

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

IN RE: AJOBOLA OSIDIPE )  
Licensed Practical Nurse )  
License No. 025.0009375 )  
 )  
 )  
 )

Case File No. NU92-0109/2009-70

**Decision on Request to Withdraw License as Licensed Practical Nurse**

**Appearances:**

for Petitioner, State of Vermont: Edward G. Adrian, Esq.  
for Respondent: Paul Gillies, Esq.

**Hearing Officer:**

George K. Belcher

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

This matter was considered on June 25, 2010. Participating in the hearing were Edward G. Adrian, Esq. on behalf of the State of Vermont. The Respondent was not present but her attorney, Paul Gillies, Esq. was present. The Hearing Officer on behalf of the Board was George K. Belcher. Notice of the hearing was given to the Respondent by letter of Mary Botter, PhD, RN dated May 25, 2010. A prior Motion of Continuance of the case which was filed by Mr. Gilles was withdrawn on June 25, 2009. At the hearing Mr. Gilles appeared and indicated that his client intended to execute a stipulation for resolution of the case as had been proposed by the prosecuting attorney. It was resolved that the Respondent would have thirty (30) days to execute the stipulation. In the event that the stipulation were not filed, the case would be resolved by suspension or revocation of the Respondent's license. No stipulation by the Respondent has been filed with the Vermont Nursing Board as of the date of this decision.

**Findings of Fact**

1. The Respondent attended Hospicare Nursing Academy of Jamaica, W.I., to become a licensed practical nurse.

2. In January of 2009 the Vermont Nursing Board was given information which called into question the Jamaican certification of the Respondent's school. In a letter from CGFNS International to state nursing boards, the accreditation service noted that "only two Practical Nursing Programs have been accredited by the National Council on Technical and Vocational Education and Training" but that the Hospicare Nursing Academy was not one of them. In May of 2010, the Vermont Nursing Board received additional verification that the Hospicare Nursing Academy was not recognized or accredited in Jamaica.
3. "An applicant for licensure to practice as a practical nurse shall be a graduate of an approved educational program preparing persons for entry into practice of practical nursing." Administrative Rules of the Board of Nursing, Chapter 4, Subchapter 2, Rule II (C.) When it became apparent that the license had been issued though a mistake, the Vermont Board of Nursing took action to withdraw her license.

### Conclusions of Law

1. The Vermont Board of Nursing has authority to issue licenses to registered nurses, licensed practical nurses and licensed nursing assistants. It also has the authority to issue warnings, reprimands, suspensions, revocations, limitations, or conditions concerning current licensees; or prevent the renewal of lapsed licenses if, after disciplinary hearing, the Board finds unprofessional conduct. 3 VSA Sec. 129 (a); 3 VSA Sec. 129a; 3 VSA Sec. 814 (d); 26 VSA Sec. 1582; the Administrative Rules of the Board of Nursing; and the Rules of the Office of Professional Regulation.
2. The Vermont Nursing Board has the authority to appoint a hearing officer to hear particular cases, report findings and conclusions to the Board, and to recommend to the Board action to be taken concerning a particular license or licensee. (3 VSA Sec. 129(f))
3. The purpose of the Vermont licensing program for licensed practical nurses is to "safeguard the life and health of the people of this state." 26 VSA Sec. 1571. The purpose of the Administrative Rules of the Nursing Board governing the licensing of nurses is "to safeguard the life and health of the people of Vermont by empowering the Board to ... register and license qualified applicants from other states." (See Administrative Rules of Vermont Nursing Board, Chapter 1, Rule II(D)) It is the public interest and the police power of the state which stands as the authority for the legislature to authorize administrative licensure of Licensed Practical Nurses. "In the absence of constitutional limitations, the ultimate authority from which a license to carry on a particular activity derives, has inherent power to withdraw the license." 51 Am Jur 2d Licenses, Sec. 88, Page 92, (citations omitted).
4. There is no constitutional limitation upon the withdrawal of a license where the license was issued through mistake, unless a fundamental interest is at stake. The balance between the interest of the Respondent in keeping her license on the one

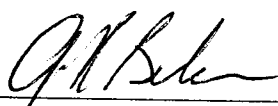
hand, and the interests of the public in having adequately trained nurses on the other hand, only requires a rational basis as justification to withdraw the license. Gersch v. Illinois Department of Professional Regulation, 720 N.E. 2d 672 (1999). In that case, a social worker was granted a high level license in error. The court held that the State "has the authority to rescind or cancel a license which has been improperly or erroneously issued when the statutorily mandated educational requirements have not been satisfied." Id. In short, the loss to the licensee was justified by the overriding public interest in having educated professionals deliver safe professional services.

5. It is also recognized that even though the licensing scheme may call for suspension or revocation of a license for specific unprofessional acts, it is within the implied authority of a licensing agency to cancel a license which was mistakenly issued. Id. See also State v. City of Milwaukee, 207 Wis. 199, 240 N.W. 847, 79 ALR 281 (1932) where a mayor revoked a license given for a "marathon dance" which he had mistakenly issued, despite the fact that preparations for the dance had been made.
6. In the case now before the Vermont Board of Nursing, there is ample authority to withdraw the license of Ajibola Osidipe.

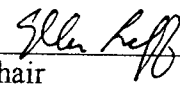
### ORDER

The Licensed Practical Nursing license of Ajibola Osidipe referenced above is deemed withdrawn and is no longer valid.

Dated this 2 day of August, 2010.

  
George K. Belcher  
Hearing Officer

Considered by the Vermont Board of Nursing and Approved  
SO ORDERED August 9, 2010

  
Ellen Leff, Chair  
Vermont Board of Nursing

8-25-10 Date entered

### **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 the decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Secretary of State's Office, National Life Building, Fl. 2, 1 National Life Drive, Montpelier, Vermont 05620-3402 within 30 days of the entry of the order. For more information about the procedure for filing an appeal, please see the Administrative Rules for the Office of Professional Regulation, which you can find at [http:// www.vtprofessionals.org/opr1/opr/admnrule.pdf](http://www.vtprofessionals.org/opr1/opr/admnrule.pdf) The Rules are also available at the Office of Professional Regulation.