

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

In re: MARCIE WEAVER	}	
License No. 026.0067391	}	Docket No. 2015-14
	}	M 2016-6

FINDINGS AND ORDER

Participating Board Members:

Ellen Watson, APRN, Chair
Jennifer Laurent, APRN,
Douglas Sutton, RN
Luana Tredwell, LPN
Kelly Sinclair, LNA
Wendy Thurston, RN
Daniel Coane, Public Member
William White, Jr., Public Member

Appearances:

Prosecuting the case: Jennifer B. Colin, Esq.
Petitioner: Participated electronically and was not represented

Presiding Officer:

George K. Belcher

Exhibits: State Exhibit 1: Log of First Source Solutions Contact and Testing, 2020-April 2021

State Exhibit 3: Email chain Ellen Leff and Marcie Weaver. 7/1/20-1/7/20

State Exhibit 4: Email Marcie Weaver to Ellen Leff 1/7/21

State Exhibit 5: Email chain Ellen Leff and Marcie Weaver 1/27/21-1/29/21

Respondent Exhibit A: Letter to Board from Benjamin C. Welch, LICSW, LADC
dated 2/26/21

Respondent Exhibit B: Letter from Jessica Sherman dated 2/25/21

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Findings of Fact

Upon the evidence presented the Vermont Board of Nursing makes the following Findings of Fact, Conclusions of Law, and Order.

1. This matter was considered on May 10, 2021 and was conducted electronically according to the Office of Professional Regulation Emergency Rules for Remote Hearings. The Board, the parties, and the witnesses participated in the hearing by electronic means. The Petitioner is licensed in Vermont 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, the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation.
2. On or about March 4, 2021 the Petitioner filed a request to the Vermont Nursing Board to remove conditions from her nursing license.
3. Based upon a stipulated order of the Board, dated January 11, 2016, the Respondent's nursing license was subjected to conditions including random drug and alcohol testing. These conditions were to last for three years from January 15, 2016. According to paragraph 18 of that order, the Respondent was required to petition for the removal of the conditions after showing compliance with the terms of the order and successful substance abuse rehabilitation.
4. On December 19, 2019 the Respondent filed a request to remove the conditions from her license. The State objected and a hearing was held before the Board on March 9, 2020. The Board refused to remove the conditions after finding that the Petitioner had failed to comply with the random drug and alcohol testing conditions including a positive test in June of 2018. See paragraph 3 of Board Findings Conclusions and Order dated 10 March, 2020.
5. The State again objects to the current request by the Petitioner to remove the conditions on her license. The State offered evidence to show that between April 26, 2020 and February 28, 2021, the Petitioner had failed to call in to learn whether she had been selected for random screening. In addition, during the same time frame, the records showed that the Petitioner had been selected for testing nine (9) times but failed to be tested. (See State Exhibit 1) The conditions pertaining to the random drug and alcohol screens provide that a missed test is deemed to be a positive test.
6. The Petitioner did not contest that she had failed to call in for testing on many occasions and that she had occasionally failed to participate in testing when selected. (See also State Exhibits 3, 4, and 5) While acknowledging the failure, Nurse Weaver explained that if she was selected while she was working as a nurse on the hospital floor, she would sometimes fail to go for the testing because it meant leaving her patients during periods of short staffing. Likewise, she explained that, on occasion, she had been selected for testing while she was on duty at her job with the National Guard and that participation was very difficult. She acknowledged that she had, on occasion, failed to advise the nursing case manager, Ellen Leff, in advance, that she would be unavailable for testing as the testing protocol requires.
7. In support of her petition, the Petitioner submitted a letter from her substance abuse therapist, Benjamin Welch, LICSW, LADC. Mr. Welch stated, "Based on her progress in treatment as well as her follow thru I have no hesitation in Ms. Weaver being taken off her sanctions and being returned to full standing." See Petitioner's Exhibit A.
8. Additionally, the Petitioner submitted a letter from Jessica Sherman, DNP, MSN, RN-BC, PCCN-K. Nurse Sherman is the Nurse Manager on the Medical-Surgical unit at Central Vermont Medical Center where Nurse Weaver has worked for the past two years. Nurse Sherman described Nurse Weaver as providing "...thoughtful, caring and

knowledgeable care to [her] patients". She also observed that Nurse Weaver had improved since the conditions were initially imposed. Nurse Sherman wrote to the Board "to encourage the discontinuation of the conditions on Marcie Weaver's RN licensure". See Petitioner's Exhibit B.

