

**STATE OF VERMONT
SECRETARY OF STATE, OFFICE OF PROFESSIONAL REGULATION
APPELLATE OFFICER**

In re: Gerald Casavant

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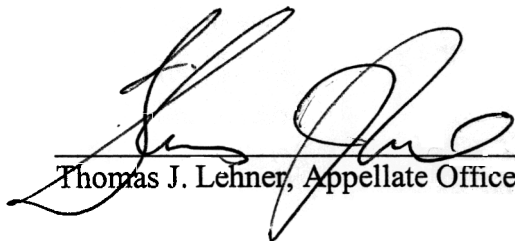
Docket No. AO-NU 57-0203

ORDER OF DISMISSAL

After a contested merits hearing on March 8, 2004, the Board of Nursing issued its Findings of Fact, Conclusions of Law, and Order, entered April 6, 2004, revoking Respondent's license to practice nursing in the State of Vermont. On May 4, 2004, the Respondent timely filed his notice of appeal. On May 12, 2004, Respondent was notified by certified mail, return receipt, of the assignment of the undersigned as Appellate Officer and informed that he had ten days to perfect his appeal by filing a statement of questions and ordering a transcript of the hearing. The notice also informed the Respondent that if the Office did not receive the information required in a timely fashion, the appeal will be dismissed. As of this date, the Respondent has filed neither a statement of questions nor an order for the transcript.

On June 24, 2004, the Prosecuting Attorney filed a Motion to Dismiss Respondent's Appeal for failure to perfect his appeal. Based on official notice of the record showing failure to file the required information, the case is hereby **DISMISSED** with prejudice pursuant to V.R.A.P. 42(b).

SO ORDERED



Thomas J. Lehner, Appellate Officer

6/25/04

Date

Date copies sent to:
Respondent's attorney _____
Respondent _____

Prosecuting Counsel _____
Other Case Manager

Cert. to resp't: return receipt no. _____

Docket Clerk's Initials _____

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

IN RE:
Gerald Casavant
License No.: 026-0024170

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Appeal Docket
No. NU57-0203

STATE'S MOTION TO DISMISS RESPONDENT'S APPEAL

NOW COMES the State of Vermont, by and through its State Prosecuting Attorney, Edward G. Adrian and hereby moves to **DISMISS** the appeal of Gerald M. Casavant (the "Respondent") in the above captioned case. In support of this Motion, the State avers as follows:

A contested merits hearing was held in the above captioned case before the Board of Nursing on March 8, 2004. The Board's Findings of Fact, Conclusions of Law, and Order were entered on April 6, 2004. Based on the facts presented at the hearing, the Board **REVOKED** the Respondent's license to practice nursing in the State of Vermont.

Attachment A.

By way of correspondence dated April 29, 2004 and received by the Office of Professional Regulation on May 4, 2004, the Respondent filed his notice of appeal with the Office of Professional Regulation "OPR" Clerk. Attachment B. By way of correspondence dated May 12, 2004, the Director of the Office of Professional Regulation informed the Respondent that within "ten days" he needed to: 1) file a statement of questions and 2) order a transcript of the hearing. Attachment C. The Respondent was also informed that if he failed to proceed "in a timely fashion, the appeal will be dismissed." Attachment C.

OPR Rule 2.4 provides that Vermont Rule of Appellate Procedure 42 is applicable in this instance. V.R.A.P. 42(b) provides that an appellate body "may dismiss or otherwise dispose of any case on its docket in which a party has not complied with a filing deadline . . .

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STATE OF VERMONT



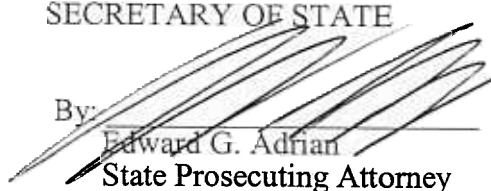
Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

On information and belief, as of the date listed below the Respondent has not perfected his appeal in that he has not 1) filed a statement of questions and 2) ordered a transcript of the hearing. The State asks this Appellate Officer to take official notice of OPR's own records verifying the same.

Wherefore, based on the foregoing reasons: the Respondent's failure to perfect his appeal; failure to supply a statement of questions; and failure to order a transcript the State respectfully requests that the above captioned appeal be **DISMISSED** forthwith by the Appellate Officer.

