

OFFICE OF PROFESSIONAL REGULATION
VERMONT STATE BOARD OF NURSING

IN RE: Michael Lemire)
Case File No. NU10-0701) DEFAULT ORDER
License No. 25-7274)

Introduction

The Board of Nursing held a default hearing in the above matter on January 13, 2003 at 81 River Street in Montpelier, Vermont. Board members Sandra Norton, De-Ann Welch, Sue Cota, Linda Rice, Alan Weiss, Larry Kingsbury and Laurey Tyo participated in the decision. Assistant Attorney General George Haegele appeared for the State. The Respondent Michael Lemire did attend.

Mr. Lemire appeared and did not offer any reason for failing to respond to the charges against him. He did discuss the matter with the Assistant Attorney General who recommended a conditioned license after consultation with the investigative team.

Findings of Fact

1. The Respondent was sent notice of the Charges against him by certified mail and first class mail on October 29, 2002 to his last known address.
2. The certified mail return receipt was returned to the Office of Professional Regulation (OPR) on November 25, 2002, marked "unclaimed." The first class mail of the charges was not returned.
3. Notice of the default hearing was mailed to that same address by certified and regular mail on December 18, 2002.
4. The Respondent has not answered the charges against him.
5. After taking notice of its own file, the Board found the Respondent to be in default. The allegations contained in the State's Specification of Charges dated October 22, 2002 (copy attached) are therefore treated as the facts on which the Board's order is based.

Conclusions of Law

The Respondent has received adequate notice of the charges against him as indicated by the Board's file. Because the Respondent has failed to answer the charges against him, the State's factual allegations are treated as if proved. Accordingly, the Board finds, in the default hearing held pursuant to 3 V.S.A. §809(d), that the Respondent has engaged in the unprofessional conduct alleged in the State's Specification of Charges.

Order

A. In accordance with the above findings of fact and conclusions of law, the license of the Respondent is hereby **CONDITIONED**, effective as of the date of entry of this order.

B. The Board **CONDITIONS** the Respondent's license to practice for **TWELVE (12) MONTHS**. The **CONDITIONS** on Respondent's licenses are as follows:

(1) Length of Time Conditions Imposed.

The conditions shall remain in place until Respondent has completed twelve (12) months of supervised nursing practice in which he works at least forty (40) hours every two (2) weeks in nursing [Part time hours of less than forty (40) hours every two (2) weeks shall be credited on a prorated basis].

(2) Re-issue of License.

Within five (5) days of the date of entry of this Order, Respondent shall submit his license to the Board of Nursing for a re-issued license labeled "conditioned".

(3) Out of State Practice/Residence.

Before any out-of-state practice or residence can be credited toward fulfillment of these terms and conditions, Respondent shall first notify the Board before beginning such practice. If Respondent fails to notify the Board before, none of the time spent in out-of-state practice will be credited toward the fulfillment of the terms and conditions of this Order.

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

Within five (5) days of the date of entry of this Order, Respondent shall notify the Board, in writing, of his current place of nursing employment (if he is employed as a nurse), personal address, and telephone number. Respondent shall further notify the Board, in writing, within forty-eight (48) hours of any change in nursing employment, personal address, or telephone number.

(5) Notification to Employers/Nursing School.

Respondent shall provide a copy of this Order to all employers in any current or future setting in which he practices as a nurse and inform them of his conditional license status. Within ten (10) days of the date of entry of this Order or of any such subsequent employment, Respondent shall cause his immediate supervisor to write to the Board, on the employer's letterhead, acknowledging receipt of the Order and the ability to comply with the conditions in the Order. In the event Respondent is attending a nursing program, Respondent shall provide a copy of the Order to the Program Director. Respondent shall cause the Program Director to write to the Board, on school letterhead, acknowledging receipt of the Order and ability of the program to comply with the conditions in the Order during clinical experience.

(6) Reports from Employers/Nursing School

Within one (1) month of the date of entry of this Order and every month thereafter, Respondent shall cause every employer for which he has been employed as a nurse during that month to submit to the Board an evaluation of Respondent's performance and attendance during that month. This report shall be submitted in writing on forms issued by the Board. In the event the Respondent attends nursing school, Respondent shall cause the Program Director to submit to the Board, on a monthly basis, a written evaluation of Respondent's performance and attendance. This report shall be submitted in writing on forms issued by the Board. Reports must indicate, to the satisfaction of the Board, that Respondent can safely and competently administer medications.

Respondent shall authorize his employer or his nursing school administrator to provide all information requested by the Nursing Board, or its designee, either orally or in writing, at any time during the period the Order is in effect.

(7) Practice Under Supervision.