9. The Petitioner pointed out to the Board that the conditions upon her license were causing an obstacle to her continuing her education at Vermont Technical College towards her BSN program and also created an obstacle to her potentially gaining a commission as an officer in the military.
10. From the evidence submitted it appears that the Petitioner has been compliant with employer and treating professional reports. See State Exhibit 3. There was no objection to removal of conditions based on any other reason than the missed testing issues.
11. There was no evidence offered to show that the Petitioner has any (actual) positive test results for prohibited substances during her period of testing. The petitioner has represented to the Board that she has remained abstinent from alcohol.

Conclusions of Law and Discussion

The Board of Nursing has the authority to impose conditions upon licenses issued by the Board (3 VSA Sec. 129(a)(3)) and to reinstate a license that has been conditioned. (3 VSA Sec. 129(a)(4)). While the failure to properly call in to the testing service and to be tested when called is problematic, the Board has considered the overall function of the testing program, the evidence that the Petitioner has been abstinent for a significant period of time, the support she has received toward the removal of conditions from both her nurse manager and her treating therapist. After weighing all the evidence presented, the Board is of the view that the petition to remove the conditions on the license of the Petitioner should be granted and that this would serve the Petitioner and her patients, while also protecting the public. The Board exercises its discretion to grant the Petitioner's request to remove the conditions upon her license.

Order

The Petition of Marcie Weaver to remove the conditions imposed upon her nursing license by this Board is granted and, upon entry of this order, her license is no longer subject to the conditions imposed on January 11, 2016 or March 10, 2020.

Vermont Board of Nursing

By:  E-SIGNED by Ellen Watson
on 2021-05-19 17:30:04 EDT

Ellen Watson, APRN, Chair

May 19, 2021

Date: _____, 2020

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 5/20/21

APPEAL RIGHTS

This is a final administrative determination by the Vermont Board of Nursing or Director

of the Office of Professional Regulation. A party aggrieved by a final decision of a board or hearing authority 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.

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

In re: MARCIE WEAVER
License No. 026.0067391

}
} Docket No. 2015-14;M2016-6
}

**Decision on
Respondent's Petition for Modification of Conditions**

Participating Board Members:

Ellen Watson, APRN, Chair
Daniel Coane, Public Member
Douglas Sutton, RN
Virginia Hudson, RN
Luana Tredwell, LPN
Jennifer Laurent, APRN
Wendy Thurston, RN
Krystal Bernier, LPN
Kelly Sinclair, LNA

Appearances:

Prosecuting the case: Jennifer B. Colin, Esq.
Respondent: *pro se*

Presiding Officer: George K. Belcher

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

The Vermont Board of Nursing held a hearing in the above matter on March 9, 2020 in Montpelier, Vermont. The State was represented by Jennifer B. Colin, Esq. The Respondent appeared *pro se*. On December 19, 2019 the Respondent filed a request seeking to remove the conditions upon her RN license (See Respondent's letter to Board undated but filed on December 19, 2019.)

Findings of Fact

Based on the evidence presented and the documents in the Respondent's file, the Board finds as follows:

1. Marcie Weaver (the "Petitioner") is a licensed registered nurse and is therefore subject to the regulatory authority of this Board, pursuant to 3 V.S.A. §§ 129, 129a, 26 V.S.A. Chapter 28, the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation.
2. The Respondent's license was subject to charges in July of 2015. Following a stipulation of facts, her license was placed under conditions for a period of three (3) years requiring supervised nursing, completion of substance abuse counselling, random alcohol testing, abstention from alcohol consumption, and the other standard drug and alcohol conditions. (See Board order entered on 1/15/16). Of particular import was Condition Number 18 which reads as follows:

Completion of Conditional License Period. Respondent must petition the Board, or its designee, to remove any and all conditions on Respondent's license. Respondent must present proof that Respondent has fully complied with the terms of this Order. Respondent must also present proof of successful substance abuse rehabilitation, the Respondent poses no danger to the public or the practice of nursing, and that Respondent can safely and competently perform the duties of a licensed nurse.
3. The Petitioner requests that the conditions on her license be removed. The State objected to the removal of conditions on the grounds that the Respondent had not successfully complied with the random alcohol testing as required under the conditions. Specifically the State asserted that the Respondent had missed 37 required urinalysis tests, either due to failure to contact the testing service or failure to appear for the tests. In addition the State asserted that the Respondent had tested positive in June of 2018 for metabolites of alcohol. The Respondent did not substantially contest the facts set forth in the State's Objection. She agreed that she had tested positive in June of 2018.
4. In addition, the Respondent did not present to the Board any proof of successful substance abuse rehabilitation or assurance that the Respondent poses no danger to the public in the practice of nursing or that she can safely and competently perform her nursing duties (as such assurance is required in Condition Number 18)

