

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

<i>In re</i>	Lori Kempf De Bustillos	}
License No.	025-0008375	}
Docket No.	NU60-0206	}

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

Introduction:

On Monday 11 June 2007 the Vermont Board of Nursing heard this contested case of alleged unprofessional conduct brought by the State of Vermont against Respondent Lori Kempf De Bustillos. Board members Kenneth W. Bush, Susan O. Farrell (Chairperson), Ellen W. Leff, Donarae Metcalf, Sandra J. Norton, Linda M. Y. Rice, Laurey M. Tyo and Alan Weiss participated in the hearing of this matter. Board member Linda M. Y. Rice recused herself. The Respondent appeared on her own behalf. Edward G. Adrian represented the State of Vermont. Board counsel Kevin F. Leahy presided.

The State brought a specification of charges (the "Charges") dated 8 November 2006 against the Respondent alleging unprofessional conduct for multiple medication errors. The Respondent worked as a licensed practical nurse at Eden Park Nursing Home in Brattleboro, Vermont at the time she made the medication errors alleged by the state.

Specifically the State alleges in pertinent part that while working at Eden Park that the Respondent committed multiple medication errors over a period of several months. The incidents occurred over a period of approximately six months from January to July 2005. The medication errors included giving incorrect dosages and failure to administer medications that were ordered for patients. These errors included:

1. Failure to administer medications to residents on more than one occasion;
2. Administering four units of insulin to a patient prescribed eight units;
3. Administering the correct medications but not at the scheduled time;
4. Respondent also administered the incorrect antibiotic to a patient, which she self reported.

See Charges, at 1-3.

At the hearing of this matter, the Respondent admitted the State's allegations.

Since there are no issues of fact regarding the medication errors alleged by the State, the only issues before the Board are legal. The first issue for the Board is whether the Respondent's actions constitute unprofessional conduct; and if so, then the issue before the Board becomes whether discipline is appropriate. The only fact issues

considered by the Board related to final disposition of this matter, not whether the Respondent engaged in unprofessional conduct.'

The State went forward with this case arguing the Respondent engaged in unprofessional conduct by violating 3 V.S.A. § 129a (b)(1) and (2).¹ The State asks for a conditioned license of two years. The Respondent has one material objection to the State's position, if adopted by this Board, which pertains to the type of work allowed under a conditioned license. The State asks for supervised work only. A supervised work condition will necessarily require that the Respondent return to an institutional setting. The Respondent, however, is currently employed by Professional Nurses Service, Inc., which provides home care. Respondent argues that it is appropriate and preferable for her to remain with this employer under the facts of this case.

The Respondent notes that it is an institutional setting where the problems giving rise to the State's Charges occurred during the June 2005 - January 2006 period. She further testified and presented additional documentary evidence indicating that her current employment affords her the opportunity to work one-on-one with patients in a far less hectic and more predictable environment. Respondent Exhibit A (work evaluations and an employer report/letter indicating satisfactory and professional job performance).

Conclusions of Law:

1. Respondent holds a State of Vermont license as a 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 material facts set forth in the Specification of Charges filed by the State of Vermont on 8 November 2006.
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 Board finds that the facts of this case do rise to the level of unprofessional conduct and that the State met its burden of proof.
6. The Respondent violated 3 V.S.A. § 129a (b) (failure to practice competently on one or multiple occasions may be unprofessional conduct regardless of whether patient injury occurs).

¹ The State originally included a charge against the Respondent for violation of laws related to the profession. See 3 V.S.A. § 129a (a)(3). In its statement of facts, however, the State did not allege any state or federal violations of law(s) governing the practice of the profession, which would serve as a basis for a charge of unprofessional conduct. The State, initially, charged the Respondent with a violation of 26 V.S.A. § 1582(a)(3) alleging that 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. Instead, the State argued the Respondent engaged in unprofessional conduct and/or failed to meet minimum standards of practice on one or more occasions and argued for a conditioned license.

