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

In re: JENNIFER M. TUCKER	}	Docket No. 2016-102 (LPN)
License No. 025.0098346	}	

Decision on
Petition for Reinstatement of License

Participating Board Members:
Ellen Watson, APRN, Chair
Jennifer Laurent, APRN
Jill Duell, LPN
Kelly Sinclair, LNA
Douglas Sutton, RN
Virginia Hudson, RN

Appearances:
Prosecuting the case: Elizabeth St. James, Esq.
Petitioner: Jennifer Tucker was present but not represented.

Presiding Officer: Stephen A. Reynes

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Vermont Board of Nursing, pursuant to notice, held a hearing in the above matter on July 9, 2018, at the Office of Professional Regulation in Montpelier, Vermont, regarding Jennifer Tucker's Petition for Reinstatement as a Licensed Practical Nurse (LPN). This followed an initial hearing before the Board of Nursing on April 9, 2018, which was continued, as set out in the Board's *Decision on Respondent's Petition for Reinstatement of License*, entered May 14, 2018. At both the April 9 and July 9, 2018 hearings the State was represented by Prosecutor Elizabeth St. James and the Respondent/Petitioner appeared but was not represented. This Decision, being based on the complete Record, is the final Decision of the Board.

Findings of Fact

Based on the evidence presented and the documents in the file of the Respondent/Petitioner, the Board finds as follows:

1. Respondent and Petitioner Jennifer Tucker ("Respondent") was a licensed practical nurse under Vermont license number 025.0098346, and therefore subject to the regulatory authority of this Board, pursuant to 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. Her Vermont license was originally issued on or about December 17, 2013 and was set to expire on or about January 31, 2018.

2. During the relevant period, Respondent was employed as an LPN at Berlin Health and Rehabilitation Center (the "Facility") in Barre, Vermont. This license was indefinitely suspended by the Board pursuant to a Stipulation and Consent Order entered on or about December 13, 2016.

3. By the Stipulation and Consent Order the Respondent admitted acts, omission(s) and/or circumstances constituting unprofessional conduct in violation of:

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

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

    c. 3 V.S.A. § 129a(a)(7) (Willfully making or filing false reports or records in the practice of the profession; willfully impeding or obstructing the proper making or filing of reports or records or willfully failing to file the proper reports or records).

4. Under the Stipulation and Consent Order, the Respondent must:

    1. Obtain an independent evaluation report by a licensed professional specializing in drug and alcohol abuse pre-approved by the Board ("Independent Evaluator") and who has verified receipt of that Order, and the results of which must indicate that the Respondent does not present a risk to the safety, health or welfare of Respondent's potential patients;

    2. Submit to the Board the results of a minimum of three (3) random urine analyses, collected in an observed setting; administered by a person or entity that has been pre-approved by the Board; and analyzed by a lab qualified to analyze samples for forensic purposes and pre-approved by the Board, the results of which shall be negative; failure to appear for, or refusal to provide, adulteration of, dilution of, or tampering with a sample for any urine analysis shall cause that screen to be presumed positive; and

    3. If recommended by the Independent Evaluator, enter into a treating professional agreement and substance abuse treatment plan with a treating professional(s) pre-approved

by the Board.

4. The Stipulation and Consent Order further provided that once reinstated, the respondent's license **SHALL BE CONDITIONED** pursuant to whatever terms the Board finds reasonable at the time of Respondent's reinstatement request, taking into account the independent evaluation, urine analysis results, the facts above, and anything else the Board deems relevant.

5. On December 11, 2017, the Respondent filed her request for reinstatement of her license. At that time she had not completed all prerequisites for reinstatement. It was difficult for the Respondent to complete all the prerequisites as she has no medical insurance and was unemployed for a period. The parties hereto sought a continuance to provide more time to complete those prerequisites, which was granted by the Board. On or about February 23, 2018, the parties filed *Second Joint Motion to Set-Out Reinstatement Hearing*, seeking to have the Petitioner's reinstatement request set for the Board's April meeting. That motion was granted by Administrative Law Officer George Belcher and the matter was set for hearing on April 9, 2018. Certain evidence was introduced at that hearing and the Board continued the matter for further hearing on July 9, 2018, for reasons set out in the Board's decision entered May 14, 2018, including that the Petitioner shall submit:

1. An updated Independent Evaluation certifying that the Respondent does not present a risk to the safety, health or welfare of Respondent's potential patients as a Licensed Practical Nurse, which evaluation shall be current within 45 days of its submission.

2. A color copy of both sides of the medical marijuana card, also known as a registered patient card issued pursuant to 18 V.S.A. Chapter 86, or a document certifying her eligibility for such card.

