

**STATE OF VERMONT
BOARD OF NURSING**

In re: Julie A. Smith
License No. 026-82314

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Docket No. 2011-779(RN temp.)

**Decision on
UNPROFESSIONAL CONDUCT CHARGE**

Participating Board Members:

Alan Weiss, Public Member
Donna Rae Metcalf, LPN
Sandra Norton, LNA
William G. White, Jr., Public Member
Deborah Swartz, RN
Douglas Sutton, RN
Ellen Watson, APRN
Sheila Davis, LPN
Virginia Hudson, RN

Appearances:

for Petitioner, State of Vermont: Gabriel Gilman
for Respondent: pro se

Presiding Officer: Larry S. Novins

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

The Vermont Board of Nursing held a hearing in the above matter on October 8, 2012 at the Capitol Plaza in Montpelier, Vermont.

The prosecution has the burden of proof in this matter. To prevail on any unprofessional conduct charge, it must prove the charge by a preponderance of the evidence.

Background

The prosecution alleges in its Specification of Charges that Ms. Smith, in violation of Vermont Statutes, arrived at work under the influence of alcohol. Ms. Smith did appear for the hearing. She appeared alert. She was responsive to questions directed at her during the hearing. But, Ms. Smith did not take an active role at the hearing. She waived any opportunity to testify on her own behalf. She did not cross-examine the witnesses who testified for the prosecution. She declined to address the Board or offer a closing statement.

Findings of Fact

Based on the evidence presented, the Board finds as follows:

1. Ms. Smith was a licensed registered nurse (temporary) and is therefore subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, 814(d) 26 V.S.A. § 1582(a), the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation.
2. On October 31, 2011 Ms. Smith arrived at Fletcher Allen Health Care where she was to begin work as an operating room nurse. Ms. Smith was to report to Human Resources and from there was sent to the OR area to meet with J.D. who planned to provide her orientation.
3. Ms. Smith arrived at the OR area two hours late, despite the fact that it was only a five minute walk from the HR department.
4. When asked why she was late, Ms. Smith provide no explanation.
5. She arrived at the orientation area in a confused state. She staggered as she walked. She could not walk a straight line. She was literally "bouncing off the walls." J.D. asked Ms. Smith if she was "OK."
6. Ms. Smith smelled of alcohol. She was seriously impaired by alcohol.
7. Others beside J.D. noticed Ms. Smith's impairment.
8. When Ms. Smith spoke, she repeatedly turned her face away from the person she was talking to. She was trying to hide the smell on her breath.
9. Ms. Smith was taken to the locker room to change clothes after which she was supposed to return to speak with the orienting nurse.
10. Ms. Smith did not promptly return. In fact, she remained in the locker room for at least ten minutes. J.D. had to search for Ms. Smith. When she found her, Ms. Smith was wandering around the locker room. Ms. Smith had still not changed clothes.
11. Ms. Smith was asked to leave the hospital. She was not fit to work. Her conduct that day was of a character that, if not interrupted by others, was likely to harm the public.
12. The essential and prevailing standards of nursing require that a nurse arrive at work sober with all the mental and physical abilities attendant to sobriety.
13. At the hearing Ms. Smith provided no account for her actions or condition that day. There was no evidence that her intoxication as described on October 31, 2012 was an aberration or attributable to some extraordinary situation. Her degree of impairment showed a serious substance abuse problem.
14. We have no evidence that since that time her condition has significantly changed.

Conclusions of Law

Based on the evidence presented and Facts found above we conclude as follows:

1. **Re: Alleged Violation of 26 V.S.A. § 1582(a)(3):** The State has proved by a preponderance of the evidence that Ms. Smith is unable to practice nursing competently by reason of any cause. This is unprofessional conduct. 3 V.S.A. § 129a(a)(3).
2. **Re: Alleged Violation of 26 V.S.A. § 1582(a)(7):** The State has proved by a preponderance of the evidence that Ms. Smith has engaged in conduct of a character

likely to harm the public. This is unprofessional conduct. 3 V.S.A. § 129a(a)(3).

3. **Re: Alleged Violation of 26 V.S.A. § 1582(a)(5):** Without more information we can only speculate that Ms. Smith is habitually intemperate. We decline to find a violation of this statute.
4. **Re: Alleged Violation of 3 V.S.A. § 129a(b)(1) and (2):** The State has proved by a preponderance of the evidence that Ms. Smith failed to practice competently. We find that Ms. Smith's conduct as found above constituted a (2) failure to conform to the essential standards of acceptable and prevailing practice. This is unprofessional conduct.

Order

For the violations above, to protect the public, health, safety and welfare, the following sanction is necessary.

Ms. Smith's license is **suspended indefinitely**, effective the date of this decision. Conditions governing any possible reinstatement and conditions on Ms. Smith's license should she successfully achieve reinstatement are set forth in the Appendix attached hereto.

APPEAL RIGHTS

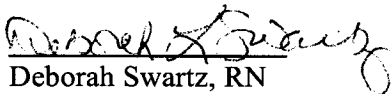
This is a final administrative determination by the Vermont Board of Nursing. A party aggrieved by a final decision of a board may appeal this decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Vermont Secretary of State, Office of Professional Regulation, National Life Bldg., North, FL2, Montpelier, Vermont 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.

To request a stay of the Board's decision, please refer to the attached stay instructions.