7. The Board typically requires that a licensee take a course in medication administration after a finding of unprofessional conduct in a case such as this. Respondent did this prior to the June hearing and provided the Board with a course completion certificate. See Respondent Exhibit C. (Medication Errors: Detection & Prevention Continuing Education Course).

8. The evidence is also compelling that the Respondent has worked professionally and error free as a home nurse for her current employer.

9. While the Board intends to order that the Respondent work under supervision during the period of conditional licensure to safeguard against future medication errors, the Board finds that it is in the public interest for the Respondent to continue with her current employment.

10. The evidence shows that the Respondent's current employment has provided her with a work environment where she has been able to practice with far greater level of professionalism than at Eden Park.

11. However, to further insure against medication errors related to Respondent's employment with Professional Nurses Services, Inc., the Board will require the following additional conditions, which shall apply to this specific employer:

- a. The Respondent's employer shall perform a review and inspection of the administration of medication by the Respondent for a particular patient/home visit each week worked by the Respondent.
- b. The employer shall review the medications ordered, given and shall check the medication count where applicable for one random patient cared for by the Respondent during each week of employment.
- c. The Respondent shall cause her employer to issue a written report to the Board or its designee each month on forms provided by the Board. This report shall include a report of the employer picked random weekly medication inspections.
- d. The medication inspections shall be made on-site and shall occur at a site of the employer's choosing.

12. In light of the findings made by the Board, we rule as follows:

- (A) The Respondent engaged in unprofessional conduct;
- (B) The Respondent's license shall be conditioned for a period of two years;
- (C) The Respondent shall be exempt from the requirement that she work under supervision while employed with Professional Nurses Service Inc.
- (D) The Board will not require a medication administration course since the Respondent voluntarily took and satisfactorily completed one prior to the hearing in this matter

ORDER

Based on the findings of facts set forth above, the Board of Nursing therefore
CONDITIONS the Respondent's license for unprofessional conduct; and

The Board further ORDERS that the Respondent meet the conditions set forth in
Appendix A of this Order.

- END -
(signature page to follow)

Vermont Board of Nursing:

By: Alan Weiss
Alan Weiss
Presiding Board Member

Date: 1 August 07

OFFICE OF PROFESSIONAL REGULATION
DATE OF ENTRY: 8/2/07

APPENDIX A
Conditions to the license of Lori Kempf De Bustillos

The CONDITIONS on the LPN license of Ms. De Bustillos are as follows:

Condition #1. The Respondent shall have a conditioned license for two (2) years. The conditions will remain on the Respondent's license until she completes two (2) years 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. Respondent shall provide a copy of this Order to all employers for 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 her immediate supervisor to write to the Board, on the employer's letterhead, acknowledging receipt of these Conditions. The employer must confirm the ability to comply with the conditions in this Order.

Condition #3. 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 prior month to submit an evaluation of Respondent's performance and dates worked during that period. This written report shall be on a form issued by the Board.

Condition #4. Respondent shall practice only in a setting where Respondent has on-site supervision for the entire shift by a Vermont licensed registered nurse in good standing.

Condition #5. 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 the ability of the program to comply with the conditions in the Order during clinical experience.

Condition #6. 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 EXCEPT AS FOLLOWS in condition no. 7.

Condition #7. The Respondent may continue to work for her current employer as outlined in the Board's order. Therefore, relative to Professional Nurses Services Inc., Conditions nos. #4 and #6 shall not apply. The additional conditions relevant to Respondent's current employment are more fully set forth in the Board's order to which this "Appendix A" is attached.

Condition #8. Upon completion of the conditional period, Respondent may petition the Board to remove the conditions on her license. Upon demonstration by the Respondent of satisfactory completion of the conditions set forth in this order, the Board shall remove the license conditions.

- 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, Vermont Secretary of State, 26 Terrace Street, Montpelier, Vermont 05609-1101 within 30 days of the entry of the 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 based on 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.