

**STATE OF VERMONT
BOARD OF NURSING**

In re: Mary Keating
License No. 025-8370

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Docket No. 2010-441(LPN)

**Decision on
Sanctions**

Participating Board Members:

Ellen W. Leff, RN, Chair
Jeanine Carr, RN, Vice Chair
Alan Weiss
Sandra Norton, LNA
Donarae Metcalf, LPN
De-Ann Welch, LPN
William G. White Jr.
Deborah Swartz, RN
John Todd, APRN

Appearances:

for Petitioner, State of Vermont: Lauren Hibbert
for Respondent: Pro se

Presiding Officer: Larry S. Novins

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

The Vermont Board of Nursing held a disposition hearing in the above matter on May 9, 2011 at the National Life Building in Montpelier, Vermont. The parties Stipulated to Findings of Fact and violations of statute which the Board approves and which are appended to this sanctions decision. At the hearing, Ms. Keating testified as did her former Director of Nursing, K.Z.

Findings of Fact

Based on the Stipulation and Consent Order and evidence presented, the Board finds as follows:

1. Ms. Keating is licensed as a practical 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.
2. The facts as set forth in the Stipulation and Consent Order herein are accepted by the Board and adopted herein.
3. At the time in question Ms. Keating worked in a very stressful environment. She has no

previous disciplinary history. Her former Director of Nursing described her as a conscientious, dedicated worker. Ms. Keating was always at work on time and worked "above and beyond" what was expected of her.

4. Ms. Keating was afraid of the management at her place of employment. When she made the medication error described in the Stipulation and Consent Order she told another facility employee to keep her error quiet so management would not act against her. Hiding a medication error is completely unacceptable. Asking a co-worker to hide her mistake showed a deficiency in Ms. Keating's understanding of professional boundaries.
5. Ms. Keating's errors in this case appear to be isolated. There is no indication that Ms. Keating had ever made similar medication errors or at any other time sought to cover up anything she had done at work.
6. Ms. Keating admits and does not minimize her errors. She appears to have learned from this experience. She appears able to practice, and with some conditions can do so in a manner in which the public will be protected.

Conclusions of Law

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

Ms. Keating has committed unprofessional conduct as set forth in the Stipulation and Consent Order accepted by the Board.

Order

For the violations above, to protect the public, health, safety and welfare, the following sanction is necessary.

Ms. Keating's license is issued a **reprimand and is conditioned as follows**, effective the date of this decision. The conditions shall remain in place until Ms. Keating completes all requirements ordered and meets each condition.

- 1) Within 60 days of the date of this decision Ms. Keating shall complete a medication administration course approved by the Board or its designee.
- 2) Within 60 days of the date of this decision Ms. Keating shall complete a course in "professional boundaries" approved by the Board or its designee.
- 3) **Reports from Employers:** Within one (1) month of the date of entry of this Order or one month of obtaining employment and monthly thereafter for six months, Ms. Keating shall cause every employer Ms. Keating works for during the relevant period as a licensed practical nurse to submit to the Board an evaluation of Ms. Keating's performance during that period. Part-time work of less than forty (40) hours every two (2) weeks shall be credited on a prorated basis.

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, Chair

Date May 10, 2011

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 5/16/11

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

IN RE:
MARY KEATING
License No. 025.0008370

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Docket No. 2010-441 (NU)

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COME the State of Vermont, by and through State Prosecuting Attorney S. Lauren Hibbert, and the Respondent, Mary Keating, LPN, who stipulate and agree as follows:

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. § 1582; the Administrative Rules of the Board of Nursing (the "ARBN"); and the Rules of the Office of Professional Regulation.

Statement of Facts

2. Mary Keating (the "Respondent") of Essex Junction, Vermont is licensed by the State of Vermont as a Licensed Practical Nurse under license number 025.0008370. This license was originally issued on or about August 5, 2003 and expires on or about January 31, 2012.
3. At all times relevant, Respondent was employed as a Licensed Practical Nurse at St Joseph's Residential Care Home (the "Facility"), located in Burlington, Vermont.
4. On or about July 29, 2010, the Office of Professional Regulation received a Mandatory Report of Unprofessional Conduct stating that on or about July 9, 2010, the Respondent switched the medication for two patients, failed to report her mistake to the Director of Nursing or the patients' physicians, and told the Licensed Nursing Assistant who she worked with not to tell anyone of the medication switch.
5. On or about July 26, 2010, Licensed Nursing Assistant N.A. made a written statement where she stated that she worked with the Respondent on July 9, 2010 and that the Respondent told her that she gave medication proscribed to R2 to R1, and that she

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
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gave R1's medication to R2. The Respondent told N.A. to keep a close watch on R1 and to not notify anyone of the medication switch.

