

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

In re: KEELEY R. LEBO	}	
License No. 025.0091705	}	Docket No. 2015-402 (LPN)
	}	

**Decision on
UNPROFESSIONAL CONDUCT CHARGE**

Participating Board Members:

Ellen Watson, APRN, Vice Chair
Kelly Sinclair, LNA
William White, Public Member
Douglas Sutton, RN
Jennifer Laurent, APRN
Virginia Hudson, RN

Appearances:

Prosecuting the case: Elizabeth A. Jarvis, Esq.
Respondent: appeared *pro se*

Presiding Officer: George K. Belcher

Exhibits:

State Exhibit 1: Email between Respondent and Investigator dated October 27-28, 2015
State Exhibit 2: Respondent's License Renewal Application, Dec. 30, 2013

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

The Vermont Board of Nursing held a hearing in the above matter on November 14, 2016 in Montpelier, Vermont. The Specification of Charges alleges that Respondent committed unprofessional conduct in violation of Vermont Statutes. The Respondent did not appear at the hearing when the hearing began. The case was called, evidence was taken, and the Board went into deliberative session. Upon reopening the hearing, the Respondent then appeared. She addressed the Board. When asked whether she wanted to give evidence (after being shown the exhibits which had been admitted) she indicated on the record that she did not want to give evidence.

Findings of Fact

Based on the evidence presented and the Answer which the Respondent filed to the Specification of Charges, the Board finds as follows:

1. Keeley R. Lebo, (the "Respondent") is a Licensed Practical Nurse and is therefore subject to the regulatory authority of this Board, pursuant to 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. Her Vermont license is active and is currently set to expire on or about January 31, 2018.
2. On September 26, 2015 at about 11:36 P.M. the Respondent was the passenger in a vehicle which was stopped for a traffic stop by the Northfield police Department. During the stop, Officer Kerry Tucker, who is an acquaintance of the Respondent, noticed that her eyes were dilated.
3. The Respondent was in possession of a buprenorphine pill which was in a plastic wrapper. The officer saw this pill. The Respondent told the Officer that she had a prescription for this medication. The Respondent had just gotten off of her evening shift as a nurse at Mayo Healthcare Nursing Home in Northfield, Vermont.
4. The Respondent told the officer that she was a heroin addict and had the buprenorphine prescribed by a physician at a clinic in Rutland, Vermont. She also stated that she had taken one of the buprenorphine tablets while at work.
5. On October 22, 2015 the Respondent was interviewed by Office of Professional Regulation Investigator Dennis Menard. During the interview, the Respondent denied having a buprenorphine pill during the traffic stop, but she did admit that she was addicted to pain killers. She stated to Investigator Menard that she had a prescription for buprenorphine but that she did not have the prescription available that day. She indicated to him that she would provide a copy of the prescription to him.
6. On October 27, 2015 Investigator Menard sent an email to the Respondent requesting a copy of the prescription. (State Exhibit 1)
7. On October 28, 2015 the Respondent answered that she would "get you that" because she was seeing her counselor in the morning and so she would get the prescription then. (State Exhibit 1) Mr. Menard never received the prescription or any further communication from the Respondent.
8. In her answer the Respondent stated that she is not in a drug program and was not in one at any time when she "filled out for my license."
9. In the Respondent's LPN Renewal Application received on December 30, 2013 she represented that: (1) she was not currently addicted to or in any way dependent upon alcohol or habit forming drugs; (2) she was not participating in a supervised program or professional assistance program which monitors her in order to assure that she is not engaging in the use of alcohol or controlled substances; (3) her use of substances or prescription medications does not limit her ability to practice her profession with reasonable skill and safety. (See State Ex. 2) The same representations were given by the Respondent in her most recent renewal application on January 14, 2016.