Vermont Board of Nursing

By:


Deborah Swartz, RN

Date October 9, 2012

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY:

10/12/12

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

In re: Julie A. Smith
License No. 026-8231 4
Docket No. 2011-779

Order

As set forth in the Order this date, Ms. Smith's license shall be **indefinitely suspended**.
Before applying for reinstatement, Ms. Smith must meet the following conditions:
Within forty-five (45) days of requesting reinstatement:

- 1) Ms. Smith shall obtain an independent evaluation report by a licensed professional specializing in drug and alcohol abuse, pre-approved by the Board or its designee;
- 2) The results of the report with the drug and alcohol independent evaluator must indicate that Ms. Smith does not present a risk to the safety, health, or welfare of her potential patients; and
- 3) Ms. Smith must submit to the Board or its designee the results of a minimum of three random urine analyses administered by a person who has been pre-approved by the Board or its designee, and analyzed by a lab pre-approved by the Board or its designee which is qualified to analyze samples for forensic purposes. The reinstatement applicant shall authorize the Board or its designee to share urinalyses results with the independent evaluator (paragraph 1, above) and the applicant's treatment provider(s).
- 4) The results of the random urinalyses shall be negative. Failure to appear for, refusal to provide, adulteration of, dilution of, or tampering with a sample for any urine analysis shall cause that screen to be presumed to be positive.

Ms. Smith's license shall not be reinstated until these prerequisites are met.

License Conditions

(1) Re-issuance of License

When Ms. Smith has shown successful completion of the reinstatement conditions above, her license shall be reinstated as "conditioned." The conditions set forth below shall remain with Ms. Smith's license until further Order of the Board.

(2) Length of time of Conditions Imposed

These conditions shall remain in place until Ms. Smith has completed all conditions ordered. Ms. Smith shall be subject to the conditions until Ms. Smith completes a **minimum of three (3) years** of supervised practice in which she works at least forty (40) hours every two (2) weeks as a license registered nurse. Part time employment of less

than forty (40) hours every two (2) weeks shall be credited on a pro-rated basis. Ms. Smith shall be prohibited from working more than forty (40) hours per week.

(3) Completion of Substance Abuse Counseling and Treatment Plan

Ms. Smith 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. Smith 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. Smith 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

(a) Ms. Smith 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.

(b) Ms. Smith 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. Smith 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

(a) Ms. Smith shall submit to random substance abuse screenings at the request of the Board or its designee. Ms. Smith 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.

(b) 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. Smith shall abstain completely from the consumption or possession of alcohol and drugs with the exception of drugs as outlined in Paragraph 9 for the duration of this Order.

(9) Drug Use Exception

(a) Ms. Smith shall not take controlled substances unless necessary. Ms. Smith 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. Smith within forty-eight (48) hours of the establishment of the practitioner/patient relationship. Ms. Smith shall ensure that the physician, dentist or nurse practitioner informs the board, in writing and on appropriate letter head, of knowledge of Ms. Smith's substance abuse issue(s) within one (1) week of entering into the practitioner / patient relationship. Ms. Smith 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.

(b) 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.

(c) Ms. Smith 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

(a) Employer Ms. Smith shall provide a copy of this Order to all employers in any current or future setting in which Ms. Smith practices as a licensed registered 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. Smith shall cause Ms. Smith'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.

(b) Nursing School Should Ms. Smith attend a nursing program which has a clinical portion that involves actual patient care, Ms. Smith shall provide a copy of this Order to the Program Director. Ms. Smith 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. Smith'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. Smith shall cause every employer Ms. Smith has worked for during the relevant period as a licensed registered nurse to submit to the Board an evaluation of Ms. Smith's performance during that period. This report shall be on forms issued by the Board.

(12) Practice Under Supervision:

Ms. Smith shall practice only in a setting where Ms. Smith has direct supervision" for the entire shift by a licensed registered nurse in good standing.

(13) Administration of Medications

(a) Ms. Smith is prohibited from administering any controlled substances. This condition may be removed only by Ms. Smith 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.

(b) In any such petition, Ms. Smith must demonstrate to the satisfaction of the Board, that she can safely and competently administer such medications. In any such petition, Ms. Smith 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.

(c) 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. Smith 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. Smith 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. Smith shall first obtain prior approval from this Board for out-of-state practice. If Ms. Smith 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. Smith 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. Smith shall notify the Board in writing, of her current place of employment, personal address, and telephone number. Ms. Smith 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. Smith is licensed in any other state(s), Ms. Smith must, within thirty (30) days, inform the nursing licensing board there of the conditioned status of Ms. Smith's license in Vermont. Failure to provide such notification will constitute a violation of this Order.

(19) License Renewal

If Ms. Smith's license expires while this Order remains in effect, this Order does not automatically extend the license. To continue to practice Ms. Smith 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. Smith 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. Smith and all treatment rendered. This Order requires that any and all information from Ms. Smith'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. Smith shall bear all costs of complying with this Order.

(22) Violation of this Order

If Ms. Smith violates the terms of this Order in any respect, the Board, after giving Ms. Smith 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. Smith 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

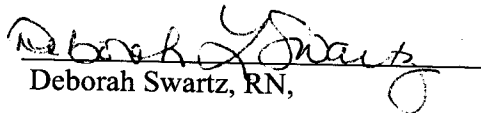
(a) After the conditional license period, Ms. Smith may petition the Board to remove any and all license conditions. Ms. Smith must present proof that all terms of this Order have been met. Ms. Smith must also present proof of successful substance abuse rehabilitation. Ms. Smith must demonstrate to the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

competently perform her licensed duties.

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

Vermont Board of Nursing, by

By:


Deborah Swartz, RN,

Dated: October 9, 2012