

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

In re: MICHELE L. ROBERTSON	}	
License No. 026.0122116	}	Docket No. 2016-403 (RN)
	}	

Appearances:

Prosecutor: Rachel Allen, Esq.

Respondent: Did not appear

Hearing Officer: George K. Belcher

DEFAULT ORDER

The Hearing Officer of the Vermont Board of Nursing held a hearing pursuant to 3 VSA Sec. 129(f) in the above matter on December 6, 2016 at the Office of Professional Regulation in Montpelier, Vermont. Respondent did not attend and was not represented by counsel.

Findings of Fact

1. Respondent is licensed as a Registered Nurse and is therefore subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, 26 V.S.A. Chapter 28, and the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation.
2. Charges were filed in this matter on October 4, 2016 (pertaining to reciprocal discipline from the State of Delaware). On October 4, 2016 the Respondent was sent a Notice of Charges in this matter by certified mail and first class mail to the address of the Respondent which was on file with the Office of Professional Regulation. The notice of specification of charges was received by the Respondent on October 11, 2016. The regular mail notice of the charges was not returned. A copy of the Specification of Charges is attached to this Default Order.
3. OPR Rule 3.3 requires that an Answer be filed within 20 days of the date on which the notice of charges was mailed by the Director.
4. On November 8, 2016 a notice was sent to the Respondent advising of the hearing before the Board to find the Respondent in default and advising that, "If you wish to contest the charges you must contact the office immediately at (802) 828-2367 and show good cause for failing to answer the charges against you." This notice was mailed by certified mail and by regular mail. The certified mail notice was not returned as of the date of the hearing. The regular mail notice was not returned as of the date of the hearing.
5. Respondent has not filed an answer to the charges, nor any communication concerning good cause for failure to answer. The Respondent did not appear at the hearing on

default. No contact was made by the Respondent to the attorney for the State indicating that the Respondent intended to contest the charges. Upon consideration of the Prosecution's presentation and taking notice of the OPR file, the Hearing Officer of the Board finds Respondent to be in Default. The allegations contained in the Specification of Charges are therefore treated as the facts on which the Board may issue an order of professional discipline. OPR Rule 3.4, 3 V.S.A. § 809(d), and 3 V.S.A. § 814(c).

6. In addition to the facts established in the Specification of Charges, it is specifically found that the Respondent has diverted regulated medications, fell asleep multiple times while on duty and appeared to be disoriented with slurred speech, and failed to practice competently. The State recommended that the license of the Respondent be indefinitely suspended.

Conclusions of Law

Respondent has received adequate or constructive notice of the charges in this matter as indicated by the Board's file and the Prosecution's presentation. Because Respondent has failed to answer the charges, the factual allegations in the Specification of Charges are treated as if proved. O.P.R. Rule 3.4. Accordingly, the Board may find, based upon the finding of Default from this Default Hearing held pursuant to 3 V.S.A. §809(d), that Respondent has engaged in the unprofessional conduct alleged in the Specification of Charges.

Proposed Order

In accordance with the above Findings of Fact and Conclusions of Law, and consistent with the recommendation by the State, the Board does ORDER that the Respondent's license be INDEFINITELY SUSPENDED. In the event that the Respondent applies for reinstatement of the suspended license at a later time, then the Board may impose appropriate conditions at that time in its discretion.

The Hearing Officer reports the above facts, conclusions of law, and the finding of DEFAULT to the Board with the recommendation that the Board approve them and enter the Order as above.

Dated this 7th day of December, 2016.



George K. Belcher
Hearing Officer of the Vermont Board of Nursing

The Vermont Board of Nursing considered the report of findings of fact and conclusions of law at its meeting on 11/9/17. After considering the report, the Board takes the following action:

- / / Rejects the report and schedules the matter for hearing.
- / / Schedules the matter for additional evidence.
- ☒ Accepts the report, adopts the findings of fact and conclusions of law, and orders the recommended discipline as set forth above.

