

**STATE OF VERMONT
BOARD OF NURSING**

In re: Emily E. Ray	}	Docket No. 2009-392
	}	Preliminary Denial of
	}	Application for Licensure

**Preliminary Denial Hearing
FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

Participating Board Members:

Ellen W. Leff, RN, Chair
Jeanine Carr, RN, Vice Chair
Alan Weiss
Sandra Norton, LNA
Donarae Metcalf, LPN
Deann Welch, LPN
William G. White Jr.
Deborah Robinson, RN
John Todd, APRN

Appearances:

for Petitioner, State of Vermont: Betsy Ann Wrask
for Respondent: Charles Martin

Presiding Officer: Larry S. Novins

The Vermont Board of Nursing held a hearing in the above matter on December 14, 2009 at the National Life Building in Montpelier, Vermont.

This preliminary denial is based on alleged unprofessional conduct. The State bears the burden of proving the unprofessional conduct. Ms. Ray bears the burden to convince the Board that the preliminary denial should be reversed and that the license should be granted. 3 V.S.A. § 129(e).

Background

By letter dated August 3, 2009 this Board denied Applicant's application for license as a practical nurse. The denial was based on Ms. Ray's "yes" answers in her application that she had surrendered a license, been convicted of a crime other than a minor traffic infraction, and that she was currently participating in a supervised program or professional assistant [sic] program "which monitors you in order to assure that you are not engaging in the use of alcohol or controlled substances." Ms. Ray requested a hearing. The State filed a Specification of Charges then an Amended Specification of Charges.

Findings of Fact

Based on the evidence presented at the hearing and review of the file, the Board finds as follows:

1. Ms. Ray, as an applicant for a license as a practical nurse, is subject to the regulatory authority of the 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. Unprofessional conduct, when that conduct is by an applicant or person who later becomes an applicant, may constitute grounds for denial of a license or other disciplinary action. Unprofessional conduct includes failure to comply with provisions of federal or state statutes or rules governing the practice of the profession. 3 V.S.A. § 129a.
2. Ms. Ray is licensed as a practical nurse in the State of Kansas.
3. Ms. Ray was convicted of DUI in Kansas. The offense date was March 11, 2004. Ms. Ray admits this.
4. On May 18, 2004 while on duty as a nurse Ms. Ray was reported by co-workers as smelling of alcohol and staggering as she walked. She tested positive for alcohol. She admits this.
5. Ms. Ray was subject disciplinary action in Kansas.
6. On June 7, 2004 Ms. Ray entered the Kansas Nurse Assistance Program (KNAP). On October 4, 2005 she was found to be non-compliant. She admits this and explained that she set aside her nursing career to concentrate on her recovery.
7. Ms. Ray worked as a nurse assistant in Kansas before her LPN license was reinstated.
8. Her license application contained incorrect information about her employment history. She stated that she has been employed full time as an LPN from April 7, 2008 through May 1, 2009. This was a false statement. In reality, she worked as a nurse assistant from April 4, 2008 through November 4, 2008. From November 5, 2008 through May 2, 2009 she worked as an LPN. Her LPN license was reinstated on September 16, 2008.
9. Ms. Ray was habitually intemperate or addicted to the use of drugs.
10. Ms. Ray has been sober since June, 2004.
11. Since returning to Vermont Ms. Ray has worked as a massage therapist. She is described by the spa owner where she works as an extremely reliable person.
12. Ms. Ray has also served as a "home share" helper for an elderly Vermont woman and retired nurse who described Ms. Ray in glowing terms.
13. Ms. Ray's history shows that continued oversight is necessary to assure she can practice safely. A conditioned license will adequately protect the public when Ms. Ray resumes practice.

Conclusions of Law

1. **Re: Alleged Violation of 26 V.S.A. § 1582(a)(1):** The State has proved by a preponderance of the evidence that Ms. Ray made a false statement in attempting to become licensed. This is unprofessional conduct. 3 V.S.A. § 129a(a)(3).
2. **Re: Alleged Violation of 26 V.S.A. § 1582(a)(3):** We conclude that Ms. Ray's conduct in 2004 rendered her unable to practice nursing competently at that time. This is

unprofessional conduct. 3 V.S.A. § 129a(a)(3).

3. **Re: Alleged Violation of 26 V.S.A. § 1582(a)(5):** The State has proved by a preponderance of the evidence that Ms. Ray was habitually intemperate. This is unprofessional conduct. 3 V.S.A. § 129a(a)(3).
4. **Re: Alleged Violation of 26 V.S.A. § 1582(a)(7):** We decline to conclude that Ms. Ray has engaged in conduct of a character likely to deceive, defraud, or harm the public. This charge is dismissed.
5. **Re: Alleged Violation of 3 V.S.A. § 129a(a)(1):** We decline to conclude that Ms. Ray engaged in fraudulent or deceptive procurement or use of a license. This charge is dismissed.
6. **Re: Alleged Violation of 3 V.S.A. § 129a(b)(1) and (2):** We decline to conclude that Ms. Ray violated 3 V.S.A. § 129a(b)(1) and (2). This charge is dismissed.
7. **Re: Alleged Violation of 26 V.S.A. § 129a(a)(3):** 3 V.S.A. § 129a(a)(3) defines unprofessional conduct to include failing to comply with provisions of federal or state statutes or rules governing the practice of the profession. Any allegation of failure to comply with statutes or rules has been addressed above. This statute does not provide an independent grounds for discipline. There is no violation of this statute. This charge is dismissed.
8. Ms. Ray has met her burden to show that she may be issued a conditioned license as a licensed practical nurse.

