

**STATE OF VERMONT
BOARD OF NURSING**

In re: Matthew Gottung
License No. 026-76065

}
} Docket No's. 2014-307,459(RN)
}

**Decision on
UNPROFESSIONAL CONDUCT CHARGE**

Participating Board Members:

Ellen Watson, APRN, Vice Chair
William G. White, Jr., Public Member
Douglas Sutton, RN
Sheila Davis, LPN
Virginia Hudson, RN
Jennifer Laurent, APRN
Kelly Sinclair, LNA

Appearances:

Prosecuting the case: S. Lauren Hibbert
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 January 12, 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 in Docket 2014-307 seeks a sanction based on a decision of the Massachusetts Board of Registration for conduct which the State alleges would constitute unprofessional conduct had it occurred in Vermont. The Specification of Charges in Docket 2014-459 alleges that Mr. Gottung, in violation of Vermont Statutes, failed, when he applied to renew his Vermont license, to reveal that he had abused a patient or patients in Massachusetts action.

Findings of Fact

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

1. Mr. Gottung 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. His license was initially issued on April 6, 2011.
2. On April 11, 2011 Mr. Gottung was asked to resign from his positions at the Mt. Greylock Extended Care facility in Pittsfield, Massachusetts. His employers informed him that there had been multiple allegations of patient abuse. Mr. Gottung was told that the allegations were being reported to Massachusetts licensing authorities. At that point Mr. Gottung could reasonably assume he was under investigation.
3. On February 15, 2012 Mr. Gottung was given notice of charges against him from the Massachusetts Board of Registration in Nursing. The notice was conveyed to him by way of a "Show Cause Order" directing him to show cause why his license to practice nursing should not be suspended, revoked or otherwise disciplined. Mr. Gottung was informed that the charges involved interacting with patients in a non-therapeutic and hostile manner, including name calling and knowingly antagonizing residents in April, 2011.
4. On March 8, 2012 Mr. Gottung filed an Answer to the Massachusetts charges denying the allegations against him.
5. On October 23, 2012 The Massachusetts Board of Registration in Nursing held a hearing on charges including acts of patient abuse occurring in 2011.
6. On March 26, 2013 Mr. Gottung renewed his Vermont RN license. At the end of the application Mr. Gottung approved the following, "I certify, under the pains and penalties of perjury, that all information I have provided in this application is true and accurate. I understand that furnishing false information may constitute unprofessional conduct and result in denial of my application or further disciplinary action. The maximum penalty for perjury is fifteen years in prison and/or a \$10,000.00 fine."
7. In the online application Mr. Gottung answered "no" to the question, "Are you currently under investigation by a licensing authority in Vermont or any other State, Federal Authority or other jurisdiction (US or elsewhere)?" We view the question broadly. Mr. Gottung knew he was under scrutiny by the State of Massachusetts. The investigation against him remained open pending formal resolution of the charges against him. Mr. Gottung knew that the application question was designed to elicit exactly the information he withheld, that an investigation was commenced and not fully resolved. This was fraudulent. The essential and prevailing standards of nursing practice require a licensee to be honest and forthright. Mr. Gottung was not honest and forthright in his answers.
8. In the online application Mr. Gottung also answered "no" to the question, "Have you committed acts of abuse, neglect, or misappropriation of patient property?" At the time Mr. Gottung renewed his license he legally maintained his innocence of the abuse allegations. It is clear from the Massachusetts Order that Mr. Gottung believed he had not been abusive. We decline to find that his "no" answer was fraudulent.
9. On January 13, 2014 the Massachusetts Board issued a Tentative Decision to which Mr. Gottung filed objections. The objections were considered and the Board issued a Final Decision and Order on April 10, 2014. The Massachusetts Board found, among other things, that Mr. Gottung had used disparaging and humiliating language toward a patient,

teased and antagonized another patient, and banged a patient's doll's head against the patient's bed knowing that the patient viewed the doll as her child. This is abusive toward the patients.

10. The Massachusetts Final Decision suspended Mr. Gottung's license for six months. It permitted reinstatement provided Mr. Gottung showed completion of specified continuing education, documentation of completion of court requirements, if any, verification of standing from other states where he may hold a license, and if employed before seeking reinstatement, employer evaluations, and a report from his primary care provider and any specialist he may have consulted verifying that he is medically able to resume the safe and competent practice of nursing.
11. Mr. Gottung met the Massachusetts reinstatement requirements and has been reinstated in Massachusetts.

Conclusions of Law

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

For: In re Matthew Gottung, Docket No. 2014-459:

1. **Re: Alleged Violation of 3 V.S.A. § 129a(a)(1):** The Prosecution has proved by a preponderance of the evidence that Mr. Gottung engaged in fraudulent or deceptive procurement or use of a license. This is unprofessional conduct.
2. **Re: Alleged Violation of 26 V.S.A. § 1582(a)(1):** The Prosecution has proved by a preponderance of the evidence that Mr. Gottung has made or caused to be made a false, fraudulent or forged statement or representation in procuring or attempting to procure registration or renew a license to practice nursing. This is unprofessional conduct. 3 V.S.A. § 129a(a)(3).

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3. **Re: Alleged Violation of 26 V.S.A. § 1582(a)(3):** The Prosecution has not proved by a preponderance of the evidence that Mr. Gottung is unable to practice nursing competently by reason of any cause. This charge is dismissed.
4. **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. Mr. Gottung's conduct, as found by the Massachusetts Board, violates 33 V.S.A. § 7301 et seq. which provides that each individual admitted is to be, free from mental and physical abuse and be treated with "consideration, respect, and full recognition of the resident's dignity and individuality, including privacy in treatment in care for the resident's personal needs." 33 V.S.A. § 7301(2)(I). This is unprofessional conduct.
5. **Re: Alleged Violation of 3 V.S.A. § 129a(a)(15):** It Is unclear exactly what facts the State alleges support this charge. We conclude that the Prosecution has not proved by a

preponderance of the evidence that Mr. Gottung failed to exercise independent professional judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession. This charge is dismissed.

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

Discussion

We recognize that to have his Massachusetts license reinstated, Mr. Gottung had to meet conditions set by that Board. While we feel that the provisions of the Massachusetts Order were appropriate, we feel that full rehabilitation so that Mr. Gottung may practice in Vermont requires additional steps.

Order

Mr. Gottung's license is **reprimanded and conditioned**.

1) **Duration:** Mr. Gottung shall be subject to these conditions until he completes 2 years of supervised practice in which he works at least forty (40) hours every two (2) weeks as a licensed registered nurse. Part-time work of less than forty (40) hours every two (2) weeks shall be credited on a prorated basis.

2) **Remedial Course:** Within 90 days of this Order Mr. Gottung shall complete a patient's rights course pre-approved by the Board. Proof that Mr. Gottung has taken such a course after the Massachusetts Decision will satisfy this requirement.

3) **Out-of-State Practice** Out-of-state practice can be credited toward fulfillment of this Order only if Mr. Gottung obtains prior approval from this Board. If Mr. Gottung fails to obtain prior approval before practicing out-of-state, none of the out of state practice time will be credited toward fulfillment of the terms of this Order. The Board will approve out-of-state practice so long as Mr. Gottung can still comply with the provisions of this Order.

4) Mr. Gottung may not work with elderly patients, or in long term care facilities during the conditional period.

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: 
Ellen Watson, APRN, Vice Chair

Date: January 12, 2015

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 1/22/15