

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

In re: Jodi Stewart

Docket No. 2015-315

**DECISION AND ORDER
PETITION FOR REINSTATEMENT**

Appearances:

Prosecuting Attorney: Elizabeth A. St. James, Esq.
Ellen Watson, APRN, IT member

Board of Nursing:

Jennifer Laurent, APRN, Acting Chair
Krystal Bernier, LPN
Virginia Hudson, RN
Kelly Sinclair, LNA
Douglas Sutton, RN
Deborah Swartz, RN
Wendy Thurston, RN
Luana Tredwell, LPN

Presiding Officer: Michael S. Kupersmith, Administrative Law Officer

**DECISION AND ORDER
PETITION FOR REINSTATEMENT**

This matter came before the Board of Nursing on the Respondent's Request for reinstatement of her license as a Licensed Practical Nurse. The hearing was held on April 8, 2019 at the Office of the Vermont State Division of Fire Safety, 1311 U.S. Route 302, Barre, Vermont. Elizabeth A. St. James, Esq. represented the Office of Professional Regulation (OPR). Respondent Jodi Stewart appeared by telephone.

Respondent was originally licensed by the State of Vermont as a Licensed Practical Nurse on or about June 23, 2008. At the time the Office of Professional Regulation (OPR) requested summary suspension of her license, November 4, 2015, Respondent's license was due to expire on January 21, 2016. The request for summary suspension was based upon allegations that the Respondent had written prescriptions for controlled substances for her own use. On November 10, 2015, the Board of Nursing issued a summary suspension order.

OPR filed a Specification of Charges against the Respondent on December 17, 2015 which contained the same allegations as the request for summary suspension. On July 11, 2016, the Board of Nursing indefinitely suspended the Respondent's license. The Board's order provided,

Her license shall continue as suspended until such time as Respondent completes an acceptable, independent substance abuse assessment by a qualified substance abuse counselor who is pre-approved by the Vermont Nursing Board, at her own expense. In the event that the assessment is negative, showing that Respondent does not have a substance abuse problem, then Respondent may apply for a conditional license subject to such work monitoring conditions as may be ordered by the Board for a period of two years. In the event that the substance abuse assessment shows that the Respondent does have a substance abuse problem, then the Respondent may apply for reinstatement on a conditional license subject to standard substance abuse conditions, including random screening for a period of three years. Any reinstatement and any order shall be at the discretion of the Board following the substance abuse assessment.

On or about January 17, 2019, the Respondent filed a request for reinstatement. She included an assessment from a substance abuse counselor who reported that "there is no evidence of a need for [substance-abuse] treatment." The assessment was admitted at hearing as State's exhibit #2.

The State asserts that although the substance abuse evaluation "does not indicate that [Respondent] has a substance abuse problem, it does raise several questions and does not adequately address Respondent's underlying conduct." The State supports Respondent's request for reinstatement, but recommends that Respondent have three years of supervised practice and random UAs. In addition, the State recommends that if Respondent should engage in either substance abuse or mental health treatment while her license is conditioned, she should submit monthly treatment reports to the Case Manager.

There were no factual disputes presented at hearing. The only dispute concerned the conditions under which Respondent's license should be reinstated. The Respondent asserted that since the substance abuse assessment indicates that she is not in need of treatment, her license should be reinstated subject to two years of work monitoring.

Taking into consideration the circumstances of leading to Respondent's indefinite suspension, the substance abuse evaluation submitted by the Respondent, and the arguments of the parties, the Board concludes that the State's request for reinstatement conditions is reasonable.

ORDER

The Board of Nursing hereby **REINSTATES and CONDITIONS** the Respondent's license and/or re-entry permit for a **MINIMUM OF THREE (3) YEARS, commencing on the date of reinstatement**. The **CONDITIONS** shall be as follows:

1. Renewal. Respondent is immediately eligible to renew and revive her Licensed Practical Nurse license. Respondent must comply with all requirements of license renewal.

