

**STATE OF VERMONT
BOARD OF NURSING**

In re: Ashley E. Hoot
License No. 025-8287

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Docket No. NU79-0308

**Decision on
UNPROFESSIONAL CONDUCT CHARGE**

Participating Board Members:

Ellen W. Leff, RN, Vice Chair
Alan Weiss
Sandra Norton, LNA
Donarae Metcalf, LPN
Kenneth W. Bush, RN
William G. White Jr.
Jeanine Carr, RN
Deborah Robinson, RN

Appearances:

for Petitioner, State of Vermont: Edward G. Adrian
for Respondent: Pro se, appeared by telephone

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, 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. Hoot failed to properly document administration of medicine and failed to administer medication as prescribed by a patient's treating physician.

Findings of Fact

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

1. Ms. Hoot is licensed as a licensed practical nurse by and subject to the disciplinary

authority of this Board. 3 V.S.A. §§ 129, 129a, 26 V.S.A. §§ 1582(a) and 1598, the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation.

2. At times relevant Ms. Hoot was employed at the Crescent Manor Care Center in Bennington, Vermont.
3. Ms. Hoot on January 9, 10, 27 and 28, 2008 signed out Hydrocodone for patient W.V., but failed to document administering the medication on the Medication Administration Record ("MAR"). The records narcotic count was correct, but the MAR did not reflect that fact.
4. The MAR is used by the facility where Ms. Hoot was employed. Its use is an acceptable means of documenting administration of drugs to patients. When the MAR is not in use, other means of documentation may be used. In this case, however, the MAR was the prescribed means at Ms. Hoot's place of employment and failure to use it meant a failure to document drug administration at all.
5. On March 3 and March 5, 2008 Ms. Hoot signed out Hydrocodone for Resident R.B. but again failed to document administering the medication on the MAR. The recorded narcotic count was correct, but the MAR did not reflect that fact. Some of the needed signatures were missing.
6. On March 7, 2008 Ms. Hoot improperly administered resident M.W.'s Percocet. She administered it every four hours, not every six hours as prescribed.
7. On March 7, 2008 Ms. Hoot correctly signed out percocet three times. However, she only documented administering it twice on the MAR.
8. On March 9, 2008 Ms. Hoot withdrew Percocet from the Pyxis machine for resident M.W. She did not properly sign it out. She failed to document in the MAR that she administered it to resident M.W.
9. Ms. Hoot was counseled by the facility nurse coordinator about the need and means for proper drug administration documentation. Ms. Hoot appears to have taken suggestions for improvement to heart.
10. On April 16, 2008 Ms. Hoot admitted the errors of January 9, 10, 27 and 28, the errors of March 3 and 5, the errors of March 7, and the errors of March 9, 2008.
11. Ms. Hoot's place of employment placed her in the difficult position of sometimes having to handle more patients during a shift than can be safely cared for. There appear to have been systematic problems with documentation.

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. Hoot is unable to practice nursing competently by reason of any cause. This is unprofessional conduct. 3 V.S.A. § 129a(a)(3). This charge is dismissed.
2. **Re: Alleged Violation of Board Rule Ch. 4, II (b)(2)** This rule defines the phrase used in 26 V.S.A. § 1582(3) "unable 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 additional basis for discipline. This charge duplicates those brought under 3 V.S.A. § 129a(b)(1) and (2). We decline to find a separate independent violation of this Rule. This charge is dismissed.

3. **Re: Alleged violation of 3 V.S.A. § 129a(b)(2):** The State has proved by a preponderance of the evidence that Ms. Hoot failed to practice competently. We find that Ms. Hoot's conduct as found above constituted failure to conform to the essential standards of acceptable and prevailing practice. This is unprofessional conduct.
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. 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. Hoot's license is warned. Ms. Hoot's license shall be conditioned as follows:

Within 3 months Ms. Hoot shall successfully complete a documentation administration review course. The course must be pre approved by the Board or its designee. When Ms. Hoot submits satisfactory proof of compliance with this condition, the condition on her license will be removed.

APPEAL RIGHTS

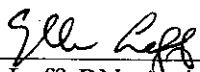
This is a final administrative determination by the Vermont Board of Nursing. A party aggrieved by a final decision of a board may appeal this decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Vermont Secretary of State, Office of Professional Regulation, 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, RN, Acting Chair

Date February 9, 2009

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 2/11/09