

**STATE OF VERMONT
BOARD OF NURSING**

IN RE:)
Linda Ann Berkeley) Case File No. NU14-0803
License No. 26-21573)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Introduction

The Vermont Board of Nursing ("the Board") held a hearing in this case on Monday, May 10, 2004, at 81 River Street in Montpelier, Vermont. Board members Susan Farrell, Laurey Tyo, De-Ann Welch, Alan Weiss, Pat Rock, Elayne Clift and Ellen Leff participated in the decision. Edward Adrian, Prosecuting Attorney, appeared for the State. Linda Ann Berkeley ("the Respondent") was present. Christopher Winters was the Presiding Officer.

This case was scheduled for a default hearing because the Respondent did not file an answer to the Charges as required by law. However, the Respondent did file the answer form, with the statement "I am awaiting confirmation of legal representation" upon it. The Respondent apparently felt this was an answer. She appeared for the hearing and requested that she be allowed to present some information on her behalf.

Findings of Fact

The Respondent does admit the facts alleged in the State's Specification of Charges dated March 2, 2004, which are incorporated by reference as the facts upon which its conclusions and Order are based.

Additional Findings

1. The Respondent is current on her installment payments due the patient from whom she borrowed money. Two more installments of \$3,000.00 each are due later this year.
2. Respondent's difficulties with owning and operating a nursing home stemmed from physical and mental health problems, which were exacerbated by her working too many hours at more than one job.

Conclusions of Law

- A. Based on the facts as set forth in the Charges, the Respondent has committed

unprofessional conduct in that Respondent has shown she is unable to practice nursing competently by reason of any cause, in violation of 26 V.S.A. §1582(a)(3). More specifically, Respondent:

- (1) Performed unsafe or unacceptable patient care; and
 - (2) Failed to conform to the essential standards of acceptable and prevailing nursing practice, which is also a violation of Board of Nursing Administrative Rule Chapter 4, Rule IV(B)(2).
- B. Respondent has engaged in conduct of a character likely to deceive, defraud or harm the public in violation of 26 V.S.A. §1582(a)(7); and
- C. Respondent has failed to comply with provisions of federal or state statutes governing the practice of the profession in violation of 3 V.S.A. §129a(a)(3).

Order

A. Based on the above findings and conclusions, the Board of Nursing hereby SUSPENDS Respondent's license for A MINIMUM OF THIRTY (30) DAYS, effective as of the date of entry of this Order and until such time as she provides the Board or its designee with a psychological evaluation from a qualified treating professional that she can safely return to the practice of nursing. The treating professional may be her current therapist. Upon reinstatement, the CONDITIONS on Respondent's license are as follows:

Length of Time 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 three (3) years of supervised nursing practice in which Respondent works at least forty (40) hours every two (2) weeks as a nurse. Part time hours of less than forty (40) hours every two (2) weeks shall be credited on a prorated basis.

Course Requirement.

Within one (1) year of the date of entry of this Order the Respondent shall take and successfully complete a course in delegation and patient assessment. Such course(s) shall be approved in advance by the Board or its designee.

Payment Plan.

The Respondent shall keep current and in good standing on her payment plan to pay back the money she borrowed from one of her residents.

- (4) Notification to Employers.

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 employment, Respondent shall cause Respondent's immediate supervisor to write to the Board, on the employer's letterhead, acknowledging receipt of the Order and the ability to comply with the conditions in the Order.

Reports from Employers.

Within one (1) month of the effective date of this Order and monthly thereafter, Respondent shall cause every employer Respondent has worked for during the relevant time period to submit to the Board an evaluation of Respondent's performance and attendance during that time period. This report shall be submitted in writing on forms issued by the Board.

In the event the Respondent is attending a nursing program, Respondent shall cause the Program Director to write to the Board, on school letterhead, acknowledging receipt of the Order and ability of the program to comply with the conditions in the Order during clinical experience.

Respondent shall sign a consent, upon request of the Board, to authorize Respondent's employer to provide all information requested by the Nursing Board, or its designee, either orally or in writing, at any time during the period the Order is in effect.

Practice Under Supervision.

Respondent shall practice only in a setting where Respondent has on-site supervision for the entire shift by a registered nurse that is licensed and in good standing.

(7) License Renewal.

In the event Respondent's license is scheduled to expire during the period this Order is in effect, Respondent shall apply for renewal of the license, pay the applicable fee, and otherwise maintain qualifications to practice as a nurse in the State of Vermont.

(8) Costs.

Respondent shall bear all costs of complying with this Order.

(9) Violation of the Consent Order.