Dated at Montpelier, Vermont this 23rd day of June, 2004

STATE OF VERMONT
SECRETARY OF STATE

By: 
Edward G. Adrian
State Prosecuting Attorney

nu051.AOappeal.wpd

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

Redstone Building
26 Terrace Street
Drawer 09
Montpelier, VT 05609-1101

Tel: (802) 828-2363
<http://www.sec.state.vt.us>



State of Vermont
Office of the Secretary of State
Office of Professional Regulation
(802) 828-2367

Deborah L. Markowitz
Secretary of State

William A. Dalton
Deputy Secretary

Jessica G. Porter
Director, Professional Regulation

April 6, 2004

Gerald Casavant
Box 28
Hoosick
New York 12089

CASE: In Re Gerald Casavant
Docket No.: NU57-0203

Dear Mr. Casavant:

Enclosed please find a copy of the *Findings of Fact, Conclusions of Law and Order* that was issued by the Board of Nursing in the above-referenced case. This is a final administrative determination.

If you are aggrieved by this decision, you may appeal this decision to an appellate officer of the Office of Professional Regulation by filing a written notice of appeal with the Director. The notice must be received no later than 30 days from the date of this letter. Send the appeal to the Director, Office of Professional Regulation, 26 Terrace Street, Drawer 09, Montpelier, Vermont 05609-1106.

The appeal does not stay the disciplinary action from going into effect. If you wish to have the disciplinary action stayed during the appeal, this must be specifically requested in writing and such request must be approved by the Board. Please see enclosed instructions for requesting a stay and appeal.

If you have any questions, please do not hesitate to contact the office.

Sincerely,

A handwritten signature in cursive script that reads "Jessica G. Porter".

Jessica G. Porter, Esq.

Director

Enclosures [Order, Stay & Appeal Information]

cc: Edward G. Adrian, Esq., w/order
Anita Ristau, Case Manager, w/order
Steve Kennedy, Investigator, w/order

CERT 1201-0915

Attachment A

**STATE OF VERMONT
BOARD OF NURSING**

In re: Gerald Casavant, R.N.
License No.: 026-0024170

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} NU57-0203
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**Decision on
UNPROFESSIONAL CONDUCT CHARGE**

Participating Board Members:

Susan Farrell, R.N., Chair
Alan Weiss
Sandra Norton, N.A.
Donarae Metcalf, L.P.N.
Elayne Clift
Deann Welch, L.P.N.
Ellen Leff, R.N.

Appearances:

for Petitioner, State of Vermont: Edward G. Adrian
for Respondent: pro se

Presiding Officer: Larry S. Novins

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

The Board of Nursing held a hearing in the above matter on March 8, 2004 at the Central Vermont Medical Center in Berlin, Vermont. Before the beginning of the hearing the State moved to amend the Specification of Charges to delete the allegations in paragraphs 14 and 15. The respondent concurred in the dismissal of those allegations stating that the evidence was clear that the conduct complained of therein could not have occurred while he was on duty as a nurse.

The prosecution has the burden of proof in this matter. To prevail on any unprofessional conduct charge, it must prove the charge by a preponderance of the evidence.

Background

The State alleges in its specification of charges that while employed at Crescent Manor Care Center in Bennington, Vermont:

•On December 23, 2002 Mr. Casavant was ordered to obtain a urine culture from resident M.W. That Mr. Casavant failed to obtain the urine culture, that when asked why he did not obtain the culture, he responded that he felt, "it was not necessary."

•On or about the afternoon of January 7, 2003 results of a urine culture showed that patient M.W. had a urinary tract infection.

•The State further alleged that Mr. Casavant failed to conduct the neuro assessment of patient W. W., which failure was called to Mr. Casavant's attention on January 13, 2003. Mr. Casavant said in nurses notes that he was "unable to obtain one" and later explained it was because the patient was sent to the emergency room for unresponsiveness.

• On or about December 22, 2002 Mr. Casavant filled out an order sheet for patient M.A. to continue medications on transfer. The medications were never reviewed with a physician prior to restarting.

Prior to these events in October 2001 Mr. Casavant was found by the Board to have committed unprofessional conduct. At that time his license was conditioned for a period of one year of practice.