Conclusions of Law

Based on the evidence presented, the pleadings, and the facts found above, we conclude as follows:

1. The Vermont Board of Nursing has authority to condition the practice of a licensed nursing assistant following a finding of unprofessional conduct. 26 VSA Sec. 1595 The Board has discretion to continue conditions or to remove them where conditions have not yet been met. Board of Nursing Rule 11.6. Our Board practice has been that the burden has been upon the licensee to persuade the Board that conditions, which have been ordered should be modified or removed.
2. The Petitioner has failed to demonstrate that she is entitled to a removal of the conditions set forth in the 2016 Order or that removal of the Conditions at this time would protect the public. Moreover, the prerequisites set forth in the Order of 2016 have not been met.

Order

Respondent's request for modification of the conditions upon her license is DENIED.

Vermont Board of Nursing

By: 
Ellen Watson, APRN, Chair

Date: 10th March 2020

DATE OF ENTRY _____

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.

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

IN RE:	)	
Marcie L. Weaver	)	Docket No. M 2016-6
License No. 026.0067391	)	2015-140 (RN)

ORDER OF MODIFICATION OF BOARD ORDER DATED JANUARY 11, 2016

Participating Board Members:

Jeanine Carr, RN, Chair
James S. Arisman, Public Member (ad hoc)
Virginia Hudson, RN
Douglas Sutton, RN
Luana Tredwell, LPN
John J. Welch, Jr., Public Member
Kelly Sinclair, LNA

Appearances:

Prosecuting the case: Elizabeth A. Jarvis, Esq.
Respondent: *pro se*

Presiding Officer:

George K. Belcher

This matter was considered by the Vermont Board of Nursing on March 14, 2016. The Respondent, Marcie L. Weaver, was present and represented herself. The State was represented by Elizabeth A. Jarvis, Esq. Upon the documents filed and the arguments of the parties, the Board makes the following modification of its prior order.

1. The Vermont Board of Nursing issued Findings of Fact, Conclusions of Law and Order on January 11, 2016 (Filed on January 15, 2016). The facts in that case were not contested but the parties asked that the Board decide the issue of the appropriate sanction (which the Board did).
2. The Board issued an Order which contained various conditions including, "The Respondent shall be prohibited from working more than forty (40) hours per week" (See Condition Number 2) and "The Respondent shall continue substance abuse counseling with Jeff Nowlan, LADC, LCMHC of Spectrum Youth and Family Services and comply with her substance abuse treatment plan until her treating professional certifies in writing to the Board that such counseling is no longer necessary" (See Condition Number 3). These conditions were part of routine substance abuse conditions and were not specifically contested at the original hearing.

3. Following the issuance of the order, the Respondent filed a Motion to Modify the Conditions dated February 9, 2016. The Respondent explained that, in her current employment position as an overnight supervisor, she is required to be on call for a weekend approximately every six weeks. It is also expected that, as a supervisor, she fill shifts of nurses who are unavailable to work. Therefore, she requested that the order be modified to allow her to work up to 50 hours per week.
4. The State took the position that additional work hours above the 40 hour per week might jeopardize the Respondent's substance abuse recovery but the State conceded to a modification allowing an additional 20 hours per month or about 5 hours additional per week.
5. The parties argued their positions and the Board considered the pleadings and the arguments of the parties, including the current status of the Respondent's counseling.

Conclusions of Law

1. Vermont Rules of Civil Procedure govern procedural filings where no express administrative procedure applies, unless the specific Rule of Civil Procedure is excepted. (See Administrative Rule for the Office of Professional Regulation 2.4)
2. The Vermont Rules of Civil Procedure allow motions for relief from final orders for various grounds including excusable neglect and "... any other reason justifying relief from the operation of the judgment." See VRCP 60(b). Having considered the matter the Board grants the Motion to Modify the Order as follows:

Based on the above, it is **ORDERED AND ADJUDGED** as follows:

The prior order of the Board in this matter dated January 11, 2016 is modified such that the last sentence of paragraph two (2) of the order shall now read, "Respondent shall be prohibited from working more than fifty (50) per week."

The Board further orders as a new condition that the substance abuse counselor of the Respondent shall file a letter with the Board within thirty (30) days of the date of entry of this order, confirming that the Respondent is engaged in weekly substance abuse therapy, and that she is doing well therein, and that she intends to continue with this schedule. In the event that the Respondent departs from weekly therapy sessions with the substance abuse therapist, the therapist shall notify the Board and the Board may reconsider the conditions in this matter.