Conclusions of Law and Discussion

Based on the evidence presented, the Specification of Charges and Respondent's Answer, and the Facts found above we conclude as follows:

1. 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. 3 VSA Sec. 129a(c).
2. The State has presented convincing evidence that the Respondent admitted to both the Police Officer and the Investigator that she had a substance abuse addiction. She admitted to both that she had a prescription for buprenorphine and agreed to provide a copy of the prescription to the Investigator which she did not do. Under the facts presented, the Respondent's statements in her answer that she has never been in a program, are not credible. Her statements to the investigator that she did not have buprenorphine pill on the night of the traffic stop, but that she did have a prescription, are not credible.
3. The State has provided ample evidence that the Respondent has an addiction to controlled substances and has had that addiction during the time of her renewal applications. The State has also proven that the Respondent was under the influence of buprenorphine while working as a Licensed Practical Nurse.
4. Re: Alleged Violation of 3 VSA Sec. 129a(a)(7): The Prosecution has proven by a preponderance of the evidence that Respondent willfully made a false report in the practice of her profession by filing a false application statement. This is unprofessional conduct.
5. Re: Alleged Violation of 3 VSA Sec. 129a(a)(5): The Prosecution has proven by a preponderance of the evidence that the Respondent practiced her profession when medically or psychologically unfit to do so. This is unprofessional conduct.
6. Re: Alleged Violation of 26 VSA Sec. 1852(a)(1) and 3 VSA Sec. 129a(a)(1): The Prosecution has proven by a preponderance of the evidence that Respondent made or caused to be made a false representation in procuring registration or renewal of a license. This is unprofessional conduct.

Order

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

Respondent's license is hereby INDEFINITELY SUSPENDED. Her license shall remain suspended until such time as she applies for reinstatement and the Board decides, in its sole discretion, that she qualifies for reinstatement. Any application for reinstatement shall be accompanied by a report, prepared by an independent and suitable evaluator, pre-approved by the Vermont Board of Nursing. The evaluation shall address at a minimum: the violations set forth above; the Respondent's substance use, if any; and her capability to practice safely. The evaluation must be completed within 60 days of the application for reinstatement and shall be performed at the sole expense of the Respondent.

Vermont Board of Nursing

By:

EW
Ellen Watson, APRN, Vice-Chair

Date: November 18, 2016

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY

11/28/16

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.

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

In re: KEELEY R. LEBO	}	
License No. 025.0091705	}	Docket No. 2015-402 (LPN)
	}	

Appearances:

Prosecutor: Elizabeth Jarvis, Esq.

Respondent: Appeared *pro se*

Hearing Officer: George K. Belcher

DENIAL OF DEFAULT ORDER

The Hearing Officer of the Vermont Board of Nursing held a hearing pursuant to 3 VSA Sec. 129(f) in the above matter on May 31, 2016 at the Office of Professional Regulation in Montpelier, Vermont. Respondent did attend the hearing but was not represented by counsel.

Findings of Fact

1. Respondent is licensed as a Licensed Practical Nurse and is therefore subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, 26 V.S.A. Chapter 28, and the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation.
2. Charges were filed in this matter on February 26, 2016. On February 26, 2016 the Respondent was sent a Notice of Charges in this matter by certified mail and first class mail to the address of the Respondent which was on file with the Office of Professional Regulation. The specification of charges was received by the Respondent's mother on March 7, 2016.
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. As of the date of this hearing (May 31, 2016) no answer to the charges has been filed.
5. On April 19, 2016 a notice was sent to the Respondent advising her of the hearing before the Board to find her in default and advising her that, "If you wish to contest the charges you must contact the office immediately at (802) 828-2367 and show good cause for failing to answer the charges against you." This notice was mailed by certified mail and by regular mail. The certified mail receipt was returned showing delivery to the Respondent by receipt signature of the Respondent's mother which was received by the Office of OPR on April 27, 2016. The regular mail notice was not returned as of the date of the hearing.
6. Respondent has not filed an answer to the charges. The Respondent did contact State

prosecutor Elizabeth Jarvis prior to the hearing.

7. The Respondent appeared at the hearing and explained that, after receipt of the charges, the Respondent was in an automobile accident on March 20, 2016 from which she was hospitalized for three days. Because of the accident and her hospitalization, the Respondent had been unable to file an answer or was distracted from doing so. She further indicated that she had factual objections to the charges and wished to contest them.
8. It was the position of the State that the Respondent should be defaulted.
9. It is a general principle of default judgements that it is preferable to resolve disputes on the merits rather than on technicalities and that persons who have legitimate defenses should be able to present them liberally rather than closing the door to them on technical grounds.
10. Accordingly, the request for default should be denied and the matter should be scheduled for merits hearing. A discovery and hearing schedule should issue which requires that an answer be filed on or before June 11, 2016 and that the matter should be ready for hearing within three (3) months.

