

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

IN RE: ERLINE PIERRE-LOUIS)

Licensed Practical Nurse)

License No. 025.0009021)

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Case File No. 2009-72

Decision on Request to Withdraw License as Licensed Practical Nurse

Appearances:

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

for Respondent: Pierre St. John, Esq. (Florida counsel)

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 Adrian, Esq. on behalf of the State of Vermont. The Respondent, Erline Pierre-Louis, participated by telephone. She was represented by Florida counsel, Pierre St. Jean, Esq. 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. Upon the arguments presented, the licensure file of the Respondent, and the oral stipulation, the Board makes the following findings of fact, conclusions of law and order.

Findings of Fact

1. The Respondent and the State stipulated on the record that the educational program of the Respondent did not meet Vermont standards at the time of her licensure. They further stipulated that at the time of her education at the Mission Bon Samaritain International, S.A. in 2000 and 2001, there was no Haitian Licensing program for an LPN nursing license. Following her graduation, the Respondent took the NCLEX LPN examination and passed it on August 14, 2006. She was given a Vermont LPN

License in 2007. She applied for an LPN License in Florida and was granted a Florida LPN license 2008.

2. The Respondent has worked as an LPN since 2008. She currently lives in Florida. She has never practiced nursing in Vermont.
3. While the Respondent stipulated that her education did not meet Vermont standards at the time of her Vermont licensure, her counsel argued that she should be given equitable leniency. He argued that his client was victimized by the nursing school which gave her the education which she paid for. According to Mr. St. Jean, the Respondent was victimized once by the nursing school which she attended. He further argued that to revoke her license would be to "victimize her a second time." He argued that the State of Vermont Board of Nursing had been in the best position to evaluate the validity of her nursing program in 2007, and since it made the mistake, she should not be penalized for that error. He also argued that the Respondent has worked as an LPN since 2008 and that her experience in that position, plus her passage of the NCLEX-PN Examination in August of 2006, shows that she has adequate LPN nursing skills. Finally, he argued that it would be a hardship for her to be unlicensed while she attends further education to satisfy requirements which she reasonably thought she had already satisfied.
4. Counsel for the Respondent argued that the decision of the Board should be stayed for a year to allow the Respondent time to react to the license revocation and that the license should be conditionally inactive for a period of one and one-half years.

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. While the Board is certainly sympathetic with an applicant who attends a fraudulent or unqualified nursing program, the nursing student must bear the ultimate consequences for the selection of a nursing school which is delivering a diploma to that nurse. Moreover, source of the mistake of issuing the license on mistaken information, must not override the interest of the public in assuring that professional nurses are well-trained and educated. In the case now before the Vermont Board of Nursing, there is ample authority to withdraw the license of Erline Pierre-Louis.

ORDER

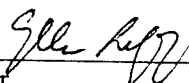
The Licensed Practical Nursing license of Erline Pierre-Louis referenced above is hereby changed to INACTIVE-CONDITIONED status. Within two (2) years of the date of entry below, the Respondent shall complete an approved nursing program with satisfies the requirements of ARBN Chapter 4, Subchapter 1. The Respondent shall obtain approval from the Board or its designee prior to the commencement of any program in order to assure that the program is satisfactory. If at the time of the date of entry below, the Respondent is already enrolled in a nursing program, credit for coursework already taken shall be given to the Respondent if the program meets the requirements of the ARBN. If the Respondent completes the nursing program

satisfactorily within the required period, her license shall be reinstated without conditions. If the Respondent fails to complete an approved nursing program within two (2) years from the date of entry below, then the Board of Nursing may impose any additional requirement if feels necessary and reasonable prior to reinstating the Respondent's license including, but not limited to: retaking the NCLEX examination; completion of an approved re-entry program; and/or working under supervision. Notwithstanding any provision above, the Respondent must continue to meet all Nursing Board requirements for maintaining a license, license renewal, and license reinstatement. This order is effective immediately upon entry.

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.