

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

In re: ROBERT KANE	}	
License No. 026.0043610	}	Docket No. 2016-349
	}	

Appearances:

Prosecutor: Jennifer Colin, Esq.

Respondent: Did not appear

Hearing Officer: George K. Belcher

DEFAULT ORDER

The Hearing Officer of the Vermont Board of Nursing held a hearing pursuant to 3 VSA Sec. 129(f) in the above matter on August 21, 2017 at the Office of Professional Regulation in Montpelier, Vermont. Respondent did not attend and was not represented by counsel.

Findings of Fact

1. Respondent is a Registered Nurse and is therefore subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, 26 V.S.A. Chapter 28, and the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation.
2. Charges were filed in this matter on June 9, 2017. The Respondent was sent a Notice of Charges in this matter by certified mail and first class mail to the address of the Respondent which was on file with the Office of Professional Regulation on June 9, 2017. The certified mail notice was returned to the OPR Office on June 19, 2017, receipt acknowledged on June 14, 2017, and the first class mail notice was not returned. A copy of the Specification of Charges is attached to this Default Order.
3. OPR Rule 3.3 requires that an Answer be filed within 20 days of the date on which the notice of charges was mailed by the Director.
4. On July 25, 2017 a notice was sent to the Respondent advising of the hearing before the Board to find a default and advising that, "If you wish to contest the charges you must contact the office immediately at (802) 828-2367 and show good cause for failing to answer the charges against you." This notice was mailed by certified mail and by regular mail. The certified mail notice was returned on August 2, 2017, with receipt acknowledged on July 29, 2017. The regular mail notice was not returned as of the date of the hearing.
5. Respondent has not filed an answer to the charges, nor any communication concerning good cause for failure to answer. The Respondent did not appear at the hearing on default. No contact was made by the Respondent to the attorney for the State indicating that the Respondent intended to contest the charges. On July 31, 2017 the Respondent

left a message with OPR indicating that because his license was inactive he did not understand why the matter was ongoing.

6. Upon consideration of the Prosecution's presentation and taking notice of the OPR file, the Hearing Officer of the Board finds Respondent to be in Default. The allegations contained in the Specification of Charges are therefore treated as the facts on which the Board may issue an order of professional discipline. OPR Rule 3.4, 3 V.S.A. § 809(d), and 3 V.S.A. § 814(c).
7. It is specifically found that the Respondent, in the month of June 2016, became frustrated and aggressive with two separate patients. He became "threatening" toward one patient and rough with another patient, both in an angry manner.
8. It was the recommendation of the State of Vermont that the Respondent's license be indefinitely suspended with conditions should the Board later determine that the Respondent's license should be reinstated. Those recommended conditions follow.

Conclusions of Law

Respondent has received adequate or constructive notice of the charges in this matter as indicated by the Board's file and the Prosecution's presentation. Because Respondent has failed to answer the charges, the factual allegations in the Specification of Charges are treated as if proved. O.P.R. Rule 3.4. Accordingly, the Board may find, based up the finding of Default from this Default Hearing held pursuant to 3 V.S.A. §809(d), that Respondent has engaged in the unprofessional conduct alleged in the Specification of Charges. The Respondent committed unprofessional conduct by violating 3 VSA Secs. 129a(b)(1) and (2).

Proposed Order

In accordance with the above Findings of Fact and Conclusions of Law, and consistent with the recommendation by the State, the Board does **ORDER** that the Respondent's license status be amended from "Expired" to "Expired-Conditioned". In the event that the Respondent seeks reinstatement or renewal of his license as a nurse in the State of Vermont, he must petition for reinstatement or renewal. If the renewal or reinstatement is granted, Respondent's license SHALL BE SUBJECT TO THE FOLLOWING CONDITIONS:

- a. Respondent shall engage in counseling with a pre-approved professional with monthly reports until the counselor states that Respondent no longer needs counseling;
- b. Any other conditions that the Board of Nursing deems reasonable at the time of Respondent renews his license, taking into account the Default Order and other relevant factors at that time.

The Hearing Officer reports the above facts, conclusions of law, and the finding of DEFAULT to the Board with the recommendation that the Board approve them and enter the Order as above.

Dated this 25th day of August, 2017.


George K. Belcher
Hearing Officer of the Vermont Board of Nursing

The Vermont Board of Nursing considered the report of findings of fact and conclusions of law at its meeting on 9/11/2017. After considering the report, the Board takes the following action:

- / / Rejects the report and schedules the matter for hearing.
- / ☒ Schedules the matter for additional evidence.
- / ☒ Accepts the report, adopts the findings of fact and conclusions of law, and orders the recommended discipline as set forth in the proposed order above.

SO ORDERED.

Vermont Board of Nursing

By: 
Jeanine Carr, Chair
Vermont Board of Nursing

Date: 9/11, 2017

OFFICE OF PROFESSIONAL REGULATION
DATE OF ENTRY: 9/11/2017

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, 89 Main St., Fl. 3, 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.