Proposed Order

The request for default is DENIED and the matter should be scheduled for merits hearing. A discovery and hearing schedule should issue which requires that an answer be filed on or before June 11, 2016 and that the matter should be ready for hearing within three (3) months.

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 St., 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.

The Hearing Officer reports the above findings of fact and proposed order to the Board with the recommendation that the Board approve them and enter the Order as above.

Dated this 2nd day of June, 2016.



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

ORDER OF THE BOARD

The Vermont Board of Nursing considered the report of findings of fact and conclusions of law at its meeting on June 13, 2016. After considering the report, the Board 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 action as set forth above.

SO ORDERED.

Vermont Board of Nursing

By: 
Jeanine Carr, RN, Chair
Vermont Board of Nursing

Date: 6/13, 2016

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 6/15/16

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

IN RE:

Keeley R. Lebo

License No. 025.0091705

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Docket No. 2015-402

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Keeley R. Lebo:

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); 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. Keeley R. Lebo (the "Respondent") of North Clarendon, Vermont, is licensed by the State of Vermont as a Licensed Practical Nurse under license number 025.0091705. This license was originally issued on or about December 5, 2012, and expires on or about January 31, 2018.
3. On or about September 26, 2015, at or about 11:36 p.m., the Respondent was a passenger in a vehicle that was involved in a traffic stop conducted by Northfield Police Department. During the stop, Officer Tucker noticed the Respondent's pupils were dilated.
4. The Respondent indicated she had just finished work at Mayo Healthcare, a nursing home in Northfield, Vermont, where she was employed as traveling nurse.
5. The Respondent was in possession of one buprenorphine pill, which she stated was prescribed by her doctor.
6. The Respondent indicated that she last took buprenorphine at or about 2:00 p.m. on or about September 26, 2015, and has been taking buprenorphine for approximately three years.

STATE OF VERMONT



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7. On or about October 27, 2015, during an interview with OPR Investigator Dennis Menard, the Respondent admitted that following a car accident in 2004 she became dependent on pain medication. In an effort to treat her dependency, the Respondent has been on buprenorphine for several years, as prescribed by her doctor.
8. The Respondent goes to a clinic in Rutland every day to get a 2mg dose of buprenorphine.
9. On her renewal application dated December 26, 2013, the Respondent answered "No" to the question, "Does your use of alcohol, substances, or prescription medications impair or limit your ability to practice this profession with reasonable skill and safety?"
10. On her renewal application dated December 26, 2013, the Respondent answered "No" to the question, "Are you currently addicted to or in any way dependent on alcohol or habit forming drugs?"
11. On her renewal application dated December 26, 2013, the Respondent answered "No" to the question, "Are you currently participating in a supervised program or professional assistance program which monitors you in order to assure that you are not engaging in the use of alcohol or controlled substances?"
12. On her most recent renewal application, received by the Board of Nursing on January 14, 2016, the Respondent answered "No" to the question, "Are you currently under investigation by a licensing authority in Vermont or any other state, federal authority, or other jurisdiction (U.S. or elsewhere)?"
13. On her most recent renewal application, received by the Board of Nursing on January 14, 2016, the Respondent answered "No" to the same questions reflected in paragraphs nine (9), ten, (10), and eleven (11) above.

Charges

14. 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. 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);
 - b. 3 V.S.A §129a(a)(1) (Fraudulent or deceptive procurement or use of a license);
 - c. 3 V.S.A. §129a(a)(5)(Practicing the profession when medically or psychologically unfit to do so);

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- d. 3 V.S.A §129a(a)(7) (Willfully making or filing false reports or records in the practice of the profession; willfully impeding or obstructing the proper making or filing of reports or records or willfully failing to file the proper reports or records);
- e. 26 V.S.A. §1582(a)(1) (Making or causing to be made a false, fraudulent, or forged statement or representation in procuring or attempting to procure registration or renew a license.

Relief Requested

WHEREFORE, the license of Keeley R. Lebo should be revoked, suspended, reprimanded, conditioned, or otherwise disciplined.

DATED at Montpelier, Vermont this 26th day of February, 2016.

STATE OF VERMONT
SECRETARY OF STATE

By: Elizabeth A. Jarvis
Elizabeth A. Jarvis
State Prosecuting Attorney

STATE OF VERMONT



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