Findings of Fact

Based on substantial credible evidence presented, the Board finds as follows:

1. Gerald Casavant is subject to the disciplinary authority of this Board. 26 V.S.A. §1582(a), 3 V.S.A. § 129(a). At all times relevant he held a license as a registered nurse.
2. In the autumn of 2002 Gerald Casavant held a license issued by the nursing Board. The license was conditioned for one year of practice beginning November 7, 2001 and remained conditioned at all times during his employment at Crescent Manor. The conditional license followed a finding of unprofessional conduct for acting without a physician's order and failing to review the patient records/chart before taking action.
3. On October 25, 2002 Mr. Casavant was hired by Crescent Manor Health Center, in Bennington, Vermont. The center was aware that Mr. Casavant possessed the conditioned license. Mr. Casavant had been forthcoming about his conditioned license. Crescent Manor hired him in a probationary status.
4. On December 22, 2002 Mr. Casavant filled out an order sheet for patient M.A. to continue medication on transfer sheet. The medications prior to the patient's admission to the hospital were never reviewed with a physician or restarted.
5. Mr. Casavant's employers at Crescent Manor described a cluster of mistakes and omissions which led them to dismiss Mr. Casavant in January 2003. The Board finds the testimony of Susan Leggett and Michelle Angell, nurses at Crescent Manor, as well as the documents admitted into evidence during their testimony to be credible.
6. On December 23, 2002 Mr. Casavant was asked to obtain a urine specimen or sample

from patient M.W. He did not promptly respond to this order.¹

7. Mr. Casavant was reminded over the next several days of the specimen order. He did not comply with the order. He did not note in the patient's file any reason for not complying with the order.
8. Mr. Casavant, when questioned about this omission at Crescent Manor said he felt that obtaining the specimen was not necessary. His superiors said it was. At this hearing Mr. Casavant testified that he could not read the doctor's order on the chart. He offered several explanations for why he did not obtain the specimen. He noted that the patient was not complaining of pain.
9. None of Mr. Casavant's explanations justified not consulting with superiors or charting reasons for not following the order in a timely manner, especially after being asked repeatedly to obtain the specimen.

Mr. Casavant was reminded of the need for a urine specimen from this patient again on January 3, 2003 and January 6, 2003. On January 6 he finally did obtain a specimen.

11. When test results on the specimen were obtained on January 7, 2003, they showed the patient had a urinary tract infection.
12. Mr. Casavant testified that he worked only five of the fourteen days between the first request for a urine sample and the day he ultimately obtained one. He blamed other nurses who he claims should be similarly chastised for the omission. He excused his mistakes as being unimportant to patient care.

Mr. Casavant failed to make timely entries on patient charts.

On or about January 13, 2003 Mr. Casavant attended to patient W.W. who was going to be transferred to the emergency room at the hospital. Mr. Casavant did not do a neuro assessment on that patient. He wrote in the patient file, "unable to obtain." The Board finds, as did Crescent Manor, that a patient transferred to the emergency room for unresponsiveness is a neuro assessment and needs to be documented. Mr. Casavant failed to do that. Mr. Casavant failed to obtain vital signs.

15. On January 22, 2003 Nurse Susan Leggett spoke to Mr. Casavant on the telephone about deficiencies in his work as recited above. She testified that Mr. Casavant agreed with her as to what had happened. The Board finds this testimony credible. Mr. Casavant agreed

¹ The State's charge states that "on or about January 3, 2003, the Respondent was to obtain a urine culture for resident M.W. Respondent failed to obtain the urine culture." The evidence shows that the initial order came on December 23, 2002 and that Mr. Casavant was reminded of it on January 3 and January 6, 2002. He had sufficient notice of the charge and did not object to, nor was he prejudiced by the evidence presented.

with her that he had not done the things she outlined.

16. Mr. Casavant admitted that he failed to obtain a neuro assessment of patient W.W. as alleged in paragraph 12 of the specification of charges.
17. When contacted by an OPR investigator as part of the investigation of this matter, Mr. Casavant used expletives to describe the charges and the people who complained against him.
18. Mr. Casavant displayed a lack of regard or any remorse for his omissions. He tried to shift blame to others. He conveyed to the Board a sense that he knew best what was right or wrong, and that he was unwilling or unable to follow the orders of the physician or the directions of his supervisors.

Conclusions of Law

Failure to carry out a physician's order or supervising nurse's order to obtain a urine sample is unprofessional conduct.

Failure to take vital signs and obtain a neuro assessment in a patient requiring emergency room evaluation, and failure to review medications with a physician are unprofessional conduct.