2. Re-issuance of License. Upon the commencement of these conditions and the renewal of Respondent's license, Respondent shall be issued a license labeled "conditioned."
3. Length of Time of Conditions Imposed. The conditions shall remain in place until Respondent has completed all conditions ordered. Respondent shall be subject to the conditions until Respondent completes a **minimum of three (3) years** of supervised licensed practical nursing practice in which Respondent works at least forty (40) hours every two (2) weeks as a licensed practical nurse. Part time hours of fewer than forty (40) hours every two (2) weeks shall be credited on a prorated basis. Respondent shall be prohibited from working more than forty (40) hours per week.
4. Monitoring. The Office of Professional Regulation, through the Enforcement Case Manager, shall be responsible for monitoring Respondent's compliance with these Conditions. All reports or correspondence regarding compliance with these conditions shall be submitted to the Case Manager in accordance with the Conditions listed below.
5. Completion of Substance Abuse Counseling, Treatment Plan, Treatment Reports and recovery groups. Per the recommendation of Respondent's independent evaluation, Respondent is **not** required to engage in substance abuse counseling at this time. However, should Respondent engage in substance abuse counseling while under the terms of this Order, the following Conditions shall apply:
 - a. Respondent shall continue substance abuse counseling and comply with the substance abuse treatment plan until the pre-approved treating professional certifies in writing to the Board that such counseling is no longer necessary. Within ten (10) days of the date of beginning treatment, Respondent shall provide a copy of this Stipulation and Consent Order to her treatment provider and inform him or her of Respondent's conditional license status and the accompanying conditions. Respondent's treating professional shall submit to the Board, on forms provided by the Board, acknowledgement of receipt of the Stipulation and Consent Order along with Respondent's current treatment plan.
 - b. Respondent shall authorize Respondent's treating professional to submit to the Board **monthly** reports on forms issued by the Board. Respondent shall authorize Respondent's treating professional to provide all information requested by the Nursing Board, either orally or in writing, at any time during the period this Consent Order is in effect.
 - c. If Respondent takes prescribed medications as part of her substance abuse counseling and treatment, Respondent's monthly treating professional reports must also indicate Respondent's current dosage and whether Respondent is appropriately taking her medication as prescribed. Respondent must continue to

take such medications as prescribed, until her treating professional certifies in writing to the Board that such medication is no longer necessary.

- d. Respondent shall participate as recommended by Respondent's treating professional in substance abuse recovery group(s), and, if recommended, shall submit **quarterly** reports documenting such attendance on forms issued by the Board.
6. **Random Drug Testing.** Respondent shall submit to random drug testing through the Board pre-approved entity. All testing shall be done on a random, unannounced basis and analyzed by a lab qualified to analyze samples for forensic purposes and 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. Failure to check-in to determine whether Respondent is selected for testing on any given day, regardless of whether Respondent is actually selected that day, may be considered a violation of this Order.

7. **Abstain from Drug Use.** Respondent shall abstain completely from the consumption or possession of controlled drugs.
8. **Drug Use Exception.** Respondent may take scheduled/controlled medications lawfully prescribed for a bona fide illness or condition by a health care practitioner disclosed to the Board in writing by Respondent within forty-eight (48) hours of the prescription. Respondent's health care practitioner shall inform the Board, in writing and on appropriate letterhead, of knowledge of Respondent's conditional license status within seven (7) days of entering into the practitioner/patient relationship. Additionally, the practitioner shall inform the Board of all scheduled/controlled medications prescribed – and the anticipation of how long such prescriptions will need to be taken – within seven (7) days of the prescription.

The Board or its designee may request that the practitioner document the necessity for the prescribed scheduled/controlled medications or other medications known to have abuse potential. It is not anticipated that Respondent would be 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.

Respondent shall provide the Board with a current medication list of any medications taken on a scheduled or as-needed basis on forms issued by the Board within seven (7) days of the date of reinstatement and shall update this list within forty-eight (48) hours of any change in these medications.

9. Notification to Employers/Nursing School. Respondent shall provide a copy of this Order to all employers in any current or future setting in which Respondent practices as a nurse and inform them of Respondent's conditional license status. Within ten (10) days of the date of entry of this Order or of any subsequent nursing employment, Respondent shall cause Respondent's immediate supervisor to submit to the Board an employer agreement form approved by the Board, acknowledging receipt of the Stipulation and Order and the ability to comply with the conditions in the Order.

In the event Respondent is attending a nursing program which has a clinical portion that involves actual patient care, Respondent shall provide a copy of this Order to the Program Director. Respondent shall cause the Program Director to submit to the Board a nursing program agreement form approved by the Board, acknowledging receipt of this Order and the ability of the program to comply with the conditions in the Order during clinical experience.

