

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

<i>In re</i>	Virginia Swain	}	Docket No. NU89-0606
License No.	026-022406	}	

**FINDINGS OF FACT
CONCLUSIONS OF LAW & ORDER**

Introduction:

On Monday 9 July 2007 the Board heard this contested case of alleged unprofessional conduct brought by the State of Vermont against Respondent Virginia Swain. Board members Susan O. Farrell (Chairperson), Hollie Shaner-McRae *ad hoc*, Sandra J. Norton, Laurey M. Tyo and Alan Weiss participated in the hearing of this matter. Board members Ellen Leff and Linda M. Y. Rice recused. The Respondent appeared *pro se*. Judith Cutler represented the State of Vermont. Board counsel Kevin F. Leahy presided.

The State brought a specification of charges (the "Charges" dated 11 April 2007) against the Respondent Virginia Swain alleging unprofessional conduct for substandard practice and substance abuse. The Board disciplined the Respondent in 2004 for her admitted diversion of morphine from her employer. The current charges do not allege diversion. The State alleges the Respondent:

- (A) Committed practice errors at the Facility where she worked prior to June 2006;
- (B) Abused opioids that she received from a friend who had a prescription for Vicodin and oxycodone. The State alleges this occurred between June and August 2006 prior to Respondent receiving addiction treatment at the Brattleboro Retreat beginning in the fall of 2006.

Charges at ¶¶ 3-10.

Findings of Fact &
Conclusions of Law:

1. This Board licenses the Respondent and may exercise disciplinary authority for alleged acts of licensee unprofessional conduct. 26 V.S.A. Chapter 28; 3 V.S.A. § 129(a); and Admin. Rules for the Bd. of Nursing and the Office of Prof. Reg.
2. Respondent holds a conditioned State of Vermont registered nursing license. The conditions are in effect due to incidents of morphine diversion in 2003.

3. In a disciplinary hearing, the state has the burden of proof. To satisfy its evidentiary burden, it must "show by a preponderance of the evidence that [a licensee] has engaged in unprofessional conduct." 3 V.S.A. § 129a (c).
4. The Respondent does not contest the factual allegations set forth in the Charges.
5. The Board finds that the State met its evidentiary burden based on the admissions of the Respondent both in her answer to the Charges and her testimony before the Board.
6. In addition to the written admissions the Respondent filed with the Board prior to the evidentiary hearing, the evidence showed that the Respondent abused opioids intermittently beginning in 2002 until sometime in 2006. The opioid abuse coincided with significant life stressors the Respondent faced beginning 2002.
7. The Respondent openly acknowledged intermittent substance abuse starting in 2002 and continuing until the fall of 2006.
8. The evidence also showed that the Respondent did not have a history of substance abuse problems prior to 2002 when she began diverting morphine from her employer.
9. The evidence showed that the Respondent started treatment at the Brattleboro Retreat in the fall of 2006 and she has successfully remained in recovery since approximately September 2006.
10. Documentary evidence reviewed by the Board showed Respondent enrolled in the Brattleboro Retreat's "Starting Now" program and that her drug testing results have returned negative for substances of abuse. *See* Exhibit A (Letter to OPR from Peter LoIacono, MA, LADC, MAC).
11. The Board wants to commend the Respondent on the success she has achieved thus far in her recovery from substance abuse.
12. However, the Board is not satisfied from Respondent's testimony that enough time has passed in recovery to demonstrate that she may continue nursing safely in the near term.
13. The Board also needs to see further evidence that the Respondent can successfully remain in recovery before the Board permits her to practice the profession of nursing.
14. The Board will therefore suspend the Respondent's license for a period extending until at least the end of this year.
15. After 1 January 2008, the Board will entertain a petition for reinstatement with conditions.
16. In considering whether to issue a conditioned license to the Respondent after the 1st of next year, the Board will look to whether the Respondent can remain in recovery.
17. Board consideration of a reinstatement petition will require an independent evaluation by a licensed drug and alcohol counselor as well as continued abstinence from substances of abuse by the Respondent.

18. In light of these findings, the Board rules as follows on the individual charges brought by the State against the Respondent:

- 26 V.S.A. § 1582(a)(3) (unable to practice nursing competently by reason of any cause). The Board rules that the State met its burden of proof. At this point the Board finds the Respondent is unable to practice nursing for the reasons set forth in its findings.

- 3 V.S.A. § 129a(b)(1) and 3 V.S.A. § 129a(b)(2) (failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct). The Board rules that the State met its burden of proof. The Respondent's admissions and the record indicate several instances of failure to practice competently.

- 26 V.S.A. § 1582(a)(5) (intemperance). The Board rules that the State met its burden of proof. Although the Respondent is successfully in recovery, during the period covered in the Charges the Respondent abused substances on multiple occasions.

- 3 V.S.A. § 129a(a)(3) (failing to comply with provisions of federal or state statutes or rules governing the practice of the profession). The State did not go forward with a §129a(a)(3) charge. The statement of facts contained in the Specification of Charges did not allege that the Respondent violated any law governing the practice of the profession. This charge is dismissed.

ORDER

Based on the findings of facts set forth above, the Board of Nursing therefore INDEFINITELY SUSPENDS the Respondent's license until at least the remainder of this year. The Board of Nursing will accept a petition for reinstatement after 1 January 2008 with a showing that Respondent has the ability to practice safely under supervision and with a conditioned license.

- END -

(signature page to follow)

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Vermont Board of Nursing:

By: Susan O. Farrell Date: 10/08/07
Susan O. Farrell, RN
Board Chairperson

OFFICE OF PROFESSIONAL REGULATION
DATE OF ENTRY: 10/10/07

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, FL2, 1 National Life Drive, Montpelier, Vermont 05602-3402 within 30 days of the entry of the order.

If you file an appeal, the Director of the Office of Professional Regulation will assign the case to an appellate officer. The appellate officer will hear the appeal and make a decision based on the record of evidence created before the Board of Nursing. In cases of alleged mistakes in the procedure followed before the board, which is not shown in the record, the appellate officer may allow proof on that particular issue. 3 V.S.A. §§ 129(d) and 130a.