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IN RE:	)	
Robert Kane	)	Docket No. 2016-349
License No. 026.0043610	)	

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Robert Kane:

Board Authority

1. The Vermont State Board of Nursing (the "Board") has authority to issue warnings or reprimands; suspend, revoke, limit, or condition current licenses; or prevent the renewal of lapsed licenses if, after disciplinary hearing, the Board finds that the Respondent has engaged in unprofessional conduct. 3 V.S.A. § 129(a); 3 V.S.A. § 129a; 3 V.S.A. § 814(d); 26 V.S.A. Chapter 28; the Administrative Rules of the Board of Nursing (the "ARBN"); and the Rules of the Office of Professional Regulation.

Statement of Facts

2. Robert Kane (the "Respondent") of Lebanon, New Hampshire is licensed by the State of Vermont as a Registered Nurse under license number 026.0043610. This license was originally issued on September 23, 2008, and expired on March 31, 2017.
3. During the relevant time period, Respondent was employed as a Registered Nurse at Mt. Ascutney Hospital and Health Center ("the Facility") in Windsor, Vermont.

Incident One

4. On or about June 19, 2016, Respondent was working with Patient 1 to transport him by wheelchair from his room to Radiology.
5. During the transfer of Patient 1 into the wheelchair, the room was occupied by another patient.
6. During the transfer of Patient 1 into the wheelchair, another nurse, GM, entered the room.
7. During the transfer, Patient 1 became agitated and expressed to Respondent that he felt like he was going to fall.

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8. Respondent did not use a gait belt during the transfer of Patient 1.
9. Respondent told Patient 1 not to sit down yet, and Patient 1 reiterated that he thought he was going to fall. Respondent reacted angrily to Patient 1 and raised his voice, telling Patient 1 again not to sit down. Patient 1 called Respondent an "asshole" and said he thought Respondent was going to make him fall. Respondent raised his voice to Patient 1, angrily saying words to the effect of: "I have you and you don't need to talk to me this way!"
10. Respondent then sat Patient 1 in the wheelchair, handed the care of Patient 1 over to GM, and exited the room.
11. Then Respondent re-entered the room and angrily yelled at Patient 1, while pointing his finger, words to the effect of: "How dare you speak to me that way when I am only trying to help you!"
12. Respondent was loud enough that he was heard by other staff at the nursing station.
13. The other patient-occupant of the room who witnessed Incident 1 reported that the encounter frightened her and she was unable to sleep that night over concern for her safety.
14. Other staff members reported feeling fearful of Respondent's behavior and characterized it as "threatening."

Incident Two

15. On June 21, 2016, Respondent was working with Patient 2 to insert a nasogastric tube ("NG tube").
16. Patient 2 was in severe pain and believed he might die from his medical condition. As a result, Patient 2 was agitated and uncooperative during the procedure.
17. As Respondent was attempting to insert the tube, he became frustrated and aggressive with Patient 2.
18. Patient 2 reported that Respondent was "pissed off" and "patted his face in a rough way."
19. Respondent, in a frustrated manner, told Patient 2 words to the effect of, "look me right in the eye and do what I am telling you."
20. As a result of Incident One and Incident Two, the Facility terminated Respondent's employment.

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Violation One: 3 V.S.A. §129a(b)(1) Failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct, whether actual injury to a client, patient, or customer has occurred. Failure to practice competently includes: (1) Performance of unsafe or unacceptable patient or client care.

21. The State re-alleges and incorporates Paragraphs 2 through 20 above.
22. Vermont law requires registered nurses to practice competently by providing safe and acceptable patient care.
23. Paragraphs 4 through 20 above demonstrate that in two separate incidents Respondent failed to provide safe and acceptable patient care by acting in an angry, aggressive, and threatening manner to patients.
24. In connection with Incident One, Respondent failed to perform safe and acceptable patient care when he failed to use a gait belt after Patient 1 expressed concern about falling.
25. Respondent failed to practice competently by providing unsafe and unacceptable patient care when he engaged in the conduct set forth in Paragraphs 4 through 19 above.
26. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because the Respondent has committed unprofessional conduct in violation of 3 V.S.A. §129a(b)(1).

Violation Two: 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, whether actual injury to a client, patient, or customer has occurred. Failure to practice competently includes: (2) failure to conform to the essential standards of acceptable and prevailing practice.

27. The State re-alleges and incorporates Paragraphs 2 through 20 above.
28. As a registered nurse, Respondent is required to interact with patients in a safe, respectful and professional manner.
29. In Incident One, Respondent failed to conform to the essential standards of acceptable and prevailing practice when, after Patient 1 expressed concern about falling, he failed to seat the patient back on the bed and implement the use of a gait belt in order to help Patient 1 feel more secure and to ensure Patient 1's safety.
30. In the two incidents described in Paragraphs 4 through 20 above, Respondent acted in an angry, threatening, and aggressive manner toward patients.

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31. The Respondent failed to conform to the essential standards of acceptable and prevailing practice by engaging in the conduct stated in Paragraphs 4 through 20 above.
32. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because the Respondent has committed unprofessional conduct in violation of 3 V.S.A. §129a(b)(2).

Relief Requested

WHEREFORE, the license of Robert Kane should be revoked, suspended, reprimanded, conditioned, or otherwise disciplined.

DATED at Montpelier, Vermont this 9th day of June, 2017.

STATE OF VERMONT
SECRETARY OF STATE

By: _____

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