

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

In re: ERNEST J. LUIKART
License No. 026.0091419

}
} Docket No. M2015-96 (2015-136) (RN)
}

**Decision on
Respondent's Petition for Modification of Conditions**

Participating Board Members:

Jeanine Carr, RN
Ellen Watson, APRN, Vice Chair
William G. White, Jr., Public Member
Virginia Hudson, RN
Kelly Sinclair, LNA
Jennifer Laurent, APRN
Jill Duell, LPN

Appearances:

Prosecuting the case: Elizabeth St. James, Esq.
Respondent: appeared *pro se*

Presiding Officer: George K. Belcher

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

The Vermont Board of Nursing held a hearing in the above matter on April 10, 2017 in Montpelier, Vermont. The State was represented by Elizabeth St. James, Esq. The Respondent appeared *pro se*. On March 9, 2017 the Respondent filed a request seeking "removal of the conditions on my nursing license" (See Respondent's letter to the Board dated March 9, 2017.)

Findings of Fact

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

1. Ernest J. Luikart, (the "Respondent") has been 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 February 5, 2013 and expired on March 31, 2017. His license continues to be in a "conditioned" status.

2. On December 14 of 2015 the Vermont Nursing Board made findings of unprofessional conduct by the Respondent. The original finding of unprofessional conduct arose from an incident in 2015 where the Respondent diverted a 5 mg dose of Oxycodone, which was not given to a patient, and which was taken and consumed by the Respondent. The medication record was falsified by the Respondent to show that the medication had been administered when it had not been. The Respondent self-reported this incident to his employer and admitted these facts to the Board investigator. The Board conditioned his license to practice nursing. The conditions were extensive and required supervised practice, employer reporting, substance abuse counselling, random drug and alcohol testing, abstinence from drug and alcohol use, and individual psychotherapy. The conditions were to last until they were completed and for a minimum of one year. (See paragraph Number 2 of Order of December 14, 2015.) The conditions could be removed from his license if the Respondent petitioned the Board for removal of the conditions upon proof of full compliance with all the conditions. (See Paragraph 21 of Order.)
3. The Respondent's request for release from conditions now asserts that there is no need to have his license conditioned in the future. His request implied that he had been compliant with the conditions since they started in February of 2016. His letter implied that he had been compliant with random drug and alcohol screening and drug and alcohol counseling. His letter of request was accompanied by three letters of reference from the Medical Director, Director of Nursing, and Interim Director of Nursing at the Brookside Nursing Home where the Respondent has worked for several years. (He was terminated from employment there in approximately mid-March of 2017.)
4. The State opposed the removal of conditions by filing an objection dated 4 April, 2017. The grounds for the objection were that: (1) the Respondent had failed to participate in 10 random drug and alcohol tests to which he was selected to participate; (2) the Respondent had failed to telephone the testing center to learn whether he had been selected for random testing; this happened over fifty (50) times; (3) the Respondent had tested positive for a substance not on his approved medication list on February 8, 2016; (4) the Respondent self-reported that he had consumed alcohol on February 28, 2017; (5) the Respondent's employer reports "have indicated concerns over Respondent's organizational skills"; (6) the Respondent had two months where he failed to attend his treating professional sessions despite those being scheduled two times per month.
5. When asked about the breach of the conditions alleged by the State, the Respondent, for the most part, did not deny them. He gave explanations for the one positive substance abuse test in February of 2016 and the alcohol use on February 28, 2017. The Respondent did not deny multiple breaches of the conditions.
6. The seriousness of the original incident, and the extent of the conditions imposed by the Board, would seemingly impress upon the Respondent that scrupulous compliance with the conditions would be required by the Board in order to remove the conditions.
7. Scrupulous compliance with the Board conditions has not been shown by the Respondent.

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 he is entitled to release of conditions. (See paragraph 21 of Order dated December 14, 2015.)
2. The Respondent has failed to demonstrate that he is entitled to a removal of the conditions. He has not persuaded the Board that the conditions of the order should be modified or released.

Order

Respondent's request for release of the conditions upon his license is DENIED.

Vermont Board of Nursing

By: _____

Jeanine Carr, RN, Chair

Date: April 12 2017

DATE OF ENTRY

4/17/17

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.