3. Three random clean urine analyses, the results of which shall be negative, except that there may be a positive result for THC if the Independent Evaluator determines that the Respondent is fit to practice.

6. The Petitioner was born on October 2, 1979. Ex. R3, Document 1, Evaluation of Christopher D. Rossey. Thus the Respondent is near her 39th birthday. The Respondent has used marijuana since age 14 to reduce anxiety. This was at a time when she was subject to beatings by her mother. [Id. at pages 1-2]. The Rossey report includes a Cannabis use disorder, moderate, as diagnosed on Admission (November 6, 2017); however, he subsequently concluded that the Respondent's current use of marijuana is "mild but consistent" as of the date of his report (December 13, 2017). [Id. at pages 5 and 4 respectively]. Mr. Rossey also made a diagnosis of "Cocaine use disorder, moderate, in sustained remission"; and a diagnosis of "Post-partum depression...Major depressive disorder, single episode, unspecified, Present on Admission." He found in his December 13, 2017 report that her current living situation with her boyfriend was "stable and consistent" and that she has her children on a set schedule about three days a week. Id. ap page 2. The Respondent is not experiencing cravings to use or abuse illicit drugs. Ex. R3, Document 2 and Respondent's testimony.

7. Anti-anxiety medications have not worked for the Respondent. The Respondent is currently using marijuana at bedtime to help her sleep. [Testimony of Respondent at 19-20 minutes and 23 minutes[1]; Ex. R3, Documents 3 and 4, letters of Susan Jacobs]. The Respondent sees her therapist every other week. Ex. R2, Document 2; *see also,* Ex. R3, Document 5 and R1 (reports of Christopher Hollis, N.D.). Ms. Jacobs was present at the hearing on July 9, 2018 and affirmed her opinion regarding Exhibits R3, Documents 3 and 4.

8. At age 16 the Respondent had her first use of hallucinogens; she quit them at the same age after an "acid trip." [Ex. A at p.3]. She used cocaine when she was 26 and stopped taking cocaine in that same year of her life. [Id.] She was prescribed Adderall at one point; she recognized that she became addicted to amphetamines and stopped taking them. [Id.]

9. The Respondent met with a Naturopathic doctor, Christopher Hollis, N.D., MSOM, Lac,. on March 28, 2018, who states in a report dated April 2, 2018, addressed "To Whom It May Concern," as follows:

> Ms. Tucker is under my care. The use of medical marijuana has reportedly been helpful for her to manage her symptoms. After establishing the required 3-month doctor-patient relationship she will qualify for the Vermont State Marijuana Registry's application process for a medical marijuana card. [Ex. R1].

10. The Respondent has suffered from Post-Traumatic Stress Disorder (PTSD). [*See*, Ex. R3, Document 5 (Report of Christopher Hollis, N.D. ("Ms. Tucker has been under my care for PTSD and anxiety ... for 90 days" and Ex. R3, Document 6, Patient Registration Packet, Health Care Professional Verification Form, signed by Christopher Hollis as Naturopathic Physician, with the Post-Traumatic Stress Disorder box checked].

11. The Respondent is sincerely regretful of her actions that led to the suspension of her license. The Respondent's actions occurred in a period of severe personal stress, including issues associated with divorce, especially when she could not see her children. [Respondent's testimony, including at 1 hour and 8-10 minutes]; Ex. R2, letter of LPN co-worker at the Facility "...I have found her to be regretful of her past mistakes."]. The Respondent has learned from her mistakes, she is stronger from her experience and now has sensitivity and tools to deal with stress that she did not have before, including going for professional assistance. [Respondent's testimony, including at 1 hour and 12-13 minutes; Ex. R2, (letter of co-worker LPN): "I would not hesitate to have her [Respondent] work with me."]

12. Both the above Stipulation and the Board's Decision entered May 14, 2018, require that the Respondent obtain an independent evaluation indicating that "the Respondent does not present

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[1] The oral record of the hearing on July 9, 2018 exceeds the OPR capacity for a link. The oral record of that hearing is on a CD which runs for one (1) hour and 22 minutes. The recording was left on for a pause of approximately eight minutes, starting at approximately eight and one-half minutes (from 8:30 through 16:45), to allow for copies to be made of Exhibit R-3. There was also a recorded pause during approximate minutes 36-41, while the Board revlewed State's Exhibit A, which had just been admitted. Subsequent citations to the CD will be to the Minutes or range of minutes (e.g. 19-24 minutes), with the understanding that the time citations are approximate as the audio display does not show the running time as one listens to the CD and the controls are not precise.

