

**STATE OF VERMONT
BOARD OF NURSING**

In re: Kirbie Kathleen Nichols-Cyr
License No. 025-9130

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Docket No. ⁷⁹NU~~97~~-0109
2009-1

Appearances:

Petitioner, State of Vermont: Betsy Ann Wrask
Respondent: Did not appear

Presiding Officer: Larry S. Novins

DEFAULT ORDER

The Board held a hearing on the above matter on August 10, 2009 at the National Life Building in Montpelier, Vermont. Ms. Nichols-Cyr did not attend and was not represented by counsel.

Findings of Fact

1. Ms. Nichols-Cyr 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. § 1582(a), the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation.
2. On June 25, 2009 Ms. Nichols-Cyr was sent notice of Charges in this matter by certified mail to her last known address. A copy of the Specification of Charges is attached to this Default Order.
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. Licensees are required to notify the Board of any change of address within 30 days. 3 V.S.A. § 129a(a)(14).
5. Stamps on the envelope returned July 21, 2009 indicate the notice of charges was "unclaimed."
6. Ms. Nichols-Cyr has not filed an answer to the charges.
7. On July 28, 2009 Notice of the default hearing scheduled for August 10, 2009 was mailed to Ms. Nichols-Cyr at that same address by certified mail.
8. Ms. Nichols-Cyr has still not answered the charges.
9. Upon hearing the State's presentation and taking notice of its own file, the Board finds Ms. Nichols-Cyr to be in Default. The allegations contained in the State's Specification of Charges are therefore treated as the facts on which the Board's Order is based. OPR Rule 3.4, 3 V.S.A. § 809(d) and 3 V.S.A. § 814(c).

Conclusions of Law

Ms. Nichols-Cyr has received adequate or constructive notice of the charges in this matter as indicated by the Board's file and the State's presentation. Because Ms. Nichols-Cyr has failed to answer the charges, the State's factual allegations are treated as if proved. O.P.R. Rule 3.4. Accordingly, the Board finds, in this Default Hearing held pursuant to 3 V.S.A. §809(d), that Ms. Nichols-Cyr has engaged in the unprofessional conduct alleged in the State's Specification of Charges.

Order

In accordance with the above Findings of Fact and Conclusions of Law, Ms. Nichols-Cyr's license is hereby Suspended Indefinitely effective as of the date of the hearing.

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, National Life Bldg., North, FL2, 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.

To request a stay of the Board's decision, please refer to the attached stay instructions.

Vermont Board of Nursing

By: Ellen W. Leff
Ellen Leff, R.N., Chair

Date: August 10, 2009

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 8/12/09

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

IN RE:

**KIRBIE KATHLEEN NICHOLS-CYR)
License No. 025-0009130)**

Docket No. 2009-1 (NU79-0109)

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Kirbie Kathleen Nichols-Cyr, LPN:

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. Kirbie Kathleen Nichols-Cyr (the "Respondent") of Pownal, Vermont is licensed by the State of Vermont as a Licensed Practical Nurse under license number 025-0009130. This license was originally issued on or about January 26, 2007 and is currently set to expire on or about January 31, 2010.
3. Respondent is also licensed by the State of Massachusetts as a Licensed Practical Nurse under license number LN67095. Respondent's Massachusetts license was originally issued on or about August 3, 2006 and is currently set to expire on or about June 25, 2009.
4. On or about July 30, 2008, Respondent completed an application for renewal of her Vermont practical nursing license.
5. During the renewal application process, it was discovered that Respondent may have a substance abuse issue.
6. On or about December 31, 2008, the Board received a letter from Respondent pursuant to a request from the Board that Respondent explain any substance abuse issues she may have. In the letter, Respondent stated that in or around June 2007, Respondent began using heroin and self-reported her substance abuse issue to the facility in which she worked. Respondent also described in part the following, which

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Prosecuting Attorney
Office of
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9 Baldwin Street
Montpelier, VT
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was confirmed pursuant to an investigation following Respondent's letter to the Board:

- a. On or about July 1, 2007 in Northampton, Massachusetts, Respondent rode in a vehicle with G.C., her then boyfriend (and now husband) and also an addict, to buy heroin. After buying heroin and pursuant to a traffic stop, Respondent was found to be in possession of heroin, arrested, and charged with Possession of a Class A Substance with Intent to Distribute.
- b. On or about July 2, 2007 in Northampton District Court under docket number 0745CR001189, sufficient facts were found regarding the heroin charge, but the hearing was continued without a finding until July 30, 2008. Respondent was placed on probation until July 30, 2008 with conditions that required Respondent to refrain from drugs and alcohol; submit to random drug screens; attend three (3) Alcohol Anonymous/Narcotics Anonymous meetings per week; and attend weekly sessions with a substance and alcohol abuse counselor.
- c. On or about July 30, 2008, due to Respondent successfully completing her probationary period, the heroin charge against Respondent was dismissed.

Charges

7. 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)(3) (Is unable to practice nursing competently by reason of any cause);
 - b. ARBN Chapter 4, Rule IV(II)(B)(2) ("Inability to practice nursing competently" includes failure to conform to the essential standards of acceptable and prevailing nursing practice);
 - c. ARBN Chapter 4, Rule IV(II)(C) ("Any cause" includes, but is not limited to, reasons of physical or mental disability or use of drugs, narcotics, or chemicals or any other type of materials);
 - d. 3 V.S.A. § 129a(b)(2) (Failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct, whether actual injury to a client, patient, or customer has occurred. Failure to practice competently includes failure to conform to the essential standards of acceptable and prevailing practice); and
 - e. 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).

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Relief Requested

WHEREFORE, the license of Kirbie Kathleen Nichols-Cyr should be revoked, suspended, reprimanded, conditioned, or otherwise disciplined.

DATED at Montpelier, Vermont this 22nd day of June, 2009.

STATE OF VERMONT
SECRETARY OF STATE

By: _____

Edward G. Adrian
State Prosecuting Attorney

nu.nichols-cyr.soc

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