

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

In re Graydon Kilpatrick }
License No. 026-0022526 }
Docket No. NU 79-0506 }

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

Introduction:

On Monday 11 February 2008, the Vermont Board of Nursing heard this contested case of alleged unprofessional conduct brought by the State of Vermont against Respondent Graydon Kilpatrick. Board members Kenneth W. Bush, Jeanine Carr, Ellen W. Leff (Vice-Chairperson), Donarae Metcalf, Sandra J. Norton, Deborah Robinson, Alan H. Weiss, DeAnn Welch and William White participated in the hearing of this matter. Linda M. Y. Rice was recused.

The Respondent appeared with counsel John Pacht. Edward G. Adrian prosecuted the case on behalf of the State of Vermont. Board counsel Kevin F. Leahy presided.

Upon hearing the case, the Board finds as follows:

Findings of Fact &
Conclusions of Law:

1. Respondent holds a State of Vermont license as a registered 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 State brought a specification of charges (the "Charges") dated 17 September 2007 against the Respondent alleging unprofessional conduct for actions taken by the Respondent at Fletcher Allen Health Care, where he was employed at all times relevant to the Charges.
4. At the hearing, the Respondent did not contest the factual allegations made by the State of Vermont.
5. The State's Charges alleged that on 13 April 2006, Respondent:
filled out and submitted an in-patient "Laboratory Requisition"
order to the Facility laboratory [that indentified Respondent] as the
patient and [claimed he was the ordering provider]. In addition to
two (2) tests [legitimately] ordered by [the physician assistant

responsible for Respondent's care], the Respondent independently ordered approximately nine (9) additional tests that had not been ordered by [his treating professional, which the Respondent ordered using his treating professional's name]. Then, during [Respondent's] shift that day, the Respondent paged the phlebotomy department to have his blood drawn for the purpose of completing the tests he had ordered.

6. Through counsel, Respondent admits to misrepresenting a medical health care provider's orders on a laboratory requisition form.
7. 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).
8. Since the Respondent does not contest the allegation of misrepresenting a treatment provider's orders on a laboratory requisition, the State therefore meets its burden of proof and the State is under no further obligation to submit further evidence in support of its case.
9. The Board also notes that the Respondent admitted his conduct to his employer and received a three-month suspension for this conduct.
10. Respondent submitted evidence to support his argument that, if disciplined by the Board, the level of any discipline meted should not exceed a reprimand.
11. This evidence included documents showing that Respondent has not had any work related disciplinary problems since 2006 and has received positive employment reviews since this incident. *See* Respondent Exhibit A.
12. Vermont law makes it unprofessional conduct for a licensed professional, while in the practice of their profession, to file false reports or make a false record. 3 V.S.A. §129a (a)(7).
13. Respondent admits that he used his position as a nurse to manipulate the submission of a medical requisition form that purported to be the directive of an authorized health care professional.
14. The Board finds this conduct to be a violation of §129a (a)(7).
15. The State of Vermont did not ask for any specific discipline other than a finding of unprofessional conduct, which the Board so finds.
16. In determining that the Respondent engaged in unprofessional conduct, the Board also takes into account the mitigating factors shown by the Respondent in Exhibit A and in the answers he gave to questions posed to him by the Board.
17. Specifically the Board finds that the Respondent has learned from his mistake, has an otherwise unblemished record and there is no indication from the record presented to the Board that Mr. Kilpatrick is at risk of committing a similar error in the future.
18. Nevertheless, Respondent's actions were serious, and the Board's order will reflect that seriousness by reprimanding him for this unprofessional conduct.

ORDER

Based on the findings of facts set forth above, the Board of Nursing
REPRIMANDS the Respondent for unprofessional conduct in violation of 3 V.S.A.
§129a (a)(7).

- END -

(signature page to follow)

Vermont Board of Nursing:

By: Ellen W. Leff
Ellen W. Leff, RN
Board Vice Chairperson

Date: 3.3.08

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 3/6/08

In re Graydon Kilpatrick

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, Secretary of State's Office, National Life Building, FL2, 1 National Life Drive, Montpelier, Vermont 05602-3402 within 30 days of the entry of the order.

