

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

<i>In re</i>	Nicole L. Gray	}
License No.	025-0008578	}
Docket No.	NU28-1106	}

**FINDINGS OF FACT
CONCLUSIONS OF LAW & ORDER**

Introduction:

On Monday 8 October 2007, the Board heard this contested case of alleged unprofessional conduct brought by the State of Vermont against Respondent Nicole Gray. Board members Kenneth W. Bush, Ellen W. Leff, Donarae Metcalf, Sandra J. Norton, Laurey M. Tyo, DeAnn Welch and Alan Weiss participated in the hearing of this matter. Board member Susan O. Farrell recused. The Respondent appeared *pro se*. Edward G. Adrian represented the State of Vermont. Board counsel Kevin F. Leahy presided.

The State brought a specification of charges (the "Charges" dated 11 April 2007) against the Respondent alleging unprofessional conduct for documentation errors occurring at Haven Healthcare located in St. Albans, Vermont. The specific allegations against the Respondent include several instances of failure to document on the Medication Administration Record (MAR) the reasons why medications were administered to patients and several instances of failure to document the administration of medication administered to patients. See Charges at ¶ 4.

Based on these allegations, the State presented evidence in support of a charge of "failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct" in violation of 3 V.S.A. § 129a (b). See Charges at ¶ 6(ii).¹

¹ The State originally included a charge against the Respondent for violating 3 V.S.A. § 129a (a)(3) (unprofessional conduct to violate laws governing practice of nursing profession). In its statement of facts, however, the State did not allege that the Respondent violated any laws governing nursing practice, which would serve as a basis for this charge of unprofessional conduct. The State did not allege that the Respondent violated any laws for that matter.

The State also charged the Respondent with violating 26 V.S.A. § 1582(a)(3) (alleging the Respondent is unable to practice the profession by reason of any cause). At the hearing, however, the state did not go forward with this charge and conceded that the Respondent was able to practice the profession but that the Respondent engaged in unprofessional conduct on one or more occasions by prior acts of failure to practice competently.

Findings of Fact &
Conclusions of Law:

1. Respondent is a licensed practical nurse.
2. This Board licenses the Respondent and may exercise disciplinary authority for alleged acts of licensee unprofessional conduct. 26 V.S.A. Chapter 28; 3 V.S.A. § 129(a); and Admin. Rules for the Bd. of Nursing and the Office of Prof. Reg.
3. The Respondent admits the substantive factual allegations set forth in the State's Charges.
4. In a disciplinary hearing, the state has the burden of proof. To satisfy its evidentiary burden, it must "show by a preponderance of the evidence that [a licensee] has engaged in unprofessional conduct." 3 V.S.A. § 129a (c).
5. The State meets its evidentiary burden of proof by the mere fact that the Respondent admits the State's allegations.
6. The State's next burden is to show that the facts rise to the level of unprofessional conduct.
7. The board finds that the admitted acts of failure to document the reasons for administering medication and the failure to document the administration of medication do, in this instance, rise to the level of unprofessional conduct. The board also finds that the unprofessional conduct warrants discipline.
8. The State asks this Board to impose a one year conditioned license to insure public safety.
9. The Board finds that the State's suggested disposition of this matter is also in the best interests of the public and the Board finds that the evidence supports the need for one year of conditions on the Respondent's license which shall include employer reports and working under supervision. Respondent's licensure conditions shall be set forth in "Appendix A" attached to this Order.

ORDER

The Respondent engaged in unprofessional conduct in violation of 3 V.S.A. § 129a (b)(1) and (2) as charged in the Specification of Charges at ¶ 6(ii).

The State's charges set forth in the Specification of Charges at ¶¶ 6(i) and (ii) are DISMISSED.

Based on the findings and conclusions set forth above, the Board of Nursing therefore **CONDITIONS THE RESPONDENT'S LICENSE** for a period of one (1) year consistent with the terms set forth in the Appendix to this Order.

- END -

(signature page to follow)

Vermont Board of Nursing:

By: Laurey M. Tyo
Laurey M. Tyo, RN
Presiding Board Member

Date: 10-29-07

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 11/2/07

APPENDIX A
License Conditions

Condition #1. Length of Time Conditions Imposed:

The Respondent shall have a conditioned license for one year. The conditions will remain on the Respondent's license until she completes one a year of supervised nursing practice. During this time, the Respondent must work at least forty (40) hours every two (2) weeks as a nurse. Part time work of less than forty (40) hours every two (2) weeks will receive prorated credit.

Condition #2. Notification to Employers:

Respondent shall provide a copy of this Stipulation and Order to all employers in any current or future setting in which Respondent practices as a nurse and inform them of Respondent's conditional license status. Within ten (10) days of the date of entry of this Order or of any subsequent employment, Respondent shall cause Respondent's immediate supervisor to write to the Board, on the employer's letterhead, acknowledging receipt of the Order and the ability to comply with the conditions in the Order.

Condition #3. Reports from Employers:

Within one (1) month of the date of entry of this Order and monthly thereafter, Respondent shall cause every employer Respondent has worked for during the relevant time period to submit to the Board an evaluation of Respondent's performance and attendance during that time period. This report shall be submitted in writing on forms issued by the Board.

In the event the Respondent is attending a nursing program, Respondent shall cause the Program Director to write to the Board, on school letterhead, acknowledging receipt of the Order and ability of the program to comply with the conditions in the Order during clinical experience.

Condition #4. Practice Under Supervision:

Respondent shall practice only in a setting where Respondent has on-site supervision for the entire shift by a registered nurse who is licensed and in good standing.

Condition #5. Types of Employment Prohibited:

Respondent 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.

Condition #6. License Renewal:

In the event Respondent's license is scheduled to expire during the period this Order is in effect, Respondent shall apply for renewal of the license, pay the applicable fee and otherwise maintain active standing.

Condition #7. Violation of the Order:

If Respondent violates this Order, the Board may take further disciplinary action.

Condition #8. Completion of Conditional License Period:

Upon completion of the conditional license period, Respondent may petition the Board to remove the license conditions. If the Respondent demonstrates that she has complied with the terms of this Order, the conditions shall be removed.

- END -

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 the decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Secretary of State's Office, National Life Building, FL2, 1 National Life Drive, Montpelier, Vermont 05602-3402, within 30 days of the entry of the order.

If you file an appeal, the Director of the Office of Professional Regulation will assign the case to an appellate officer. The appellate officer will hear the appeal and make a decision based on the record of evidence created before the Board of Nursing. In cases of alleged mistakes in the procedure followed before the board, which is not shown in the record, the appellate officer may allow proof on that particular issue. *See* 3 V.S.A. §§ 129(d) and 130a.