

**STATE OF VERMONT
BOARD OF NURSING**

In re: Beverly Farone
License No. 025-6986

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Docket No. 2010-396(LPN)

**Decision on
Unprofessional Conduct Charge**

Participating Board Members:

Ellen W. Leff, RN, Chair
Jeanine Carr, RN, Vice Chair
Alan Weiss
Sandra Norton, LNA
Donarae Metcalf, LPN
De-Ann Welch, LPN
William G. White Jr.
Deborah Swartz, RN
John Todd, APRN

Appearances:

for Petitioner, State of Vermont: Lauren Hibbert
for Respondent: Pro se

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 June 13, 2011 at the National Life Building 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 prosecution alleges in its Specification of Charges that Ms. Farone in violation of Vermont Statutes 1) failed to provide adequate care to patients and 2) was abusive to patients.

Findings of Fact

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

1. Ms. Farone is licensed as a practical 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. Ms. Farone was employed at a nursing home, "The Pines at Rutland."
3. The events described at the hearing occurred on July 12, 2010.
4. The evidence at the hearing consisted of the testimony of three witnesses, C.P., who worked as an LNA at the Pines on the same shift with Ms. Farone, T.L.H. another LNA at the Pines, and Ms. Farone. While the testimony of the witnesses was in many respects similar, with some details conflicting, we found T.L.H.'s testimony to be particularly credible to understanding what occurred.
5. On July 12, 2010 Ms. Farone was working with LNA's C.P. and T.L.H. Ms. Farone was to catheterize a patient I.A. The essential standards of acceptable and prevailing licensed practical nurse practice require the nurse to clean a patient before inserting a catheter. Ms. Farone did this. As Ms. Farone was trying to insert the catheter, the patient I.A. complained more than once that it hurt. The essential standards of acceptable and prevailing practice required Ms. Farone to take sufficient steps to provide for I.A.'s comfort. She failed to do that. Instead, Ms. Farone told patient I.A. to "shut up." She said this more than once.
6. When the catheterization process was complete, Ms. Farone held a urine collection bag up over the patient and asked, "Do you want to drink this?" Ms. Farone testified about her difficult working relationship with the two LNA's and said that said the comment was not intended to be harmful to I.A. Though the statement was intended, she said, to relieve the tension of the situation, it was disrespectful and inappropriate. It was disrespectful to I.A.'s dignity and rights as a patient. Ms. Farone thought the comments were appropriate. The essential standards of acceptable and prevailing practice require a nurse to treat patients with respect and honor their dignity. Ms. Farone's words and comments, however intended, did not meet those standards.
7. Patient M.K., another patient at the facility, frequently removed her colostomy bag, sometimes more than once during any given nursing shift. On July 12, 2010 this happened yet again. When Ms. Farone learned that M.K. had removed the bag, Ms. Farone made derogatory comment about M.K. to a co-worker. Ms. Farone denied uttering the expletive quoted, but did not deny making a comment. M.K.'s call light was on. Ms. Farone responded and gave M.K. a towel. Ms. Farone failed to re-attach the colostomy bag at that time. She left M.K. slightly soiled with a towel over the colostomy site. The essential standards of prevailing and acceptable practice require that the colostomy bag be re-attached. Deferring in this context appears punitive. Ms. Farone left M.K. to finish giving medications to another patient. M.K. was forced to wait at least a half an hour until a nurse from another floor came to the floor and re-attached M.K.'s colostomy bag. The delay is unsafe and potentially harmful to the patient.
8. Testimony at the hearing gave context to the events portrayed above. These events took place during the 11 p.m. to 7 a.m. shift. The floor was a busy one described as "high maintenance." Ms. Farone frequently worked double shifts. At least from her point of view, Ms. Farone's employer was inflexible in scheduling Ms. Farone's shifts. Ms. Farone was overworked. Her relationship with her co-workers was strained. One testified she called Ms. Farone "the nutty nurse." Ms. Farone took the term as being

intentionally hurtful. Simply put, Ms. Farone was stressed out in her working conditions. Her co-workers saw this.

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):** We decline to conclude that Ms. Farone is unable to practice nursing competently by reason of any cause.
2. **Re: Alleged Violation of 3 V.S.A. § 129a(b)(1) and (2):** The State has proved by a preponderance of the evidence that Ms. Farone failed to practice competently. We find that Ms. Farone's conduct as found above constituted (1) performance of unsafe or unacceptable patient or client care. 3 V.S.A. § 129a(b)(1) and constituted a (2) failure to conform to the essential standards of acceptable and prevailing practice. This is unprofessional conduct.
3. **Re: Alleged Violation of 26 V.S.A. § 129a(a)(3):** 3 V.S.A. § 129a(a)(3) defines unprofessional conduct to include failing to comply with provisions of federal or state statutes or rules governing the practice of the profession. Any allegation of failure to comply with statutes or rules has been addressed above. This statute does not provide separate/additional grounds for discipline. There is no independent violation of this statute.

