not anticipated that Respondent would be prescribed scheduled/controlled medication during the term of this Consent Order for a period greater than fourteen (14) days, but if so, then the conditions herein may be revoked by the Board.

Respondent shall keep a written record of all medications taken, including over the counter drugs, and produce such record upon the request of the Board or its designee.

(10) Notification to Employers/Nursing School.

Respondent shall provide a copy of this Stipulation and Consent Order to all employers in any current or future setting in which Respondent practices as a registered nurse and inform them of Respondent's conditional license status.

Within ten (10) days of the date of entry of this Consent Order or of any subsequent registered nursing employment, Respondent shall cause Respondent's immediate supervisor to write to the Board, on the employer's letterhead, acknowledging receipt of the Stipulation and Consent Order and the ability to comply with the conditions in the Consent Order.

In the event the Respondent is attending a nursing program which has a clinical portion that involves actual patient care, Respondent shall provide a copy of the Stipulation and Consent Order to the Program Director. Respondent shall cause the Program Director to

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write to the Board, on school letterhead, acknowledging receipt of the Stipulation and Consent Order and the ability of the program to comply with the conditions in the Consent Order during clinical experience.

(11) Reports from Employers/Program Director.

Within one (1) month of the date of entry of this Order or within one (1) month of the commencement of registered nursing employment and **monthly** thereafter, Respondent shall cause every nursing employer the Respondent has worked for during the month to submit to the Board an evaluation of Respondent's work performance and attendance during that month. This report shall be submitted in writing on forms issued by the Board. All employer reports shall indicate satisfactory performance and attendance.

In the event the Respondent is attending a nursing program, Respondent shall cause the Program Director to submit to the Board, on a monthly basis, a written evaluation of her performance and attendance. This report shall be submitted in writing on forms issued by the Board and accompanied by a cover letter on the school's letterhead. All Program Director reports shall indicate satisfactory performance and attendance.

(12) Practice Under Supervision.

Respondent shall practice as a registered 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.

(13) Administration of Medications.

Respondent is prohibited from administering any controlled substances. This condition may be removed only by the Respondent filing a petition with the Board after she has worked as a registered nurse for twelve (12) weeks for at least forty (40) hours every two weeks (or the part time equivalent) after the date of reinstatement.

In any such petition, the Respondent must demonstrate, to the satisfaction of the Nursing Board, that she can safely and competently administer such medications. In any such petition, the Respondent must include appropriate support from her treating professional and employer or nursing school administrator and a description of the documentation and inventory control procedures in place.

The removal of this prohibition shall not automatically result in the reinstatement of all medication privileges. The Board may gradually restore those privileges through whatever intermediary steps it determines are appropriate.

(14) Types of Employment Prohibited.

Respondent shall not work in a supervisory role. Respondent shall not work for a nurse registry, traveling nurse agency, float-pool, home health care agency, temporary nursing employment agency or as a private duty nurse or personal care provider during the effective period of this Consent Order.

(15) Interview with the Board or its Designee.

Respondent shall appear in person for interviews with the Board or its designee upon request.

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(16) Out-of-State Practice.

Before any out-of-state practice can be credited toward fulfillment of these terms and conditions, Respondent shall first obtain approval from the Board prior to Respondent practicing nursing outside the State of Vermont. If Respondent fails to receive such approval before practicing nursing outside the State of Vermont, none of the time spent practicing nursing out-of-state will be credited toward the fulfillment of the terms and conditions of this Consent Order. The Board will approve out-of-state nursing practice so long as the Respondent can still comply with the provisions of this Consent Order.

(17) Notification of Place of Employment/Personal Address/Telephone Number.

Within five (5) days of the date of entry of this Consent Order, Respondent shall notify the Board, in writing, of her current place of employment, personal address, and telephone number. Respondent shall further notify the Board, in writing, within forty-eight (48) hours of any change in employment, personal address, or telephone number.

(18) Notification to Other States.

In the event that the Respondent is licensed in nursing in any other state(s), she must inform the nursing licensing board of the state(s) in which the Respondent is licensed of the conditional status of her Vermont registered nursing license within thirty (30) days of the date of entry of this Order. If the Respondent fails to provide such notification, it will be considered a violation of this Order.

(19) License Renewal.

If the Respondent's license expires while this Order is still in effect, this Order does not automatically extend the license. In that situation, in order to continue to practice as a registered nurse, the Respondent must timely apply for renewal, pay the applicable fee and demonstrate that she has otherwise complied with the requirements for license renewal.

(20) Release of Information Forms.

The conditions of this Order require the Respondent to authorize drug and/or alcohol treatment providers to report information in verbal and/or written format and/or to discuss the Respondent and any and all treatment rendered to the Respondent for drugs and/or alcohol with the Board or its designee. The conditions of this Order must allow any and all information from the Respondent's treatment providers to also be provided to the Office of Professional Regulation investigators and that the information may be used for further prosecutions if so warranted or if the Office of Professional Regulation determines that said information violates the terms of this Order or any rules or laws governing the profession of nursing.

The Respondent is entitled to revoke this consent at any time. However, any revocation by the Respondent of such consent to disclosure during the term of this Order shall be considered a violation of this Order.

This consent expires when the conditions are removed from the Respondent's registered nursing license.

This Stipulation and Consent Order shall constitute a valid written consent pursuant to the requirements of 42 C.F.R. § 2.31.

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The Respondent understands that her treatment provider may require her to sign a separate and distinct consent meeting the requirements of 42 C.F.R. § 2.31.