a risk to the safety, health or welfare of Respondent's potential patients...." Findings 4.1 and 5.1 above. An independent evaluation was performed by a Board Approved License Counselor Christopher D. Rossey, who concluded on December 12, 2017, "that the licensee could practice her profession, without being a threat to safety, health, and welfare of her potential clients." He further concluded "that if the licensee continues to attend counseling, and submits to random urine screen analysis," she "could continue to rehabilitate her overall life balance and well-being, by returning to the workforce, in her previous capacity, and feel productive, and contribute to society in meaningful ways." Ex. R3, Document 1. Mr. Rossey met with the Petitioner again on June 4, 2018 and prepared for the Board "an update" and "assessment addendum," which did not revise the professional opinion he gave in his December 2017 assessment. Ex. R3, Document 2. His updated report includes positive developments reported to him by the Respondent including:

A. She and her ex-husband have improved their communication following mediation, such that both parties are agreeable to work with each other.

B. She now has child custody on a 50% basis.

C. Her finances had improved, from working full time at a greenhouse (seasonal).

D. Her social life has improved and includes new girlfriends with whom she can communicate.

E. She has received training as a medical scribe to aid her transition back to the medical workforce. She carries a notebook with her to remember important tasks and instructions.

Mr. Rossey concluded his assessment addendum with the recommendations outlined in his original assessment, including "urine drug screening through the OPR and/or continued outpatient treatment with Susan Jacobs LADC LMCHC."

13. The Respondent has developed positive ways of coping with stress. For example, when Respondent worked 26 consecutive days in her greenhouse employment, which involved considerable physical labor, she sensed that she was becoming stressed and in need of a day off and made that known to her employer. [Testimony of Respondent at 1 hour:12-13 minutes; testimony of therapist Susan Jacobs regarding positive changes in the Respondent's behaviors and response to stressors, including exercise and journaling [at approximately 47 minutes]; and see Ex. R3, Document 2 (Rossey update letter)].

14. Overall, the Respondent's situation and condition have stabilized.

15. The Patient Registration Packet filed with the Vermont Department of Public Safety Marijuana Registry includes: a form completed and signed by the Respondent, dated June 28, 2018; the Health Care Verification Form completed and signed by Christopher Hollis, Naturopathic Physician, dated June 28, 2018; a Mental Health Care Provider Form on which, under Licensure Information, the box entitled Clinical mental health counselor is checked, and the form

is signed by Susan Jacobs LCMHC/LADC, dated June 29, 2018; and the Authorization for Release of Medical Records is signed by the Respondent, dated June 28, 2018. The Respondent submitted the Patient Registration Packet to the Vermont Department of Public Safety Marijuana Registry shortly before the hearing on July 9, 2018. Ex. R3, Document 6. The State indicated receipt and that it takes about three weeks to process it. [Respondent's testimony].

16. Ms. Jacobs testified, in response to the question by the Respondent whether she thinks it is safe for her to return to work as a Licensed Practical Nurse, "I do." [Therapist testimony at 34 minutes]. The Respondent's current use of marijuana is not a problem for the professional performance as an LPN. [Therapist testimony at approximately 47 minutes].

17. With regard to the condition that the Respondent submit a minimum of three (3) random urine analyses, the results of which shall be negative, except for THC as per the Board's Decision dated May 14, 2018, the Respondent was told by the Board of Nursing's case manager that there was indication of alcohol, about a week before the Board hearing on July 9, 2018. The Respondent did not know whether she could have called to check on the results before then. The Respondent had forgotten that alcohol was a substance from which she should abstain. [Respondent's testimony at 17 minutes]. She been working long days in a hot greenhouse and occasionally joined with some female co-workers after work and took part in social events like a cookout for Mother's Day, having "one, two-max" drinks. [Respondent testimony at 23-25 minutes]. Respondent wonders whether a prescribed tincture contained alcohol. When advised of the positive on alcohol, she stopped having any alcohol and stopped the tincture. She did not have any difficulties not consuming alcohol. When asked by the State whether she would be agreeable to a random UA testing if the Board reinstated her license, the Respondent testified "Absolutely." [Id.]

18. The Respondent wants to return to nursing as an LPN. She also has the goal of meeting the requirements for licensure as a Registered Nurse. The Respondent's desire is deeper than simply wanting to return to the professional position and stability for which she had been licensed. The Petitioner has a passion for nursing that goes to the core of who she is now, along with being a good mom for her two children. The Respondent testified, and the Board takes it as true, that the Respondent loves going into a room and saying, 'Hi, I'm Jennifer, I'm going to be your nurse today.' I love myself when I'm nursing." [Testimony of Petitioner at 1hr., 7-15 minutes].