Order

The Board's preliminary denial of Ms. Ray's application is **reversed**. Her license shall be issued as "conditioned" with the conditions in the attachment hereto imposed.

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.

By: BOARD OF NURSING
Ellen Leff, RN, Chair

Dated: December 15, 2009

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 12/18/09

**Vermont Board of Nursing
Conditions Imposed as Part
of Disciplinary Decision**

In re: Emily E. Ray
License No. (To be issued)
Docket No. 2009-392

Order

As part of the Order issued this date, Ms. Ray's license shall be conditioned as follows:

License Conditions

(1) Re-issuance of License

Upon the commencement of these conditions, Ms. Ray shall be issued a license labeled "conditioned."

(2) Length of time of Conditions Imposed

These conditions shall remain in place until Ms. Ray has completed all conditions ordered. Ms. Ray shall be subject to the conditions until Ms. Ray completes a **minimum of three (3) years** of supervised nursing in which she works at least forty (40) hours every two (2) weeks as a licensed practical nurse. Part time employment of less than forty (40) hours every two (2) weeks shall be credited on a pro-rated basis. Ms. Ray shall be prohibited from working more than forty (40) hours per week.

(3) Completion of Substance Abuse Counseling and Treatment Plan

Ms. Ray shall enter into and continue substance abuse counseling with a treating professional pre-approved by the Board until the treating professional shall certify in writing to the Board that such counseling is no longer necessary. Ms. Ray shall enter into and comply with the substance abuse treatment plan approved by the Board and the treating professional.

(4) Notification to Treating Professional

Ms. Ray shall provide a copy of this Order to the treating professional and cause the treating professional to inform the Board, in writing on professional letterhead, of receipt of the Order and the treating professional's ability to comply with the conditions related to treatment and with all other terms of this Order.

(5) Reports from Treating Professional

Ms. Ray shall authorize and cause the treating professional to submit to the Board evidence of satisfactory progress with the treatment plan during the effective period of this Order. The first report is due commencing one month after the date of the commencement of the conditions. Subsequent reports are due **monthly** thereafter.

Ms. Ray shall authorize the treating professional to provide all information requested by the Board of Nursing, or its designee, either orally or in writing, at any time during the period this Order is in effect.

(6) Participation in Recovery Group(s)

Ms. Ray shall participate in substance abuse recovery group(s) as recommended by the treating professional, and shall submit **quarterly** reports to the Board documenting such attendance on forms issued by the Board.

(7) Random Drug and Alcohol Testing

Ms. Ray shall submit to random substance abuse screenings at the request of the Board or its designee. Ms. Ray shall designate a person, who has been pre-approved by the Board or its designee, to administer random substance abuse screens. All testing shall be done on a random, unannounced basis and be analyzed by a laboratory which is qualified to analyze samples for forensic purposes and which is approved by the Board. All urine specimens collected for tests shall be collected in an observed setting. All screens shall be negative.

Failure to appear for, refusal to provide, adulteration of, dilution of, or tampering with a sample for any urine screen shall cause that screen to be presumed positive. Any positive screen shall constitute a violation of this Order.

(8) Abstain from Drug and Alcohol Use

Ms. Ray shall abstain completely from the consumption or possession of drugs with the exception of drugs as outlined in paragraph 9 for the duration of this Order.

(9) Drug Use Exception

Ms. Ray shall not take controlled substances unless necessary. Ms. Ray may take scheduled/controlled medications lawfully prescribed for a bona fide illness or condition by a physician, dentist, or nurse practitioner whose identity shall be made known to the Board in writing by Ms. Ray within forty-eight (48) hours of the establishment of the practitioner/patient relationship. Ms. Ray shall ensure that the physician, dentist or nurse practitioner informs the board, in writing and on appropriate letter head, of knowledge of Ms. Ray's substance abuse issue(s) within one (1) week of entering into the practitioner/patient relationship. Ms. Ray shall inform the Board in writing of all scheduled/controlled medications prescribed, including the name of the prescribing practitioner, within forty-eight (48) hours of receiving the prescription.

The Board or its designee may request at any time that the practitioner document the continued necessity for the prescribed scheduled/controlled medication during the term of this Order for a period greater than fourteen (14) days, but if so, then the conditions herein may be revoked by the Board.

Ms. Ray shall keep a written record of all medications taken, including over the counter drugs, and produce such record upon the request of the Board or its designee.

(10) Notification to Employers/Nursing School

Employer Ms. Ray shall provide a copy of this Order to all employers in any current or future setting in which Ms. Ray practices as a licensed practical nurse and inform them of the conditional license status.

