

**STATE OF VERMONT
STATE BOARD OF NURSING**

In re: Martha P. Israel
License No. 026-0021730

}
} Docket No. NU 03-0706
}

**Decision on
UNPROFESSIONAL CONDUCT CHARGE**

Participating Board Members

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

Appearances:

for Petitioner, State of Vermont: Edward G. Adrian
for Respondent: Judy Barone

Presiding Officer: Larry S. Novins

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

The Vermont State Board of Nursing held a hearing in the above matter on April 14, 2008 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. Israel at all times relevant was employed as a registered nurse at the Dale Women's Correctional Facility in Waterbury, Vermont. Specifically, the State charges unprofessional conduct occurred when:

"On or about June 1, 2006, the respondent left her nursing shift at the Facility knowing that the narcotics count was inaccurate. Furthermore, the Respondent failed to notify her

manager that the narcotics count was inaccurate before leaving.”

The State alleges that Ms. Israel’s conduct violates three statutes:

- 26 V.S.A. § 1582 (“is unable to practice nursing competently by reason of any cause) which includes, but is not limited to, failing to conform to the essential standards of acceptable and prevailing nursing practice pursuant to ARBN Chapter 4, Rule IV(II)(B)(2),” (*Quoted from Specification of Charges*)
- 3 V.S.A. § 129a(b)(2) “failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct.(failing to practice competently includes failure to conform to the essential standards of acceptable and prevailing practice).” (*Quoted from Specification of Charges*), and
- 3 V.S.A. § 129a(a)(3) “(failing to comply with the provisions of state statutes or rules governing the practice of the profession.) (*Quoted from Specification of Charges*).

Findings of Fact

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

1. Martha P. Israel, the respondent is licensed as a registered nurse and is therefore subject to the disciplinary authority of this Board. 26 V.S.A. §§1582, 1598, the Administrative Rules of the Board of Nursing, 3 V.S.A. §§ 129 and 129a, and the Administrative Rules of the Office of Professional Regulation.
2. During June 2006 Ms. Israel was employed on a per diem basis at the Dale Correctional Facility as a registered nurse.
3. On June 1, 2006 Ms. Israel worked the day shift. At the end of her shift she knew that the narcotics log for one of the two floors she was responsible for was inaccurate by one or two pills. It was accurate when her shift began. She admitted that the inaccuracy was her responsibility and that she had been unable before leaving on June 1 to account for the error.
4. On June 1, T.B. who was not a regular employee at the facility was Ms. Israel’s replacement at the end of her shift.
5. When T.B. arrived, Ms. Israel oriented her to the facility, to the patients and their needs, and to the fact that the narcotics count was not accurate.
6. Ms. Israel did not sign the narcotics log sheet before leaving that day. She testified that she knew that the absence of her signature would tell anyone responsible that the narcotics count in log was not accurate.
7. T.B. told Ms. Israel that she would report this to a supervisor. There was no supervisor or manager at the facility when Ms. Israel’s shift ended.
8. Ms. Israel spent almost two hours with her replacement T.B. and stayed well past the end of her shift. She could have called the manager and reported the log inaccuracy herself. She did not.
9. Instead, Ms. Israel relied on T.B. to report the inaccuracy. Ms. Israel believed that the manager’s knowledge of the inaccuracy was assured. T.B. did, in fact, report the log inaccuracy to a supervisor.

10. Supervisory personnel apparently rectified the log error the next day and never asked Ms. Israel about the June 1 discrepancy.
11. No evidence suggested that Ms. Israel's failure to report the inaccuracy to the manager before leaving for the day had any adverse affect on any patient at the facility.
12. Ms. Israel has been a nurse for over 17 years. Almost all of her professional experience has been as a school nurse. She has no prior disciplinary history.

Conclusions of Law

1. Ms. Israel's failure to report an inaccurate narcotics count to her manager before leaving the correctional facility on June 1, 2006 does not show that she is unable to practice as a registered nurse.
2. We conclude that the prosecution has not shown by a preponderance of the evidence that Ms. Israel violated 26 V.S.A. § 1582 ("is unable to practice nursing competently by reason of any cause)."
3. Ms. Israel's failure to report an inaccurate narcotics count at a correctional facility to her manager before leaving on June 1 did violate the essential standards of acceptable and prevailing nursing practice.
4. We conclude that the prosecution has shown by a preponderance of the evidence that Ms. Israel has violated 3 V.S.A. § 129a(b)(2). A failure to practice competently includes failure to conform to the essential standards of acceptable and prevailing practice. This is unprofessional conduct.
5. We note that 3 V.S.A. § 129a(a)(3)(failing to comply with the provisions of state statutes or rules governing the practice of the profession) is a grant of disciplinary authority to the Board. It allows the Board to impose sanctions when statutory or rules violations have occurred. It does not state an independent grounds for discipline. We decline to find a separate or additional violation of this statute.

Order

For the violation of 3 V.S.A. § 129a(b)(2) the Board Ms. Israel's license is hereby warned.

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, National Life Bldg., North, FL2, Montpelier, VT 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 W. Leff
Ellen W. Leff, RN, acting Chair

Dated: April 14, 2008
April 14, 2008

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 4/22/08