

**STATE OF VERMONT
BOARD OF NURSING**

In re: Dana Gilbert
License No. 025-9211

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Docket No. NU50-1108

**Decision on
UNPROFESSIONAL CONDUCT CHARGE**

Participating Board Members:

Jeanine Carr, RN, Vice Chair
Alan Weiss
Sandra Norton, LNA
Donarae Metcalf, LPN
Deann Welch, LPN
Kenneth W. Bush, RN
William G. White Jr.
Deborah Robinson, RN
Linda Rice, ARPN

Decision on Unprofessional Conduct Charges

Appearances:

for Petitioner, State of Vermont: Betsy Ann Wrask
for Respondent: Did not appear for the hearing

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 August 10, 2009, 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. Gilbert in violation of Vermont Statutes 1) altered a prescription for Vicodin 2) failed to properly administer and document drugs, and 3) acted improperly toward a family member of a complainant. Ms. Gilbert was given notice of the hearing, but did not appear. The hearing was conducted without her.

Findings of Fact

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

1. Ms. Gilbert 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. On July 14, 2008 Ms. Gilbert was given a prescription for 12 tablets of Vicodin 500/5 written by Dr. R.A.
3. On the same day, Ms. Gilbert took the prescription to the Rite Aid Pharmacy in Bristol, Vermont. The pharmacy did not fill the prescription. It determined that the tablet amount had been altered from 12 to 120.
4. Ms. Gilbert admitted that she knew the prescription had been altered and that she had "inadvertently" given the pharmacy the prescription to be filled. She said she gave the pharmacy the Vicodin prescription instead of another and different prescription to be filled for her daughter. She claimed that she had been distracted by her children while at the pharmacy. Based on the description of the prescription and the way it was altered, we find she intentionally presented the prescription to be filled.
5. At work Ms. Gilbert committed several medical errors, most related to drugs or drug administration.
6. Ms. Gilbert left the door to the medication room open on December 19, 2007.
7. Ms. Gilbert left a syringe unattended on the top of her medication cart on December 26, 2007.
8. Ms. Gilbert was counseled for improperly documenting a PRN medication on October 22, 2008.
9. On October 26, 2008 she did not document administering pain medication on a MAR and did not document a resident's pain levels before or after administering drugs.
10. Ms. Gilbert confronted a family member of a patient who had complained about her, asking why a complaint letter was written. Her conduct was deemed inappropriate and disrespectful to the patient and patient's family and their privacy.

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 State has not proved by a preponderance of the evidence that Ms. Gilbert is unable to practice nursing competently by reason of any cause. This charge is dismissed.
2. **Re: Alleged Violation of ARBN Chapter 4, Rule IV(II)(B)(1) and (2) :** This rule defines 26 V.S.A. § 1582(a)(3) "Inability to practice nursing competently" to include: (1) performance of unsafe or unacceptable patient care; (2) failure to conform to the essential standards of acceptable and prevailing nursing practice. A definition does not provide a separate basis for discipline. This charge duplicates that brought under 3 V.S.A. § 129a(b)(1) and (2). We decline to find a separate basis for discipline. This

charge is dismissed.

3. **Re: Alleged Violation of ARBN Chapter 4, Rule IV(II)(C):** This rule defines 26 V.S.A. § 1582(a)(3) "Any cause" to include, reasons of physical or mental disability or use of drugs, narcotics, chemicals or any other type of materials. The definition does not provide a separate basis for discipline. This charge duplicates that brought under 3 V.S.A. § 129a(b)(1) and (2). We decline to find a separate basis for discipline. This charge is dismissed.
4. **Re: Alleged Violation of 26 V.S.A. § 1582(a)(7):** The State has proved by a preponderance of the evidence that Ms. Gilbert has engaged in conduct of a character likely to deceive or harm the public. This is unprofessional conduct. 3 V.S.A. § 129a(a)(3).
5. **Re: Alleged Violation of 3 V.S.A. § 129a(a)(7):** The State has not proved by a preponderance of the evidence that Ms. Gilbert willfully made or filed false reports or records in the practice of the profession; or willfully impeded or obstructed the proper making or filing of reports or records or willfully failed to file the proper reports or records. This charge is dismissed.
6. **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. Gilbert failed to practice competently. We do find that Ms. Gilbert's conduct as found above constituted (1) performance of unsafe or unacceptable patient or client care, 3 V.S.A. § 129a(b)(1). We find her conduct is also a (2) failure to conform to the essential standards of acceptable and prevailing practice This is unprofessional conduct.
7. **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 an independent grounds for discipline. There is no violation of this statute. This charge is dismissed.

Order

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

Ms. Gilbert's license is **suspended indefinitely, effective the date of this decision.**

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:

Jeanine Carr
Jeanine Carr, RN, for the Board

Date August 11, 2009

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 8/14/09