6. On or about July 26, 2010, N.A. wrote that on July 9, 2010 she observed that R1 was very drowsy and that he could not stand on his own.
7. On or about September 29, 2010, in an interview with State Investigator Jamie Palmisano, S.M., who is a Registered Nurse and the Director of Nursing at the facility, stated that she did an investigation on July 23, 2010 when she was alerted to the drug error that occurred on July 9, 2010. S.M. stated that she found the following:
 - a. The Respondent was the Charge Nurse at the time of the incident;
 - b. That R1 received R2's drugs which included: (1) Clonazepam 1 MG TAB; (1) Docusate SOD 100MG; (1) Levetiracetam 500 MG TAB; and (1) Seroquel 25 MG TAB;
 - c. That R2 received R1's drugs which included: Metoprolol 25 MG; Tramadol HCL 50 MG; and Mirtazapine 30 MG; MS ER 15 MG;
 - d. N.A. was afraid of the Respondent harassing her as a result of this incident;
 - e. After initially denying the medication switch when confronted on July 26, 2010 the Respondent admitted to S.M. that she did make the medication error.
8. On or about September 16, 2010, in an interview with State Investigator Jamie Palmisano, the Respondent admitted that she did give R1 medication that was prescribed to R2 and that she gave R2 medication that was proscribed to R1. The Respondent also admitted that she asked N.A. not to tell anyone of the medication error and that she herself never reported the error.
9. Respondent has committed unprofessional conduct because she performed unacceptable patient care when she administered the wrong medications to two residents under her care, she did not conform to essential standards of suitable care when she did not notify anyone of her mistake, and she failed to comply with the rules governing the practice of profession.

Charges

10. 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:
 - a. 26 V.S.A. § 1582(a)(3) (Is unable to practice nursing competently by reason of any cause) which includes performing unsafe or unacceptable patient care pursuant to ARBN Chapter 5, Subchapter 4, Rule II(A)(1); and failing to conform to the essential standards of acceptable and prevailing nursing assistant practice pursuant to ARBN Chapter 5, Subchapter 4, Rule II(A)(2);

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- b. 3 V.S.A. § 129a(b)(1) and (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: (1) performance of unsafe or unacceptable patient or client care; or (2) failure to conform to the essential standards of acceptable and prevailing practice); and
- c. 3 V.S.A. § 129a(a)(3) (Failing to comply with provisions of federal or state statutes or rules governing the practice of the profession).

Understandings

- 11. Respondent admits the facts above are true.
- 12. Respondent understands that the Nursing Board must review and accept the terms of the Consent Order. If the Board rejects any portion, the entire Stipulation and Consent Order shall be null and void.
- 13. Respondent specifically waives any claims that any disclosures made to the full Board during its review of this agreement have prejudiced her rights to a fair and impartial hearing in future hearings if this agreement is not accepted by the Board.
- 14. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
- 15. Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation and Consent Order.
- 16. Respondent voluntarily enters into this agreement after the opportunity to consult with legal counsel and is not being coerced by anyone into signing this Stipulation and Consent Order.
- 17. Respondent voluntarily waives her right to a hearing on the facts before the Board of Nursing and waives any right to appeal from this Stipulation and Consent Order. The Respondent and the State shall each be able to have a hearing on whether the facts constitute unprofessional conduct and if so, the appropriate sanction/disposition.
- 18. Respondent agrees that the Order set forth below may be entered by the Board.

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ORDER

Based on the Stipulation above, it is **ORDERED AND ADJUDGED** as follows:

- A. **The parties have not reached agreement as to the sanction required, if any, as a result of the alleged unprofessional conduct described above. The parties leave**

the sanction if any to be determined by the Board of Nursing at the time of the disposition hearing.

- B. This Stipulation and Consent Order is a matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. § 129(a).
- C. This Stipulation and Consent Order will remain part of Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.
- D. The Board shall hear the disposition hearing at their next meeting, scheduled for Monday, May 9, 2010.

AGREED TO:

STATE OF VERMONT
SECRETARY OF STATE

Dated: 4/27/11

By: S. Lauren Hibbert

S. Lauren Hibbert
State Prosecuting Attorney

MARY KEATING
RESPONDENT

Dated: 4/26/11

By: Mary Keating

Mary Keating

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 5-11-11

By: Heidi Riff

Chairperson

Date of Entry: 5/16/11

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