Conclusions of Law and Discussion

The Vermont Board of Nursing has authority to suspend the license of a nurse following a finding of unprofessional conduct, which occurred here pursuant to the facts as outlined in the above Stipulation and Consent Order, entered December 13, 2016. A Board may reinstate or deny reinstatement of a license which has been revoked, suspended, limited or conditioned. 3 V.S.A. §129(a)(4). The burden to establish that a licensee is entitled to reinstatement of a suspended license is upon the licensee.

In oral argument at the conclusion of the evidentiary hearing on July 9, 2018, the State opposed reinstatement of the Petitioner's License on several grounds. The State noted that this is a case of first impression with regard to cannabis use by a licensee. The State is not in support of

the Petitioner getting her license back while using cannabis. Although the State did not present direct evidence on the point, the argument was made that if a nurse appears to be impaired at work due to alcohol or any other substance, except cannabis, or is subject to standard drug and alcohol conditions, there are tools for testing that indicate the presence of the substance and the quantitative level that generally corresponds to any degree of impairment, but we do not have the same testing capabilities for cannabis or its metabolites. That argument is reminiscent of those who argued against enactment of legislation allowing limited cultivation, possession and use of marijuana because there was not a test to measure driver impairment. That argument was not persuasive to the majority of the General Assembly, which did pass such legislation. Act No. 86 (H.511) (eliminated all penalties for possession of one ounce or less of marijuana and two mature and four immature marijuana plants for persons who are 21 years of age or older, effective date July 1, 2018).

This is not to say that measuring impairment due to cannabis by drivers and licensed professionals is not a significant issue to be decided by statute or rule-making as a matter of policy, but that broad policy issue is not the issue that is to be decided by the Board in this case. The question before the Board in Docket 2016-102 is whether the LPN license of *this* Petitioner, who uses marijuana as a medical matter, should be reinstated, in a State which has authorized use of medical marijuana. *See* 18 V.S.A. Ch. 86, Therapeutic Use of Cannabis, §§ 4472(17), 4473(b)(4)(patient registration card) and 4474a(b).

The Board's responsibility is to decide each case on its own facts and merits in the context of current law. Although the State may think the better policy is to not allow anyone using marijuana even for an acceptable condition to serve as a licensed nurse while being treated with medical marijuana, at least until a reliable testing method is developed that measures the presence of cannabis and its metabolites, the State has not pointed to any statute or rule adopting that position. Based on the record in this case, the Board sees its responsibility as determining and deciding a Petition for Reinstatement based on the facts of the specific Petition/Petitioner before it under the current law.

The State also argues that the Petitioner had not satisfied all of the requirements of the 2016 Stipulation and Order and the Board's Order of May 14, 2018. With regard to the urine analysis, the Board finds and concludes that the Respondent's testimony is credible, including as to this issue, and that she is earnest, committed and dedicated to providing good nursing and care of patients. The Respondent gave her full welcome at the hearing to a period of UAs including alcohol prohibition, if she is allowed the opportunity to return to nursing.

The Board's Order of May 14, 2018 also included the following provision:

> The Respondent shall submit a color copy of both sides of the medical marijuana card, also known as a registered patient card issued pursuant to 18 V.S.A. Chapter 86, **or** a document certifying her eligibility for such card.

(Emphasis added). This requirement was satisfied by Exhibit R3, Document 5. The timing of submission of the Registration documents and the State's processing time was such that the card was not issued in time for the Board's hearing in July. The Board is requiring submission of both

sides of the card by the Order below.

The 2016 Stipulation and Order and the Board's Order of May 14, 2018, require that the Respondent obtain the opinion of a Board-approved independent evaluator that she "does not present a risk to the safety, health or welfare of Respondent's potential patients." The independent evaluator's stated that he "believes that the licensee could practice her profession, without being a threat to safety, health, and welfare of her potential clients." He further opined that "if the licensee continues to attend counseling, and submits to random urine screen analysis, that the client could continue to rehabilitate her overall life balance and well-being, by returning to the workforce, in her previous capacity and feel productive, and contribute to society in meaningful ways." In the Board's experience, an evaluator's words do not always precisely track the words in an Order. This is not necessarily surprising, given an evaluator's potential concerns about liability and having a more nuanced professional opinion. The evaluator's updated letter of June 4, 2018, read together with his earlier report, indicate a positive progression. Moreover, what the evaluator set out as a positive course under which the Respondent could return to the workforce in her previous capacity is, in fact, occurring. She is proceeding in a substance abuse plan and sees her counselor twice a month. That counselor testified that she believes it is safe for the Respondent to return to work as a Licensed Practical Nurse, and the Board, with the Conditions imposed under this Order, agrees.