SO ORDERED.

Vermont Board of Nursing

By: 
for Jeanine Carr, RN, Chair
Vermont Board of Nursing

Date: 1-9-2017

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 1/9/17

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 St., 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.

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

IN RE:

**MICHELE L. ROBERTSON
License No. 026.0122116**

)
)
)

Docket No. 2016-403

SPECIFICATION OF CHARGES

Board Authority

1. The Vermont Board of Nursing ("Board") has jurisdiction to investigate and adjudicate allegations of unprofessional conduct committed by Nurses, pursuant to 3 V.S.A. §§ 129, 129a; 26 V.S.A. Chapter 28; the Administrative Rules of the Board of Nursing ("ARBN"); and the Rules of the Office of Professional Regulation.

General Statement of Facts

2. Michele L. Robertson ("Respondent") of Lewes, Delaware, is licensed by the State of Vermont as a Registered Nurse ("RN") under license number 026.0122116. This license was originally issued on or about June 27, 2016, and expires on or about March 31, 2017.
3. On June 20, 2016, Respondent completed an application for a Vermont RN license by endorsement and indicated that she was currently under investigation by a licensing authority in Vermont or any other state, federal authority, or other jurisdiction. As required, Respondent attached a letter explaining that she was under investigation by the Delaware Board of Nursing.
4. On May 20, 2016, the State of Delaware, Division of Professional Regulation, Investigative Unit, notified the Respondent that their investigation of complaint #11-44-16 was complete.
5. On May 31, 2016, a professional complaint was filed against Respondent by the State of Delaware Department of Justice ("Delaware Complaint"), case numbers 11-31-16 and 11-44-16. *See Attachment A.*
6. The Delaware Complaint alleged that the Respondent engaged in the following conduct while working as a Nursing Supervisor for the Delaware Veterans Home ("DVH") :
 - a. On February 23, 2016, Respondent failed to properly waste two tablets of Oxycodone HCL, 5mg, a schedule II controlled substance;

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Prosecuting Attorney
Office of
Professional Regulation
89 Main Street
3rd Floor
Montpelier, VT
05620-3402

- b. On April 9, 2015, Respondent fell asleep multiple times on, when she was the only leadership team member on duty;
 - c. On April 9, 2015, Respondent's speech was slurred, unintelligible, and her appearance was disoriented and disheveled while on duty;
 - d. On April 9, 2015, Respondent failed to complete necessary paperwork and properly report issues to the nurse supervisor working the subsequent shift.
- 7. On July 13, 2016, a Consent Agreement, accepted by the Delaware Board of Nursing, went into effect and resolved case numbers 11-31-16 and 11-44-16. *See* Attachment B.
 - 8. In the Delaware Consent Agreement, Respondent admitted to facts stated above in Paragraph 6, subsections (a) through (d). Respondent agreed that she practiced nursing when unfit to perform procedures and make decisions in accordance with the license held because of physical or mental impairment or dependence on alcohol or drugs.
 - 9. Respondent's RN license is suspended for three (3) years, stayed immediately and placed on probation for three years contingent upon her enrollment and compliance in the Delaware Professionals' Health Monitoring Program. Respondent must also complete fifteen (15) acceptable continuing education hours in the subject areas of substance abuse and ethics.
 - 10. The alleged conduct charged against the Respondent in Delaware would constitute unprofessional conduct in this state. The Board may discipline any licensee or refuse to license any person who has had a license application denied or license revoked, suspended, limited, conditioned or otherwise disciplined by a licensing agency in another jurisdiction for conduct which would constitute unprofessional conduct in this state, or has surrendered a license while under investigation for unprofessional conduct, pursuant to 3 V.S.A. §129(a)(5).
 - 11. The application of consistent and commensurate professional discipline between and among licensing jurisdictions promotes professional accountability and patient safety and is in the interest of public protection.

Violation One: 26 V.S.A § 1582(a)(2). Diverting or attempting to divert drugs or equipment or supplies for unauthorized use.