10. Reports from Employers/Program Director. Within one (1) month of the date of reinstatement or within one (1) month of the commencement of nursing employment and **monthly** thereafter, Respondent shall cause every nursing employer Respondent has worked for during the month to submit to the Board an evaluation of Respondent's work performance and attendance during that month. Moreover, on a **quarterly** basis, these reports shall include the results of the employer's medication audits of Respondent's medication administration and practices, if and when Respondent engages in medication administration. In the event Respondent is attending a nursing program, Respondent shall cause the Program Director to submit to the Board, on a monthly basis, a written evaluation of Respondent's performance and attendance. These reports shall be submitted in writing on forms issued by the Board. All employer reports shall indicate satisfactory performance (ie., consistently meeting all standards of nursing practice) and attendance.
11. Practice Under Supervision. Respondent shall practice as a licensed practical nurse only in a setting where Respondent has onsite supervision for the entire shift by a licensed registered nurse or licensed practical nurse that is in good standing with the Board.
12. Administration of Medications. Respondent is prohibited from administering any controlled substances. This condition may be removed only by Respondent filing a petition with the Board after Respondent has worked as a licensed practical nurse for six (6) months for at least forty (40) hours every two weeks (or the part time equivalent) after the date of reinstatement.

In any such petition, Respondent must demonstrate, to the satisfaction of the Nursing Board or its designee, that Respondent can safely and competently administer such medications. Respondent must include appropriate support from Respondent's 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 the reinstatement of all medication privileges. The Board may gradually restore those privileges through whatever intermediary steps it determines are appropriate.

13. Types of Employment Prohibited. Respondent shall not work in a supervisory role. Respondent shall not work for a nurse registry, traveling nurse agency, float-pool, home health care agency, temporary nursing employment agency, or as a private duty nurse or personal care provider requiring a nursing or nursing assistant license during the effective period of this Order.
14. Interview with the Board or its Designee. Respondent shall appear in person for interviews with the Board or its designee upon request.
15. Out-of-State Practice. Before any out-of-state practice can be credited toward fulfillment of these terms and conditions, Respondent shall first obtain approval from the Board or its designee. The Board will approve out-of-state nursing practice so long as Respondent can still comply with the provisions of this Order. If Respondent receives discipline on a nursing license held in another state during the conditioned period, Respondent must inform the Board of such, in writing, within ten (10) days of receiving such discipline.
16. Notification of Place of Employment/Personal Address/Telephone Number. Within ten (10) days of the date of entry of this Order, Respondent shall notify the Board, in writing, of Respondent's current place of employment, personal address, and telephone number. Respondent shall further notify the Board, in writing, within forty-eight (48) hours of any change in employment (including resignation or termination), personal address, or telephone number.
17. Notification to Other States. In the event that Respondent is licensed in nursing in any other state(s), Respondent must inform the nursing licensing board of the state(s) in which Respondent is licensed of the conditional status of Respondent's Vermont nursing license within thirty (30) days of the date of entry of this Order.
18. License Renewal. This Order does not automatically extend the license and Respondent must comply with the requirements for license renewal.

19. Release of Information Forms. This Order requires Respondent to authorize drug and/or alcohol treatment providers to report information in verbal and/or written format and/or to discuss Respondent and any and all treatment rendered to Respondent for drugs and/or alcohol with the Board or its designee. Any and all of this information may be provided to the Office of Professional Regulation investigators, and that the information may be used for further prosecutions if so warranted or if the Office of Professional Regulation determines that said information violates the terms of this Order or any rules or laws governing the profession of nursing.

Respondent is entitled to revoke this consent at any time. However, any revocation shall be considered a violation of this Order. This consent expires when the conditions are removed from Respondent's nursing license.

This Order shall itself constitute a valid written consent pursuant to the requirements of 42 C.F.R. § 2.31. Respondent understands that Respondent's treatment provider may require Respondent's to sign a separate and distinct consent meeting the requirements of 42 C.F.R. § 2.31.

20. Costs. Respondent shall bear all costs of complying with this Order.
21. Violation of this Order. If Respondent violates this Order the Board, after giving Respondent notice and an opportunity to be heard, may rescind or modify this Order and impose additional appropriate disciplinary actions. If a complaint of unprofessional conduct is made against Respondent during the term of this Order, this Order shall be automatically extended until the unprofessional conduct matter is concluded.
22. Completion of Conditional License Period. Respondent shall submit a petition to the Docket Clerk to remove any and all conditions on Respondent's license. The State will assent to or oppose Respondent's petition. The Board will conduct a hearing if necessary. Respondent bears the burden and must present proof that Respondent has fully complied with the terms of this Order and these conditions are no longer necessary to protect the public.

SO ORDERED

Vermont Board of Nursing

By: Jennifer Laurent
Jennifer Laurent, Acting Chair

Date: 4.23.19

Date of Entry: 4.30.19



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, 89 Main Street, Fl. 3, 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.

