

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

In Re: Thomas Njuguna
License no.: 025.0068650

) Docket no.: M2014-16
) (2012-247)

**Decision on
Respondent's Petition to Remove Conditions**

Participating Board Members:

Ellen Watson, APRN, Chair
Deborah Swartz, RN
Jill Duell, LPN
Jennifer Laurent, APRN
Douglas Sutton, RN
William White, Public Member
Luana Tredwell, LPN
Kelly Sinclair, LNA

Appearances:

Prosecuting the case: Jennifer B. Colin, Esq.
Respondent: Thomas Njuguna did not appear

Presiding Officer: Stephen A. Reynes

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

On January 17, 2018, Thomas Njuguna (Respondent) filed a petition requesting that the Vermont Board of Nursing "remove all conditions in my [LPN] license." The Board of Nursing held a hearing in the above matter on February 12, 2018, in Montpelier, Vermont. The State was represented by Jennifer B. Colin, Esq. The Respondent did not appear.

Findings of Fact

Based on the evidence presented and documents in the Respondent's file cited herein, the Board finds as follows:

1. Thomas Njuguna was licensed by the State of Vermont as a Registered Nurse under license number 025.0068650 ("License"), originally issued on or about September 7, 2010, and expired on January 31, 2018. During the relevant period, the Respondent was employed as a Licensed Practical Nurse by Correct Care Solutions and worked at the Chittenden Regional Correctional Facility (the "Facility"), in South Burlington, Vermont.

2. On October 2, 2012, the State filed a Request for Summary Suspension of the Respondent's License. This was based in part on the fact that the Respondent was arraigned on May 24, 2012 in the Superior Court of Vermont on one count of Sexual Assault of a Confined Inmate, a felony violation of 13 V.S.A. §3257(a)(1), and the Court found probable cause for the described felony at the Facility in November of 2011, The Court released the Respondent on conditions; those conditions did not prohibit the Respondent from practicing nursing.

3. The State's Request for Summary Suspension was also based on a report of unprofessional conduct relating to a job application the Respondent completed and dated May 15, 2012, in which he omitted his employment with Correct Care Solutions where he was required to name his past employers and provide contact information, with dates of employ and reason for leaving. The Respondent signed a certification at the end of the application that "all information on this application and any other information provided by me is true and complete."

4. The State's Request for Summary Suspension also states that the above acts and circumstances violate cited statutes pertaining to failure to practice nursing competently, sexual misconduct exploiting the provider-patient relationship, unprofessional conduct, and failure to conform with essential standards of acceptable and prevailing practice, and that emergency action is imperative to protect the public health, safety, or welfare of the people of Vermont.

5. The Board of Nursing conducted a hearing on October 8, 2012 on the State's Request for Summary Suspension. Notice of the hearing was sent to the Respondent's address. He did not appear at the hearing. The Board granted the requested Summary Suspension Order on October 9, 2012. The State and the Respondent subsequently entered into a Stipulation and Consent Order, signed by the Respondent, and by his attorney Richard C. Bothfield as to Form in April 2013, which was APPROVED AND SO ORDERED by the Vermont Board of Nursing on April 8, 2013. The stipulated Facts include that "Respondent made inappropriate sexual contact with a female patient incarcerated at the Facility" and that the Respondent admitted as part of his Court plea agreement that, while being a correctional employee, he inserted his finger into an inmate's genital opening through and outside of her clothing. See Stipulation and Consent Order at ¶ 4 and ¶ 5.

7. The Consent Order "INDEFINITELY SUSPENDS" the Respondent's License. It provides that at such time as the Respondent has completed rehabilitative counseling as required by the Vermont Probation Department, the Respondent may petition the Board for conditional reinstatement of his license and the State may file opposition to such request. The Consent Order also provides that the Respondent bears the burden of demonstrating "that a set of license conditions exists that would enable him to return to nursing practice while adequately protecting the public health, safety and welfare, and the integrity the nursing professions."

8. The Respondent petitioned the Board for reinstatement of his license on January 16, 2014. After a preliminary denial letter citing insufficient information, the Respondent submitted several documents to the Board. The Board held a hearing on June 9, 2014. The Board's Decision on Petition for Reinstatement, dated June 10, 2014, Ordered that:

- the Respondent's license shall remain suspended until certain prerequisites have been satisfied, after which the Respondent may petition for reinstatement, and
- When the Respondent has shown the Board successful completion of the reinstatement prerequisites, his license shall be reinstated as "conditioned" for at least one year of supervised practice. The Board's Order includes thirteen numbered Conditions.