Mr. Casavant failed to conform to the essential standards of acceptable and prevailing nursing practice in violation of Nursing Board Rules, Chapter 4, Rule IV(II)(B)(2) and therefore 3 V.S.A. § 129a(3).

Order

Mr. Casavant's license remained conditioned at all times relevant. His conduct and attitude gave Crescent Manor more than adequate cause to prevent him from administering to patients. The cumulative effect of Mr. Casavant's prior unprofessional conduct, unprofessional conduct in this case and lack of appreciation of the seriousness of his acts causes the Board to conclude that permitting Mr. Casavant to continue practice as a nurse would endanger the public safety. Therefore, Mr. Casavant's license is **REVOKED**.

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, 26 Terrace Street, Drawer 09, Montpelier, Vermont 05609-1106 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.

Vermont Board of Nursing

By: Susan Farrell
Susan Farrell, Chair

Dated: March 30, 2004

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 4/6/04

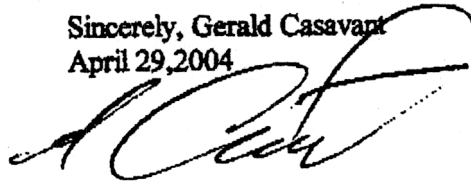
To: Director of Professional Regulation

From: Gerald M. Casavant
22049 Rte. 22
Hoosick Falls, N.Y. 12090

Re: Docket No. NU57-0203

It is my wish to appeal the decision made by the Board of Nursing on April 6, 2004 regarding the above case. It is still my contention that justice has not been served and that the Board has failed to recognize the same in the above matter. There was no remorse shown because the investigating officer has chosen to perjure himself and has relied on intimidating behaviors in order to present a false scenario before the Board. Therefore I do feel aggrieved and desire that an appellate officer be assigned to this case.

Sincerely, Gerald Casavant
April 29, 2004



Attachment B

Redstone Building
26 Terrace Street
Drawer 09
Montpelier, VT 05609-1101

Tel: (802) 828-2363
<http://www.sec.state.vt.us>



State of Vermont
Office of the Secretary of State
Office of Professional Regulation
(802) 828-2367

Deborah L. Markowitz
Secretary of State

William A. Dalton
Deputy Secretary

Jessica G. Porter
Director, Professional Regulation

May 12, 2004

Gerald M. Casavant
22049 Rte. 22
Hoosick Falls
New York 12090

Case: In Re Gerald Casavant
Docket No: NU57-0203

Dear Mr. Casavant:

We have received your notice of appeal of the decision issued by the Board of Nursing in the above-referenced case. Before the appeal can be scheduled you must within ten days:

- a. Send a statement of questions to be determined by the Appellate Officer.
- b. Make arrangements to obtain a transcript of the hearing, which can be done by contacting the Docket Clerk at (802) 828-2367. Based on the length of time of hearing, the cost of the transcript will be approximately \$405.00. Two-thirds of this is due with your request for a transcript. The balance will be billed when the transcript sent to you.

Upon the Docket Clerk's receipt of the transcript, you will be notified that the record is complete.

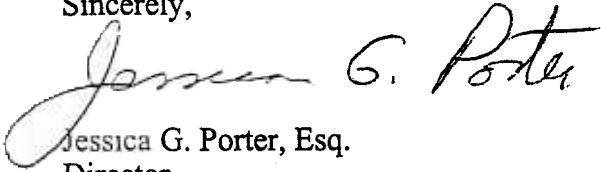
- a. Within thirty days of receiving notice that the record is complete, you must provide: A brief, or written outline, providing a legal argument for the appeal, including references to the pertinent parts of the record on appeal and supporting legal authority, if known.

Hereafter, every time you file a paper with the Office, you must also send a copy to the Prosecuting Attorney.

If the Office does not receive information required in a timely fashion, the appeal will be dismissed. Thomas J. Lehner, Esq. has been assigned as Appellate Officer in the above-referenced case.

Please do not hesitate to contact the Office if you have additional questions regarding the appeal process.

Sincerely,


Jessica G. Porter, Esq.
Director

cc: Thomas J. Lehner, Esq., Appellate Officer
Edward G. Adrian, Esq., Prosecuting Attorney \\\nAnita Ristau, Case Manager

CERT 1201-1097

Attachment C