

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

IN RE: EDITH OZOH	)	
Licensed Practical Nurse	)	
License No. 025.0009268	)	Case File No. 2010-69
	)	
	)	
	)	

Decision on Request to Withdraw License as Licensed Practical Nurse

Appearances:

for Petitioner, State of Vermont: Edward G. Adrian, Esq.
for Respondent: Edith Ozoh, *pro se*

Hearing Officer:

George K. Belcher

Exhibits:

- Ex. 1 License Application dated October 24, 2006
- Ex. 2 Verification of Education, transcript and graduation certificate
- Ex. 3 Letter to State Boards of Nursing from CGFNS dated January 29, 2009
- Ex. 4 Letter to Dr. Botter from Director of Evaluations, International Education Research Foundation, Inc. dated May 4, 2010
- Ex. 5 Letter to Dr. Botter from CGFNS dated May 13, 2010
- Ex. 6 Letter to Josef Silny from Audra Flanders, dated November 13, 2008
- Ex. 7 NCLEX-PN Candidate Report dated August 1, 2007

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, Edith Ozoh, participated by telephone and represented herself. The Hearing Officer on behalf of the Vermont Nursing 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 and was received by the Respondent. Evidence was taken. Upon the evidence presented, the Board makes the following findings of fact, conclusions of law, and order.

Findings of Fact

1. The Respondent, Edith Ozoh, was born in Nigeria. She moved to Georgia, USA, and enrolled in the National Academy of Kingston, Jamaica. The instruction for this program was not in Jamaica, but rather was in Marietta, Georgia (U.S.) and the clinical instruction was in Miami, Florida, in a nursing home. She attended classes and instruction for about two years. On February 8, 2005, the Respondent was given a certificate of completion of 12 months of practical nursing instruction from the National Academy in Kingston, Jamaica, West Indies. (State Ex. 2).
2. Following graduation she was advised by the school to apply for a Vermont LPN license. She took the NCLEX-PN examination passed it on August 1, 2007. (State Ex. 7) She was given a Vermont LPN (Licensed Practical Nurse) License in 2007.
3. She applied for a license as an LPN in Tennessee and was granted a Tennessee LPN license in 2008.
4. The Respondent has worked as an LPN since 2008.
5. In May of 2010, the Vermont Nursing Board received information that the National Academy of Kingston, Jamaica was not an "approved school" as of January of 2005 (State Ex. 5) and was not "recognized or accredited" in Jamaica (State Ex. 4) There was some evidence that the National Academy was accredited by the National Council and Technical and Vocational Education and Training in Jamaica, and that the school was registered with the Jamaican Registry of Education and Culture (See State Ex. 3), however neither of these entities appear to license practical nurses, and practical nurses are not licensed in Jamaica in general.
6. There was no evidence offered to show that the Respondent knew that the nursing program she attended in Georgia, or that the degree she received from the National Academy was deficient or unaccredited. She testified that she thought the nursing program was legitimate. She testified that she had no knowledge of a problem until she was contacted by the Vermont Nursing Board.
7. The Respondent has never worked as a nurse in the State of Vermont. She would like to retain her Vermont LPN license.
8. During the course of the testimony, the Respondent testified that she was currently taking classes in a Registered Nurse program. When asked to identify the program, she then said that she was enrolled in a program which would begin soon. When asked what the name of the program was, she had difficulty identifying the name of the program. She ultimately identified it as the "Excelsior" nursing program in Nashville, Tennessee.
9. The hearing officer continued the case for twenty (20) days to allow the Respondent to provide evidence that she was enrolled in a Registered Nursing program.

10. On July 7, 2010 the Vermont Board of Nursing received a letter from Accelerated Learning Center, Inc. in Nashville, TN which stated in part, "Edith Ozoh is currently completing course with Accelerated Learning Center, Inc., to prepare for Excelsior College of Examinations toward an Associates in Science in Nursing." The Executive Director of the Vermont Nursing Board advised the Respondent on July 15, 2010 that: (1) the Excelsior College nursing program does not meet the Vermont education requirements; and (2) that Accelerated Learning Center is not a nursing educational program that is known to be an accredited program for the preparation of Registered Nurses.
11. The original educational program completed by the Respondent did not meet the Vermont educational requirements. The educational institution at which she received her basic LPN training is from an institution which does not train Licensed Practical Nurses for licensing in Jamaica because practical nurses are not licensed in Jamaica. (State Ex. 3) Thus, the license which was granted to the Respondent was mistakenly issued to her based upon the belief by the Vermont Nursing Board that she satisfied the Vermont educational requirements. "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 Edith Ozoh.

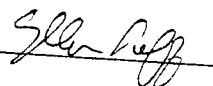
ORDER

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

Dated this 2nd 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/admrule.pdf](http://www.vtprofessionals.org/opr1/opr/admrule.pdf) The Rules are also available at the Office of Professional Regulation.