In all other regards the prior order of January 11, 2016 is reaffirmed.

SO ORDERED.

Vermont Board of Nursing



Jeanine Carr, Chair



Date

3/18/16
Date of Entry

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.

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

IN RE:	)	
Marcie L. Weaver	)	Docket No. 2015-140 (RN)
License No. 026.0067391	)	

FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER

Participating Board Members:

Jeanine Carr, RN, Chair
Ellen Watson, APRN
William G. White, Jr., Public Member
Jennifer Laurent, APRN
Virginia Hudson, RN
Douglas Sutton, RN
Donarae Metcalf, LPN (ad hoc)
Michael Doyle, Public Member (ad hoc)
Ann Marchewka, RN (ad hoc)

Appearances:

Prosecuting the case: Elizabeth A. Jarvis, Esq.
Respondent: *pro se*

Presiding Officer:

George K. Belcher

This matter was considered by the Vermont Board of Nursing on January 11, 2016. The Respondent, Marcie L Weaver, was present and represented herself. The State was represented by Elizabeth A. Jarvis, Esq. Evidence was taken. Upon the evidence and the arguments of the parties, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. The Vermont Board of Nursing has jurisdiction pursuant to 3 VSA Secs. 129 and 129a, 26 VSA Ch. 28, the Administrative Rules of the Vermont Board of Nursing, and the Administrative Rules of the Office of Professional Regulation.
2. The State filed charges against the Respondent, alleging that the Respondent is habitually intemperate or addicted to the use of habit forming drugs, failed to comply with state or federal law and was convicted of a crime related of practice of the profession or conviction of a felony.

3. The State and the Respondent negotiated and came before the Board with an agreement as to the facts. Accordingly, the Respondent admitted to all of the Specification of Charges with the exception that the State withdrew a portion of Charge 4(b) such that the last sentence of that paragraph now reads "The Respondent also attended five counseling sessions." With this change, the State agreed to amend the charges and the Respondent admitted to the amended charges. (The original Specification of Charges is attached hereto as Exhibit A.)

Conclusions of Law

4. The Board concludes on the admitted Specification of Charges that the Respondent failed to comply with the provisions of the State of Vermont statutes and therefore violated 3 VSA Sec. 129a(a)(3). The Board further concludes that the Respondent committed unprofessional conduct by being habitually intemperate. 26 VSA Sec. 1582(a)(5).

Based on the above, it is **ORDERED AND ADJUDGED** as follows:

A. The Board of Nursing hereby **CONDITIONS** the Respondent's license to practice nursing for **THREE (3) years from the date of entry below**. The conditions are 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 nursing (meaning supervised by Employer Reports as set forth below but not by direct, onsite supervision by another nurse) in which Respondent works at least forty (40) hours every two (2) weeks as a 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.
3. Completion of Substance Abuse Counseling, Treatment Plan, Treatment Reports and recovery groups. Respondent shall continue in substance abuse counseling with Jeff Nowlan, LADC, LCMHC of Spectrum Youth and Family Services and comply with her substance abuse treatment plan until her treating professional certifies in writing to the Board that such counseling is no longer necessary. Should the Respondent need to find a new substance abuse counselor, such treating professional shall be pre-approved by the Board. Respondent shall provide a copy of her Drug and Alcohol Evaluation, dated December 30, 2015, and completed by Matthew J. Bijur, LADC, LCMHC, to any treating professional.

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.

Respondent shall participate as recommended by Respondent's treating professional in substance abuse recovery group(s). If recommended that the Respondent attend such groups, the Respondent shall submit **quarterly** reports documenting such attendance on forms issued by the Board.

4. Random Drug and Alcohol Testing.

Respondent shall submit to random drug and alcohol screenings at the request of the Board or its designee. Respondent shall designate a person or entity that has been pre-approved by the Board or its designee to administer random drug and alcohol screens. 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.

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

6. 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 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 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 this order and shall update this list within forty-eight (48) hours of any change in these medications. The Respondent shall also cause any health care provider who currently provides such medications to inform the Board, in writing and on appropriate letterhead, of knowledge of Respondent's substance abuse issue(s) and list of prescribed medications within seven (7) days of this order.

7. 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 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 the 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 the Order and the ability of the program to comply with the conditions in the Order during clinical experience.

8. Reports from Employers/Program Director. Within one (1) month of the date of entry of this order 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. 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.
9. Types of Employment Prohibited. 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.
10. Interview with the Board or its Designee. Respondent shall appear in person for interviews with the Board or its designee upon request.
11. 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.