(21) Costs.

The Respondent shall bear all costs of complying with this Consent Order.

(22) Violation of this Order.

If the Respondent violates the terms of this Order in any respect, the Board, after giving the Respondent notice and an opportunity to be heard, may rescind or modify this Order and impose additional appropriate disciplinary actions. If a complaint of unprofessional conduct is made against the Respondent during the term of this Order, this Order shall be automatically extended until the unprofessional conduct matter is concluded.

(23) Completion of Conditional License Period.

After the conditional license period, the Respondent may petition the Board to remove any and all conditions on her license. The Respondent must present proof that she has fully complied with the terms of this Order. The Respondent must also present proof of successful substance abuse rehabilitation and she must demonstrate, to the satisfaction of the Board, that she poses no danger to the public or the practice of registered nursing and that she can safely and competently perform the duties of a licensed registered nurse.

- B. Notwithstanding any provision above, the Respondent must continue to meet all Nursing Board requirements for maintaining a license, license renewal and license reinstatement.
- C. This Stipulation and Consent Order is a matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. §129(a).
- D. This Stipulation and Consent Order will remain part of Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

AGREED TO:

STATE OF VERMONT
SECRETARY OF STATE

Dated: 12-10-09

By: BetsyAnn Wrask
State Prosecuting Attorney

AUDRA MARIE LAMOTHE
RESPONDENT

Dated: 12/2/09

By: Audra Marie Lamothe
Audra Marie Lamothe

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
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APPROVED AND SO ORDERED:

Dated: 1-11-10

Date of Entry: 1/13/2010
nu.lamothe.stip

VERMONT BOARD OF NURSING

By: *[Signature]*
Chairperson

STATE OF VERMONT



Prosecuting Attorney
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STATE OF VERMONT
BOARD OF NURSING

In re: Audra Lamothe
License No.

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}
}

Docket No. NU37-1008
~~2009~~-392
2009

Decision on
UNPROFESSIONAL CONDUCT CHARGE

Participating Board Members:

Ellen W. Leff, RN, Chair
Jeanine Carr, RN, Vice Chair
Alan Weiss
Sandra Norton, LNA
Donarae Metcalf, LPN
Linda Rice, APRN
William G. White, Jr.
Deborah Robinson, RN
Margaret Luce

Appearances:

for Petitioner, State of Vermont: Betsy Ann Wrask
for Respondent: Was not present

Presiding Officer: Larry S. Novins

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER

The Vermont Board of Nursing held a hearing in the above matter on July 13, 2009 at the National Life Building 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.

Background

The prosecution alleges in its Specification of Charges that Ms. Lamothe was habitually intemperate, based on a DUI charge and conduct at her place of employment, in violation of Vermont statutes.

Findings of Fact

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

Page 1 of 3

Attachment A

1. Ms. Lamothe is licensed as a registered nurse by and subject to the disciplinary 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. Ms. Lamothe's answer does not contest the charges against her. Her answer states that a reckless endangerment charge which accompanied her DUI charge was dismissed. This implies that she was in fact convicted of DUI second offense, which we find today.
3. Ms. Lamothe reported that she completed a 42 day residential treatment program.
4. Ms. Lamothe was reported by the prosecutor to be in residential treatment again at the time of this hearing.
5. Based on Ms. Lamothe's continued difficulties with alcohol and prescription drugs, the Board finds that continued treatment is necessary.
6. The Board was informed at today's hearing that the parties had arrived at a Stipulation and Consent Order. It was not available for the hearing.

Conclusions of Law

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

1. **Re: Alleged Violation of 26 V.S.A. § 1582(a)(5):** The State has proved by a preponderance of the evidence that Ms. Lamothe is habitually intemperate or is addicted to the use of habit-forming drugs. This is unprofessional conduct. 3 V.S.A. § 129a(a)(3).
2. **Re: Alleged Violation of 26 V.S.A. § 1582(a)(7):** The State has not proved by a preponderance of the evidence that Respondent has engaged in conduct of a character likely to deceive, defraud, or harm the public. 3 V.S.A. § 129a(a)(3). This charge is dismissed.
3. **Re: Alleged Violation of 26 V.S.A. § 1582(a)(3):** The State has proved by a preponderance of the evidence that Ms. Lamothe is unable to practice nursing competently by reason of any cause. This is unprofessional conduct. 3 V.S.A. § 129a(a)(3).
4. **Re: Alleged Violation of 26 V.S.A. § 129a(a)(3):** 3 V.S.A. § 129a(a)(3) defines unprofessional conduct to include failing to comply with provisions of federal or state statutes or rules governing the practice of the profession. Any allegation of failure to comply with statutes or rules has been addressed above. This statute does not provide an independent grounds for discipline. There is no violation of this statute. This charge is dismissed.

Discussion

Ms. Lamothe requested that this matter be continued so that she could attend the hearing. Rather than post-pone a determination of the facts of this case which Ms. Lamothe did not contest, we elect to find unprofessional conduct and impose an *interim sanction*.

Order

For the violations above, to protect the public, health, safety and welfare, the following sanction is necessary. Ms. Lamothe's license is indefinitely suspended. This sanction will remain in effect until the parties submit and the Board approves any Stipulation and Consent Order. The docket clerk will set this matter for a Stipulation hearing at the Board's next meeting.

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, National Life Bldg., North, FL2, 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: *Ellen Leff*
Ellen Leff, RN, Chair

Date *July*
June 14, 2009

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 7/20/09