Order

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

Ms. Farone's license is conditioned, effective the date of this decision, as set forth in the incorporated Conditions attached hereto.

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, National Life Bldg., North, FL2, 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: Ellen Leff
Ellen Leff, RN, Chair

Date: June 14, 2011

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 6/16/11

**Vermont Board of Nursing
Disciplinary Decision
Conditions Imposed**

**In re: Beverly Farone
Docket No. 2010-396(LPN)
License No. 025-6980**

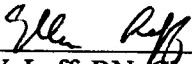
As part of the Order issued this date, Ms. Farone's license shall be conditioned as follows:

1. **Re-issuance of license:** Ms. Farone's license shall be reissued labeled "conditioned." The conditions shall remain in place until Ms. Farone completes all requirements ordered and meets each condition.
2. **Duration:** Ms. Farone shall be subject to these conditions until Ms. Farone completes 3 years of supervised practice in which Ms. Farone works at least forty (40) hours every two (2) weeks as a licensed practical nurse.
3. **Part time work:** Part-time work of less than forty (40) hours every two (2) weeks shall be credited on a prorated basis.
4. **Notification to Employers:** Ms. Farone shall provide a copy of this Order and these Conditions to all employers in any current or future setting in which Ms. Farone practices as a licensed practical nurse and inform them of the conditional license status. Within ten (10) days of the date of entry of this Order or of any subsequent employment, Ms. Farone shall cause Ms. Farone's immediate supervisor to write on the employer's letterhead to the Vermont Board of Nursing, Attn: Executive Director, acknowledging receipt of this Order and acknowledging the employer's ability to comply with the conditions required by this Order.
5. **Reports from Employers:** Within one (1) month of the date of entry of this Order and monthly thereafter, Ms. Farone shall cause every employer Ms. Farone has worked for during the relevant period as a licensed practical nurse submit to the Board an evaluation of Ms. Farone's performance during that period. This report shall be on forms issued by the Board.
6. **Nursing Programs:** In the event Ms. Farone is attending a nursing program, Ms. Farone shall cause the Program Director to write to the Board, on school letterhead, acknowledging receipt of this Order and ability of the program to comply with the conditions in the Order during clinical experience.
7. **Practice Under Supervision:** Ms. Farone shall practice only in a setting where Ms.

Farone has "direct supervision" for the entire shift by a licensed registered nurse or licensed practical nurse in good standing. On a showing of good cause after one year of "direct supervision," the Board will consider Ms. Farone's petition to remove the "direct supervision" condition.

8. **Types of Employment Prohibited:** Ms. Farone shall not work for a nurse registry, traveling nurse agency, float-pool, home health care agency, temporary nursing employment agency or as a personal care provider during the effective period of this Order.
9. **Time Limitations on Work:** Ms. Farone shall not work more than 40 hours in any seven day period. She may not work more than 12 hours in any one shift. She may not work between midnight and 6:00 a.m.
10. **Out-of-State Practice** Out-of-state practice can be credited toward fulfillment of this Order only if Ms. Farone shall first obtain prior approval from this Board for out-of-state practice. If Ms. Farone fails to obtain prior approval before practicing out-of-state, none of the out of state practice time will be credited toward fulfillment of this terms of this Order. The Board will approve out-of-state practice so long as Ms. Farone can still comply with the provisions of this Order.
11. **License Renewal:** The Board's Order, and these conditions, do not affect Ms. Farone's license renewal responsibilities. Ms. Farone must timely apply for and otherwise comply with the requirements for license renewal.
12. **Remedial Courses: Before Ms. Farone may resume employment as a nurse, and within 90 days of this Order:** Ms. Farone must successfully complete 3 courses: one in patient's/resident's rights, one in anger management, and one in "delegation." The courses must receive pre-approval by the Board or the Board's designee.
13. **Completion of Conditional License Period:** After the conditional license period, Ms. Farone may petition the Board to remove any and all license conditions. Ms. Farone must present proof that all terms of this Order have been met. Once Ms. Farone has shown that all conditions of this Order have been met, the Board will remove the conditions on Ms. Farone's license and restore Ms. Farone's licensure privileges.

Vermont Board of Nursing, by


Ellen W. Leff, RN, Chair

6-14-11
June 14, 2011