- 12. The State re-alleges and incorporates Paragraphs 2 through 10 above.
- 13. The facts alleged in Paragraph 6, subsections (a) through (d) demonstrate Respondent's failure to account for a controlled substance.

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14. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because the Respondent has committed unprofessional conduct in violation of 3 V.S.A. § 129(a)(2).

Violation Two: 26 V.S.A § 1582(a)(3). Engaging in conduct of a character likely to deceive, defraud, or harm the public.

15. The State re-alleges and incorporates Paragraphs 2 through 10 above.
16. The facts alleged in Paragraphs 6 through 8 demonstrate conduct likely to harm the public.
17. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because the Respondent has committed unprofessional conduct in violation of 3 V.S.A. § 129(a)(3).

Violation Three: 3 V.S.A § 129a(b)(1) and (2). Failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct, whether actual injury to a client, patient, or customer has occurred. Failure to practice competently includes: (1) performance of unsafe or unacceptable patient or client care; or (2) failure to conform to the essential standards of acceptable and prevailing practice.

18. The State re-alleges and incorporates Paragraphs 2 through 11 above.
19. As a Registered Nurse, Respondent must properly account for all controlled substances and practice when fit to do so, free from mental or physical impairment or dependence on alcohol or drugs.
20. The facts alleged in Paragraphs 5 through 11 demonstrate Respondent's failure to practice competently by performing unsafe or unacceptable patient or client care and failing to conform to the essential standard of acceptable and prevailing practice by failing to properly waste Oxycodone, falling asleep at work, having slurred speech and a disoriented demeanor while on-duty, and failing to report significant issues to the subsequent nursing supervisor.
21. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because the Respondent has committed unprofessional conduct in violation of 3 V.S.A. § 129a(b)(1) and (2).

Relief Requested

WHEREFORE, the license of Michele L. Robertson should be revoked, suspended, reprimanded, conditioned, or otherwise disciplined.

DATED at Montpelier, Vermont this 4th day of October, 2016.

STATE OF VERMONT



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STATE OF VERMONT
SECRETARY OF STATE

By: 

Rachel Allen
State Prosecuting Attorney
802-828-1217

STATE OF VERMONT



Prosecuting Attorney
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BEFORE THE DELAWARE BOARD OF NURSING

IN RE: MICHELE L. ROBERTSON)

LICENSE NO.: L1-0039964)

Case Nos.: 11-31-16

11-44-16

COMPLAINT

1. Michele L. Robertson ("Respondent") is a registered nurse in the State of Delaware, license number L1-0039964. Respondent's license was issued on January 24, 2011 and expires on September 30, 2017. Respondent's license is currently active.

2. At all times relevant, Respondent was working as a nursing supervisor for the Delaware Veterans Home ("DVH") located at 100 Delaware Veterans Blvd., Milford, Delaware 19963.

Case No. 11-31-16

3. On February 23, 2016, Respondent failed to properly waste two tablets of Oxycodone HCL 5 mg. Oxycodone HCL is a schedule II controlled substance.

4. By the afore-mentioned conduct, Respondent violated 24 Del. C. § 1922 (a)(8) as well as the following Board Regulations:

- a. 10.4.2.16 in that she diverted or misappropriated drugs of a patient agency or governmental program; and
- b. 10.4.2.28 in that she failed to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.

Case No. 11-44-16

5. On April 9, 2015, Respondent worked the 6:00 a.m. to 6:00 p.m. shift. She was the only leadership team member in the building.

6. During her shift, Respondent fell asleep multiple times. Additionally, Respondent's

medical team reported that her speech was slurred and unintelligible and her appearance was disoriented and disheveled.

7. Respondent failed to complete the necessary paperwork or properly report significant issues to the nurse supervisor working the shift after her.

8. By the afore-mentioned conduct, Respondent violated 24 *Del. C.* § 1922 (a)(6) as her physical condition is such that the performance of nursing service is or may be injurious or prejudicial to patients or to the public.

