STATE OF VERMONT
BOARD OF NURSING

In re: Margaret Downing	}	Docket No. 2013-524
License No. 026-82921	}	

Decision on
Unprofessional Conduct Charge

Participating Board Members:
Jeanine Carr, RN, Chair
Ellen Watson, APRN, Vice Chair
William G. White, Jr., Public Member
Deborah Swartz, RN
Sheila Davis, LPN
Luana Tredwell, LPN
Jennifer Laurent, APRN
Kelly Sinclair, LNA

Appearances:
Prosecutor: Annika Green
Respondent: Did not appear

Presiding Officer: Larry S. Novins

Findings of Fact, Conclusions of Law,
and Order

The Vermont Board of Nursing held a hearing in the above matter on February 9, 2015 at the Office of Professional Regulation Conference Room at the City Center in Montpelier, Vermont.

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 Specification of Charges alleges that Ms. Downing, in violation of Vermont Statutes, had a co-worker place a Lidoderm patch which was supposed to be used for a patient on Ms. Downing's back.

Findings of Fact

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

1. Ms. Downing is a licensed registered nurse and is therefore subject to the regulatory authority of this Board. 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.
2. At all times relevant Ms. Downing was employed as a registered nurse at the Centers for Living and Rehabilitation in Bennington, Vermont.
3. Ms. Downing's Answer was admitted into evidence. She stated that on August 10, 2013 she had twenty-one patients under her care. Four were at high risk for falling. One had fallen at the beginning of Ms. Downing's shift. When assisting the patient to her feet, Ms. Downing felt a "twinge" in her back. She was in pain. She did not seek medical attention. She testified that she did not want to leave the facilitate as they were short staffed already.
4. Ms. Downing asked a co-worker to place a Lidoderm patch on her back. The patch had been prescribed to a patient at the facility. Ms. Downing said that she should have known that a Lidoderm patch required a prescription and that the patch had been intended for a patient at the facility.
5. The essential standards of acceptable and prevailing practice require a nurse to know which drugs require a prescription and to inquire if not sure. They also require that a nurse verify that any drug be used properly. Taking a Lidoderm patch intended for a patient is deceptive and is unacceptable and unsafe patient care.
6. Ms. Downing submitted six letters of support. One, from K.S., RN was written just three days after the incident described above. It is unknown whether K.S. had any knowledge of Ms. Downing's conduct on August 10, 2013. The second letter, dated August 7, 2013, three days before the incident above was signed by sixteen co-workers. They could not have had any knowledge. Two were written in 2003 and do not shed light on Ms. Downing's current ability to practice.
7. The Prosecutor represented to the Board that Ms. Downing was extremely apologetic and remorseful for her error.
8. Ms. Downing has no disciplinary history.

Conclusions of Law

Based on the evidence presented and Facts found above we conclude as follows:

1. **Re: Alleged Violation of 26 V.S.A. § 1582(a)(3)**: The Prosecution has not proved by a preponderance of the evidence that Ms. Downing is unable to practice nursing competently by reason of any cause. This charge is dismissed.

2. **Re: Alleged Violation of 26 V.S.A. § 1582(a)(7)**: The Prosecution has proved by a preponderance of the evidence that Ms. Downing has engaged in conduct of a character likely to deceive, defraud, or harm the public. This is unprofessional conduct. 3 V.S.A. § 129a(a)(3).

3. **Re: Alleged Violation of 3 V.S.A. § 129a(b)(1) and (2)**: The Prosecution has proved by a preponderance of the evidence that Ms. Downing failed to practice competently. We find that Ms. Downing's conduct as found above constituted of unsafe or unacceptable patient or client care, 3 V.S.A. § 129a(b)(1) and is a failure to conform to the essential standards of acceptable and prevailing practice. This is unprofessional conduct.

Order

For the violations above, to protect the public, health, safety and welfare, the following sanction is necessary.

Ms. Downing's license is **warned.**

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.

To request a stay of the Board's decision, please refer to the attached stay instructions.

Vermont Board of Nursing

By: Jeanine Carr
Jeanine Carr, RN, Chair

Date: February 9, 2015

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 2/10/15