The Board believes that the Respondent's testimony is not merely aspirational. The Board not only heard the testimony of the Respondent, the Board observed her demeanor, her facial expressions, and the light in her eyes when she talked about her love of nursing and her desire and determination to return to it. The Board observed that the Respondent exhibits the positive transition and transformation referenced in the Counselor's reports and other evidence cited above.

In sum, this Petition involves questions of professional judgment. The question before the Nursing Board, in light of the evidence under existing law, is whether *this* Petitioner's license should be reinstated, subject to the Conditions the Board finds reasonable and relevant. That is what the Board has done in its unanimous professional judgment in granting the Petition for Reinstatement of *this* LPN license, based on the specific facts of this case, subject to the Conditions imposed herein.

The Order section of the December 2016 Stipulation and Consent Order provided that once reinstated, the respondent's license **SHALL BE CONDITIONED** pursuant to whatever terms the Board finds reasonable at the time of Respondent's reinstatement request, taking into account the independent evaluation, urine analysis results, the facts above, and anything else the Board deems relevant. Id. at Paragraph B. That is what the Board has done in the Order section below.

Order

The Petitioner's request for Reinstatement of the subject Licensed Professional Nurse is **GRANTED,** subject to the Conditions below.

1. The Respondent shall submit a color copy of both sides of the medical marijuana card, also known as a registered patient card issued pursuant to 18 V.S.A. Chapter 86.

2. A. The Board of Nursing hereby **CONDITIONS** the Respondent's license for a **MINIMUM OF THREE (3) YEARS, commencing on the date of entry of this order.** The **CONDITIONS** shall be as follows:

   1. Re-issuance of License. Upon the commencement of these conditions, Respondent shall be issued a license labeled "conditioned."

   2. 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 nursing assistant practice in which Respondent works at least forty (40) hours every two (2) weeks as a licensed nursing assistant. 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.

   3. 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.

   4. Completion of Substance Abuse Counseling, Treatment Plan, Treatment Reports and recovery groups. 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 entry of this Order, Respondent shall provide a copy of this Decision and 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 this Decision and Order along with Respondent's current treatment plan.

      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 Order is in effect.

      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.

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.

5. Random Drug and Alcohol Testing. Respondent shall submit to random drug and alcohol 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.

6. Abstain from Drug and Alcohol Use. Respondent shall abstain completely from the consumption or possession of alcohol and drugs.

7. 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 may ingest marijuana lawfully obtained pursuant to a medical marijuana card issued to her. Respondent's health care practitioner shall inform the Board, in writing and on appropriate letterhead, of knowledge of Respondent's substance abuse issue(s) 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 Decision and 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.

8. Notification to Employers/Nursing School. Respondent shall provide a copy of this Decision and Order to all employers in any current or future setting in which Respondent

practices as a licensed nursing assistant 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 Decision and Order and the ability to comply with the conditions herein.

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 Decision and 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 Decision and Order and the ability of the program to comply with the conditions herein during clinical experience.

9. Reports from Employers/Program Director. Within one (1) month of the date of reinstatement or within one (1) month of the commencement of licensed nursing assistant employment and **monthly** thereafter, Respondent shall cause every licensed practical nurse 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 (i.e., consistently meeting all standards of nursing practice) and attendance.

10. Practice Under Supervision. Respondent shall practice as a licensed practical nurse only in a setting where Respondent has direct supervision for the entire shift by a licensed registered nurse or licensed practical nurse that is in good standing with the Board.

11. 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.

12. 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 license during the effective period of this Consent Order.

13. Interview with the Board or its Designee. Respondent shall appear in person for interviews with the Board or its designee upon request.

14. 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. 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.

15. 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.

16. 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.

17. License Renewal. This Order does not automatically extend the license and Respondent must comply with the requirements for license renewal.

18. 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.

19. Costs. Respondent shall bear all costs of complying with this Order.

20. Violation of this Order. If Respondent violates this Order, the Board, after giving Respondent notice and an opportunity to be heard, the State 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.

21. 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.

B. Notwithstanding any provision above, the Respondent must continue to meet all Board requirements for maintaining a license, license renewal and license reinstatement.

C. This Decision and Order is a matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. §129(a).

D. This Decision and Order will remain part of Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

This Decision, being based on the complete Record from both hearings, is the final Decision of the Board.

Vermont Board of Nursing

By: _____ Date: 3 October, 2018
Ellen Watson, APRN, Chair

DATE OF ENTRY: 10-10-18

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 Street, 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.