Within ten (10) days of the date of entry of this Order or of any subsequent employment, Ms. Ray shall cause Ms. Ray's immediate supervisor to write on the employer's letterhead to the Vermont Board of Nursing acknowledging receipt of this Order and acknowledging the employer's ability to comply with the conditions required by this Order.

Nursing School Should Ms. Ray attend a nursing program which has a clinical portion that involves actual patient care, Ms. Ray shall provide a copy of this Order to the Program Director. Ms. Ray shall cause the Program Director to write to the Board on school letterhead acknowledging receipt of the Order and the ability of the program to comply with the terms of this Order during Ms. Ray's clinical experience.

(11) Reports from Employers/Program Director

Within one (1) month of the date of entry of this Order and monthly thereafter, Ms. Ray shall cause every employer Ms. Ray has worked for during the relevant period as a licensed practical nurse to submit to the Board an evaluation of Ms. Ray's performance during that period. This report shall be on forms issued by the Board.

(12) Practice Under Supervision: Ms. Ray shall practice only in a setting where Ms. Ray has direct supervision for the entire shift by a licensed registered nurse in good standing.

(13) Administration of Medications

Ms. Ray is prohibited from administering any controlled substances. This condition may be removed only by Ms. Ray filing a petition with the Board after she has worked as a registered nurse for twelve (12) weeks of at least forty (40) hours every two weeks (or the part time equivalent) after the date of [reinstatement] this Order.

In any such petition, Ms. Ray must demonstrate to the satisfaction of the Board, that she can safely and competently administer such medications. In any such petition, Ms. Ray must include appropriate support from the treating professional and employer or nursing school administrator and a description of the documentation and inventory control procedures in place.

The removal of this prohibition shall not automatically result in reinstatement of all medication privileges. The Board may gradually restore those privileges through intermediary steps it deems appropriate.

(14) Types of Employment Prohibited

Ms. Ray shall not work for a nurse registry, traveling nurse agency, float-pool, home health care agency, temporary nursing employment agency or as a personal care provider during

the effective period of this Order.

(15) Interview with Board or its Designee.

Ms. Ray shall appear in person for interviews with the Board or its designee upon request.

(16) Out-of-State Practice

Out-of-state practice can be credited toward fulfillment of this Order only if Ms. Ray shall first obtain prior approval from this Board for out-of-state practice. If Ms. Ray fails to obtain prior approval before practicing out-of-state, none of the out of state practice time will be credited toward fulfillment of this terms of this Order. The Board will approve out-of-state practice so long as Ms. Ray can still comply with the provisions of this Order.

(17) Notification of Place of Employment, Personal Address, Telephone Number

Within 5 days of the entry of this Order, Ms. Ray shall notify the Board in writing, of her current place of employment, personal address, and telephone number. Ms. Ray shall further notify the Board, in writing, withing forty-eight (48) hours of any change of employment, personal address, or telephone number.

(18) Notification to Other States

In the event that Ms. Ray is licensed in any other state(s), she must, within thirty (30) days, inform the nursing licensing board there of the conditioned status of her license in Vermont. Failure to provide such notification will constitute a violation of this Order.

(19) License Renewal

If Ms. Ray's license expires while this Order remains in effect, this Order does not automatically extend the license. To continue to practice Ms. Ray must timely apply for renewal, pay the applicable fee, and demonstrate that all renewal requirements have been satisfied.

(20) Release of Information Forms

This Order requires Ms. Ray to authorize substance abuse treating providers to report to the Board or its designee and provide information verbally or in written form and to discuss Ms. Ray and all treatment rendered. This Order requires that any and all information from Ms. Ray's treatment providers be provided to Office of Professional Regulation investigators. Information acquired by the Board, its designees, or the Office of Professional Regulation investigators may be used for further prosecution, if it is determined that the terms of this Order, or any rules or laws governing the practice of nursing have been violated.

(21) Costs

Ms. Ray shall bear all costs of complying with this Order.

(22) Violation of this Order

If Ms. Ray violates the terms of this Order in any respect, the Board, after giving Ms. Ray notice and an opportunity to be heard, may rescind or modify this Order and impose additional

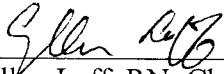
appropriate disciplinary sanctions. If a complaint of unprofessional conduct is made against Ms. Ray during the term of this Order, the Order shall be automatically extended until the unprofessional conduct matter is concluded.

(23) Completion of Conditional License Period

(a) After the conditional license period, Ms. Ray may petition the Board to remove any and all license conditions. Ms. Ray must present proof that all terms of this Order have been met. Ms. Ray must also present proof of successful substance abuse rehabilitation. Ms. Ray must demonstrate to the satisfaction of the Board that she poses no danger to the public or the practice of nursing and that Ms. Ray can safely and competently perform her licensed duties.

(b) Notwithstanding any provision above, Ms. Ray must continue to meet all Board of Nursing requirements for maintaining a license, license renewal, and license reinstatement.

BOARD OF NURSING

By: 
Ellen Leff, RN, Chair

Dated: December 15, 2009