9. By the afore-mentioned conduct, Respondent violated 24 *Del. C.* § 1922 (a)(8) as well as the following Board Regulation:

- a. 10.4.2.15 in that she practiced nursing when unfit to perform procedures and make decisions in accordance with the license held because of physical or mental impairment or dependence on alcohol or drugs.

WHEREFORE, pursuant to 29 *Del. C.* § 8735 and 24 *Del. C.* Chapter 19, the State of Delaware respectfully requests that the Board:

- a. Set a time for a hearing on the allegations set forth above;
- b. Serve Respondent with a copy of the Complaint;
- c. Find Respondent guilty of the violations alleged herein; and
- d. Impose such disciplinary measures as the Board deems appropriate.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Carla A.K. Jarosz
Carla A.K. Jarosz (ID #5424)
Deputy Attorney General
820 N. French Street, Sixth Floor
Wilmington, DE 19801
(302) 577-8316

Date: May 31, 2016

BEFORE THE DELAWARE BOARD OF NURSING

IN RE: MICHELE L. ROBERTSON)
) Case Nos.: 11-31-16
LICENSE NO.: L1-0039964) 11-44-16

CONSENT AGREEMENT

A written Complaint ("Complaint") has been filed with the Delaware Board of Nursing ("Board") alleging that Michele L. Robertson ("Respondent"), a registered nurse in the State of Delaware, has engaged in conduct which constitutes grounds for discipline under the *Nurse Practice Act*. (24 Del. C. Ch. 19).

Respondent and the State enter into this Consent Agreement and submit it to the Board for review and approval as a means of resolving the pending administrative prosecution against Respondent pursuant to 24 Del. C. Ch. 19 and 29 Del. C. Ch. 101.

IT IS UNDERSTOOD AND AGREED THAT:

1. Respondent is a registered nurse in the State of Delaware, license number L1-0039964. Respondent's license was issued on January 24, 2011 and expires on September 30, 2017. Respondent's license is currently active.

2. At all times relevant, Respondent was working as a nursing supervisor for the Delaware Veterans Home ("DVH") located at 100 Delaware Veterans Blvd., Milford, Delaware 19963.

Case No. 11-31-16

3. On February 23, 2016, Respondent failed to properly waste two tablets of Oxycodone HCL 5 mg. Oxycodone HCL is a schedule II controlled substance.

4. By the afore-mentioned conduct, Respondent violated 24 Del. C. § 1922 (a)(8) as well as the following Board Regulations:

- a. 10.4.2.16 in that she diverted or misappropriated drugs of a patient agency or governmental program; and
- b. 10.4.2.28 in that she failed to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.

Case No. 11-44-16

5. On April 9, 2015, Respondent worked the 6:00 a.m. to 6:00 p.m. shift. She was the only leadership team member in the building.

6. During her shift, Respondent fell asleep multiple times. Additionally, Respondent's medical team reported that her speech was slurred and unintelligible and her appearance was disoriented and disheveled.

7. Respondent failed to complete the necessary paperwork or properly report significant issues to the nurse supervisor working the shift after her.

8. By the afore-mentioned conduct, Respondent violated 24 *Del. C.* § 1922 (a)(6) as her physical condition is such that the performance of nursing service is or may be injurious or prejudicial to patients or to the public.

9. By the afore-mentioned conduct, Respondent violated 24 *Del. C.* § 1922 (a)(8) as well as the following Board Regulation:

- a. 10.4.2.15 in that she practiced nursing when unfit to perform procedures and make decisions in accordance with the license held because of physical or mental impairment or dependence on alcohol or drugs.