9. On January 15, 2015, the Board issued Decision on Motion for Reinstatement (amended), with Findings of Fact, Conclusions of Law, and Order, under which the Respondent's license was reinstated, "with the conditions set out in the June 10, 2014 Decision on Petition for Reinstatement."

10. The Respondent, by the letter of his Attorney Richard Bothfield dated April 7, 2015, requested modification and clarification of the Order regarding the requirement that the Respondent practice only in a setting in which he "direct supervision" by a licensed RN. A review committee for the Board replied with a preliminary decision letter dated April 20, 2015, which denied the request for modification of the Order and stated that "'direct supervision' means that the supervising RN must be physically present on the unit where Mr. Njuguna is working." The letter stated that if the Respondent wants the Board to review the preliminary decision, such request must be filed with the Docket Clerk within 30 days. No such request was filed.

11. The Respondent's Petition to Remove Conditions on his LPN license states that he has "worked in NY as an LPN in New York as an LPN and mostly as night charge nurse for almost two years," that he has complied with all the requirements and has not violated any conditions. His Petition also states that the allegations against him "were NOT TRUE." He states that he encloses his most recent pay stub and hours worked." There is nothing in the Respondent's Petition which identifies where he worked as an LPN and there is nothing on the pay that identifies who issued it. The Respondent's Petition also includes a document indicating 28.5 hours of continuing education with Relias Learning as the Instructor and Centers Health Care as the Organization. The Respondent printed his name on the "Staff Name" line and his signature on the "Staff Signature" line.

12. The State filed its *Opposition to Respondent's Petition to Remove Conditions* memorandum on January 24, 2018. Contrary to the Respondent's unsupported statement that he has complied with all conditions, the State's Memorandum points out that the Respondent failed to obtain pre-approval to have his out-of-state practice count toward the hours of conditioned and supervised practice and other requirements of his Conditioned License. The State's Memorandum also notes the Respondent's "alleged pay stub ...from an unknown entity, and a self-signed/certified document of continuing education hours." The Respondent did not provide any response or evidence pertaining to these points either in writing or by appearing at the noticed hearing on his Petition.

Conclusions of Law

Condition 13 of the Conditions after Reinstatement provides that the Respondent may petition the Board to remove any and all license conditions and that he "must present proof that all terms of this Order have been met." Decision on Petition for Reinstatement at p. 7. Accordingly, the burden is on the Respondent to present evidence that he has complied with all the Conditions of Reinstatement, set out in the Board's Decision on Petition for Reinstatement dated June 10, 2014. The Respondent's Petition to Remove Conditions states that he has "complied with all the requirements," but fails to demonstrate that.

There is no need for the Board to set out in this Decision every way in which the Respondent has failed to demonstrate compliance with all of the Conditions for Reinstatement, which is the Respondent's burden. Without making a comprehensive list, it is evident that the

Respondent has not demonstrated compliance with Condition 7, pertaining to out-of-State practice. That Condition states that the Board will approve out-of-state practice so long as the Respondent can still comply with the Order. The Board cannot make that determination under Condition 7 or determine compliance with Condition 3 (Notification to Employers) when the Respondent has failed to provide any evidence of compliance under Condition 3, under which the Respondent "shall cause his immediate supervisor to write on the employer's letterhead or form provided by the Board acknowledging receipt of this Order."

Beyond not providing evidence of compliance with Conditions 7 and 3 at the beginning of employment, it is odd and mysterious that the Respondent's Petition states that he has worked in New York for almost two years, mostly as a night charge nurse under an RN supervisor, without identifying the employer or employers. The pay stub included with the Petition is evidence that the Respondent worked in New York State but provides no evidence of the identity of the employer. If all this was an oversight, the Respondent could have provided the missing information after reading the State's Memorandum and appearing at the hearing. As it is, such failure also appears as non-compliance with Condition 8 (Notification of Place of Employment, Personal Address, Telephone Number).

Providing evidence of where he worked could also go to demonstrating compliance with Condition 6, which prohibits certain nursing employment. As it is, there is no evidence upon which the Board can base a determination of compliance with Condition 6.

The Board is also troubled that the Respondent, in his 2018 Petition, states emphatically that the female inmate's allegations were "not true," when the Stipulation and Consent Order he signed on April 2, 2013 admits his inappropriate sexual contact with a female incarcerated at a correctional Facility and more specific admitted conduct as to same as part of his plea agreement and conviction.

Order

The Respondent's Request for Removal of All Conditions on his License is DENIED.

Vermont Board of Nursing

By:


Ellen Watson, APRN, Chair

Date: March 23, 2018

Date Entry:

4/2/18

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 Street, 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.