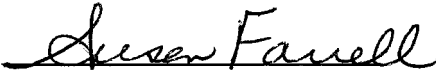
If Respondent violates the terms of this Order in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke the terms of the conditional license and take further disciplinary action. If a complaint or charges are filed against Respondent during the term of this Order, the conditional license period shall be extended until the matter is final.

Completion of Conditional License Period.

Upon completion of the conditional license period, Respondent may petition the Board to remove any and all conditions and after formal review by the Board, Respondent's nursing license may be formally restored by appropriate Board action. Respondent shall demonstrate, to the Board's satisfaction that Respondent fully complied with all the terms of this Order. If the Respondent demonstrates to the Board's satisfaction compliance with all conditions, then any and all conditions shall be removed.

B. 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).

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


Susan Farrell
Board Chair

Date: May 21, 2004

OFFICE OF PROFESSIONAL REGULATION

Date of entry: 5/25/04

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

IN RE:	)	
LINDA ANN BERKELEY	)	Docket Nos: NU 14-0803
License No. 026-0021573	)	NU 26-0903

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Linda Ann Berkeley, R.N.:

Board Authority

1. The Vermont State Board of Nursing ("the Board") has authority to issue warnings or reprimands, suspend, revoke, limit, condition or prevent the renewal of current or lapsed licenses if, after disciplinary hearing, the Board finds that the Respondent has engaged in unprofessional conduct. 3 V.S.A. §129a ; 3 V.S.A. §129(a)(5); 3 V.S.A. §814(d); 26 V.S.A. §1582(a); Administrative Rules of the Board of Nursing ("ARBN").
2. Failure to comply with the provisions of state statutes or rules governing the practice of the profession is unprofessional conduct upon which the Board can base disciplinary action. 3 V.S.A. §129a(a)(3).
3. Engaging in conduct of a character likely to deceive, defraud or harm the public is unprofessional conduct upon which the Board can base disciplinary action. 26 V.S.A. §1582(a)(7).
4. Inability to practice nursing competently by reason of any cause is unprofessional conduct upon which the Board can base disciplinary action. 26 V.S.A. §1582(a)(3).
5. Inability to practice nursing competently includes performance of unsafe or unacceptable patient care and failure to conform to the essential standards of acceptable and prevailing nursing practice. ARBN Chapter 4, Rule IV(II)(B)(1) and (2).

Facts

6. The Respondent is licensed in the State of Vermont as a Registered Nurse under license number 026-0021573.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

7. Respondent's license was originally issued on June 14, 1994 and Respondent's license is currently set to expire on March 31, 2005.

8. At all times relevant, the Respondent was the owner and operator of the Chelsea Home (the "Facility"); a nursing home located in Chelsea, Vermont.

9. Surveys of the Facility conducted by the Vermont Department of Aging and Disabilities on various occasions revealed several violations. The surveys were completed on the following dates: June 19, 2003; January 2, 2003; February 25, 2002; May 10, 2002; June 27, 2002; September 12, 2002; October 31, 2001; and November 1, 2000.

10. The violations listed in the surveys include: failure to record a physician's order; failure to do assessments of new residents; failure to train staff to dispense medications; falsification of records; failure to take necessary vital signs before dispensing medications; and failing to keep the Facility clean.

11. On or about December 19, 2003, the Respondent advised Investigator Ron West that violations were due to the high turnover rate in personnel at the Facility and the Respondent being unable to provide proper supervision as she was in "over her head with the home". The Respondent stated that she had to work a second job during the day to make ends meet and she felt that she was "just not capable of performing both jobs". The Respondent no longer owns or operates the Facility as it was foreclosed upon in around July 2003.

12. In another incident, occurring in or about January 2002, to help ease her debts, the Respondent borrowed \$25,000 from E.I., a resident at the Facility.

13. Upon information and belief, the Respondent currently still owes E.I. approximately \$16,000 and the Respondent is not presently paying any money to E.I.

Charges

14. The above acts, omissions and/or circumstances described above, constitute grounds for discipline because Respondent violated:

A. 26 V.S.A. §1582(a)(7) (Engaging in conduct of a character likely to deceive, defraud or harm the public); and

B. 26 V.S.A. §1582(a)(3) (Inability to practice nursing competently by reason of any cause), which includes performance of unsafe or unacceptable patient care and failure to conform to the essential standards of acceptable and prevailing nursing practice pursuant to ARBN Chapter 4, Rule IV(II)(B)(1) and (2); and

C. 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).

Relief Requested

WHEREFORE, the license of Linda Ann Berkeley should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

Dated at Montpelier, Vermont this 2nd day of March 2004.

STATE OF VERMONT
SECRETARY OF STATE

By: _____

Edward G. Adrian
State Prosecuting Attorney

nu.berkeley.soc