10. Respondent hereby admits that the allegations set forth in paragraphs 1 through 9 above are true and correct.

11. Respondent and the State agree that the appropriate disciplinary sanctions shall be

as follows:

- a. Respondent's license issued by the Delaware Board of Nursing is hereby placed on suspension for a period of three years;
- b. The suspension of Respondent's license shall be stayed immediately, and her license placed on probation for three years contingent upon her enrollment in the Delaware Professionals' Health Monitoring Program (DPHMP) within 30 days of this Order. If Respondent does not enroll in the DPHMP, her suspension shall commence immediately at the close of said 30-day period without further action by the Board;
- c. Any violation of any of the terms of the probation including noncompliance with the terms and conditions of the DPHMP will result in the immediate conversion of Respondent's probation to suspension for the remainder of the term without further notice or hearing;
- d. Should Respondent's license be suspended pursuant to this Order, such suspension will not lift until she petitions the Board. At the time of such petition, the Board may continue the suspension if it finds such action necessary to appropriately protect the public, or lift the suspension and impose any additional conditions it finds necessary to appropriately protect the public at that time;
- e. Within ninety days of the Board's Order, Respondent must complete fifteen acceptable continuing education contact hours. Of the fifteen, six of the contact hours must be in the subject area of substance abuse and nine must be in the subject of ethics; these fifteen hours must be in addition to, and not in lieu of the contact hours required for renewal; and
- f. Failure to comply with the Board's Order may result in further discipline. This is a public disciplinary action reportable to the national practitioner databank.

12. The parties to this Consent Agreement are the State of Delaware and Respondent.

13. The parties agree and acknowledge that nothing contained in this Consent Agreement shall affect any rights or interests of any person not a party to this Agreement.

14. Respondent acknowledges that she is waiving her rights under 24 *Del. C. Ch. 19* and 29 *Del. C. Ch. 101* to a hearing before the Board prior to the imposition of disciplinary sanctions.

15. Respondent acknowledges that she has carefully read and understands this Consent Agreement, and is entering into this Consent Agreement freely, knowingly, voluntarily, and after having received or having been afforded the opportunity to receive the advice of counsel.

16. Respondent acknowledges that this Consent Agreement is a public record within the meaning of 29 *Del. C.* § 10002 and will be available for public inspection and copying as provided for by 29 *Del. C.* § 10003.

17. The parties acknowledge and agree that this Consent Agreement is subject to approval by the Board.

18. The parties acknowledge and agree that if the Board does not accept this Consent Agreement, it shall have no force or effect, except as follows:

- a. Neither Respondent, nor anyone on her behalf, will in any way or in any forum challenge the ability of the Board or any of its members to conduct an evidentiary hearing relating to the allegations in the subject Complaint;
- b. The Consent Agreement, or conduct or statements made in negotiating the Consent Agreement, will be inadmissible at any administrative, civil or criminal legal proceeding; and
- c. No provision contained in the Agreement shall constitute or have the effect of an admission by Respondent as to any fact alleged in the Complaint in this matter or in this Agreement.

19. If the Board accepts the Consent Agreement and enters it as an Order, the Consent Agreement shall be admissible as evidence at any future proceedings before the Board.

20. The parties acknowledge and agree that this Consent Agreement, along with any exhibits, addendums, or amendments hereto, encompasses the entire agreement of the parties and

supersedes all previous understandings and agreements between the parties, whether oral or written. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever concerning this agreement.

21. This Consent Agreement shall be effective upon acceptance by the Board and entry of the Board's Order.



Michele Robertson
Respondent

Dated: 6/25/10



Carla A.K. Jarosz
Deputy Attorney General
Delaware Department of Justice

Dated: 6/28/10

BEFORE THE DELAWARE BOARD OF NURSING

IN RE: MICHELE L. ROBERTSON)

)

Case No.: 11-31-16

LICENSE NO.: L1-0039964)

)

11-44-16

ORDER

WHEREAS, the Delaware Board of Nursing has reviewed this matter and hereby approves the Consent Agreement of the parties, and enters it now as an Order of the Delaware Board of Nursing;

IT IS SO ORDERED this 13th day of July, 2016



Pamela J. Tyranski/Board President
President, Board of Nursing

Date Mailed: 7/14/2016