12. 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.
13. 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.
14. License Renewal. This Order does not automatically extend the license and Respondent must comply with the requirements for license renewal.
15. 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.

16. Costs. Respondent shall bear all costs of complying with this Order.
17. 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.

18. Completion of Conditional License Period. Respondent must petition the Board, or its designee, to remove any and all conditions on Respondent's license. Respondent must present proof that Respondent has fully complied with the terms of this Order. Respondent must also present proof of successful substance abuse rehabilitation, that Respondent poses no danger to the public or the practice of nursing, and that Respondent can safely and competently perform the duties of a licensed nurse.
- 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 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 Order will remain part of Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

SO ORDERED.

Vermont Board of Nursing

Jeanine Carr
Jeanine Carr, Chair

1/14/16
Date

1/15/16
Date of Entry

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.

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

IN RE:	)	
Marcie L. Weaver	)	Docket No. M 2016-6
License No. 026.0067391	)	2015-140 (RN)

ORDER OF MODIFICATION OF BOARD ORDER DATED JANUARY 11, 2016

Participating Board Members:

Jeanine Carr, RN, Chair
James S. Arisman, Public Member (ad hoc)
Virginia Hudson, RN
Douglas Sutton, RN
Luana Tredwell, LPN
John J. Welch, Jr., Public Member
Kelly Sinclair, LNA

Appearances:

Prosecuting the case: Elizabeth A. Jarvis, Esq.
Respondent: *pro se*

Presiding Officer:

George K. Belcher

This matter was considered by the Vermont Board of Nursing on March 14, 2016. The Respondent, Marcie L. Weaver, was present and represented herself. The State was represented by Elizabeth A. Jarvis, Esq. Upon the documents filed and the arguments of the parties, the Board makes the following modification of its prior order.

1. The Vermont Board of Nursing issued Findings of Fact, Conclusions of Law and Order on January 11, 2016 (Filed on January 15, 2016). The facts in that case were not contested but the parties asked that the Board decide the issue of the appropriate sanction (which the Board did).
2. The Board issued an Order which contained various conditions including, "The Respondent shall be prohibited from working more than forty (40) hours per week" (See Condition Number 2) and "The Respondent shall continue substance abuse counseling with Jeff Nowlan, LADC, LCMHC of Spectrum Youth and Family Services and comply with her substance abuse treatment plan until her treating professional certifies in writing to the Board that such counseling is no longer necessary" (See Condition Number 3). These conditions were part of routine substance abuse conditions and were not specifically contested at the original hearing.

3. Following the issuance of the order, the Respondent filed a Motion to Modify the Conditions dated February 9, 2016. The Respondent explained that, in her current employment position as an overnight supervisor, she is required to be on call for a weekend approximately every six weeks. It is also expected that, as a supervisor, she fill shifts of nurses who are unavailable to work. Therefore, she requested that the order be modified to allow her to work up to 50 hours per week.
4. The State took the position that additional work hours above the 40 hour per week might jeopardize the Respondent's substance abuse recovery but the State conceded to a modification allowing an additional 20 hours per month or about 5 hours additional per week.
5. The parties argued their positions and the Board considered the pleadings and the arguments of the parties, including the current status of the Respondent's counseling.

Conclusions of Law

1. Vermont Rules of Civil Procedure govern procedural filings where no express administrative procedure applies, unless the specific Rule of Civil Procedure is excepted. (See Administrative Rule for the Office of Professional Regulation 2.4)
2. The Vermont Rules of Civil Procedure allow motions for relief from final orders for various grounds including excusable neglect and "... any other reason justifying relief from the operation of the judgment." See VRCP 60(b). Having considered the matter the Board grants the Motion to Modify the Order as follows:

Based on the above, it is **ORDERED AND ADJUDGED** as follows:

The prior order of the Board in this matter dated January 11, 2016 is modified such that the last sentence of paragraph two (2) of the order shall now read, "Respondent shall be prohibited from working more than fifty (50) per week."

The Board further orders as a new condition that the substance abuse counselor of the Respondent shall file a letter with the Board within thirty (30) days of the date of entry of this order, confirming that the Respondent is engaged in weekly substance abuse therapy, and that she is doing well therein, and that she intends to continue with this schedule. In the event that the Respondent departs from weekly therapy sessions with the substance abuse therapist, the therapist shall notify the Board and the Board may reconsider the conditions in this matter.

In all other regards the prior order of January 11, 2016 is reaffirmed.

SO ORDERED.

Vermont Board of Nursing



Jeanine Carr, Chair



Date

3/18/16
Date of Entry

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.