Respondent shall practice only in a setting where he has on-site supervision for the entire shift by a registered nurse in good standing with the Vermont Board of Nursing, or is in good standing in all states that nurse is licensed.

(8) Prohibited Duties.

Respondent shall not work as a Charge Nurse.

(9) Types of Employment Prohibited.

Respondent shall not work for a nurse registry, travelling nurse agency, float-pool, home health care agency, temporary employment agency or as a personal care provider during the effective period of this Order.

(10) Prohibited Hours of Work.

Respondent shall work only the day or evening shift during the effective period of this Order. Respondent shall not work the night shift during the effective period of this Order.

(11) Costs.

Respondent shall bear all costs of complying with this Order.

(12) Violation of the Order

If Respondent violates the terms of this Order in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke the terms of the conditional license and take further disciplinary action. If a complaint or charges are filed against Respondent during the term of this Order, the conditional license period shall be extended until the matter is final.

(13) Completion of Conditional License Period.

Upon completion of the conditional license period, Respondent may petition the Board to remove any and all conditions on his license and after formal review by the Board, Respondent's nursing license may be fully restored by appropriate Board action. Furthermore, Respondent must demonstrate, to the Board's satisfaction, that he can safely return to unrestricted practice, that he has safely and competently administered medications and that he has fully complied with all the terms of this Order.

C. This 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 Order will remain part of Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

Appeal Rights

This is a final administrative determination by the Vermont State Board of Nursing. You may appeal by sending a notice of appeal in writing to the Director of the Office of Professional Regulation within 30 days of the date of entry of this order. If you wish to request a stay of the Board's decision, please refer to the attached stay instructions.

By: Linda Rice A.P.R.N. Date: 1-23-03
Linda Rice, A.P.R.N.
Acting Chair

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 2/7/03

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

IN RE:)
MICHAEL P. LEMIRE, L.P.N.)
License No. 025-0007274)

Docket No: NU 10-0701

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Michael P. Lemire, LPN:

Board Authority

1. The Vermont State Board of Nursing ["the Board"] has authority to issue warnings or reprimands, suspend, revoke, limit, 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)(5); 3 V.S.A. §814(d); 26 V.S.A. §1582(a).
2. Failure to comply with the provisions of state statutes or rules governing the practice of the profession is unprofessional conduct upon which the Board can base disciplinary action. 3 V.S.A. §129a(a)(3).
3. Engaging in conduct of a character likely to deceive, defraud or harm the public is unprofessional conduct upon which the Board can base disciplinary action. 26 V.S.A. §1582(a)(7).
4. Engaging in conduct of a character likely to harm the public includes performing acts beyond the limits of the statutory definitions of the practice of nursing found in 26 V.S.A. §1572(2),(3) and (4). Administrative Rules of the Board of Nursing ("ARBN") Chapter 4, Rule IV(B)(4)(a).
5. Being unable to practice nursing competently by reason of any cause is unprofessional conduct upon which the Board can base disciplinary action. 26 V.S.A. §1582(a)(3).
6. Inability to practice nursing competently includes performance of unsafe or unacceptable patient care and failure to conform to the essential standards of acceptable and prevailing nursing practice. Administrative Rules of the Board of Nursing ("ARBN") Chapter 4, Rule IV(B)(2).

Facts

7. The Respondent is a Licensed Practical Nurse under License Number 025 – 0007274.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

8. Respondent was originally licensed on or about August 24, 1995 and Respondent's license is currently extended.
9. At all times relevant, Respondent was employed by Fletcher- Allen Medical Center in Burlington, Vermont.
10. The Respondent made a number of errors in the course of his practice, specifically:
 - a) On or about March 28, 2001, Respondent administered Tetracaine to a patient, T.E., without a physician's order;
 - b) On or about January 4, 2001, Respondent failed to timely document the administration of medication to patient A.G.;
 - c) On or about January 4, 2001, Respondent provided medical care to a patient, P.G., and failed to timely document that the medical care was provided;
 - d) On or about January 4, 2001, Respondent administered Tylenol #3 to a patient, N.S., and failed to timely document the administration;
 - e) On or about January 4, 2001, Respondent failed to timely document that medical care was provided to patient K.K..

Charges

11. By making the above errors, the Respondent has:
 - a) failed to comply with federal or state statute or rules governing the practice of the profession; and
 - b) engaged in conduct of a character likely to harm the public; and
 - c) failed to practice nursing competently including the performance of unsafe or unacceptable patient care and the failure to conform to the essential standards of acceptable and prevailing nursing practice.

Relief Requested

WHEREFORE, the license of Michael P. Lemire should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

Dated at Montpelier, Vermont this 22nd day of October 2002.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: 
George C. Haegele IV
Assistant Attorney General

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