For more information about the procedure for filing an appeal, please see the Administrative Rules for the Office of Professional Regulation, which you can find at: <http://www.vtprofessionals.org/opr1/opr/admnrule.pdf> or which are available at the Office of Professional Regulation.

If you file an appeal, the Director of the Office of Professional Regulation shall assign the case to an appellate officer. The appellate officer will review the record (the tape recording, exhibits etc.) created before the board during the hearing of your case. In cases of alleged irregularities in procedure before the board, not shown in the record, proof related to that issue may be taken by the appellate officer. 3 V.S.A. §§ 129(d) and 130a.

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

IN RE:
GRAYDON KILPATRICK
License No. 026-0022526

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Docket No: NU79-0506

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Graydon Kilpatrick, R.N.:

Board Authority

1. The Vermont State Board of Nursing ("the Board") has authority to issue warnings or reprimands, suspend, revoke, limit, 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 ("ARBN"); and the Rules of the Office of Professional Regulation.

Statement of Facts

2. The Respondent, Graydon Kilpatrick, is licensed in the State of Vermont as a registered nurse under license number 026-0022526. This license was originally issued on or about October 31, 1995 and is currently set to expire on March 31, 2009.
3. At all times relevant, the Respondent was employed as a registered nurse at Fletcher Allen Health Care (the "Facility") located in Burlington, Vermont.
4. On or about April 13, 2006, the Respondent filled out and submitted an in-patient "Laboratory Requisition" order to the Facility laboratory identifying himself as the patient and physician assistant E.H. as the ordering provider. In addition to two (2) tests actually ordered by E.H., the Respondent independently ordered approximately nine (9) additional tests that had not been ordered by E.H. under E.H.'s name. Then, during his shift that day, the Respondent paged the phlebotomy department to have his blood drawn for the purpose of completing the tests he had ordered.
5. Facility records indicate that between April 7 and April 11, 2006, the Respondent accessed his own medical records on multiple occasions for reasons unrelated to the performance of his professional responsibilities at the Facility. This conduct was a violation of Facility policy.
6. Additionally, from about March 17-March 28, 2006, the Respondent accessed his mother's medical records on at least six (6) separate occasions. The Respondent was not

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responsible for his mother's medical care nor were there any other medical reasons requiring the Respondent to access her records.

7. The Respondent was terminated from the Facility on or about May 2, 2006 due to the conduct described above. However, this termination was reversed on or about August 2, 2006 pursuant to a "Last Chance Agreement" entered into between the Facility and the Respondent.

8. In an interview conducted by State Investigator Amy Carlson on or about April 10, 2007, the Respondent admitted that he had ordered laboratory tests for himself, that he had accessed his personal medical information in the Facility database, and that he had accessed his mother's medical information in the Facility database.

Charges

9. The acts, omissions and/or circumstances described above constitute grounds for discipline because the Respondent has committed unprofessional conduct in violation of:

- i. 26 V.S.A. § 1582(a)(3) (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);
- ii. 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. Failure to practice competently includes, but is not limited to, failure to conform to the essential standards of acceptable and prevailing practice);
- iii. 3 V.S.A. § 129a(a)(7) (willfully making or filing false reports or records in the practice of the profession; willfully impeding or obstructing the proper making or filing of reports or records or willfully failing to file the proper reports or records);
- iv. 26 V.S.A. § 1582(a)(7) (engages in conduct of a character likely to deceive, defraud or harm the public) which includes, but is not limited to, falsifying or altering clinical records or making inaccurate or misleading entries pursuant to ARBN Chapter 4, Rule IV(II)(D)(3); and
- v. 3 V.S.A. § 129a(a)(3) (failing to comply with the provisions of state statutes or rules governing the practice of the profession).

Relief Requested

WHEREFORE, the license of Graydon Kilpatrick should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

DATED at Montpelier, Vermont this 30th day of August 2007.

17th

September

STATE OF VERMONT
SECRETARY OF STATE

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

nu.kilpatrick.soc

By.

Edward G. Adrian
State Prosecuting Attorney

STATE OF VERMONT



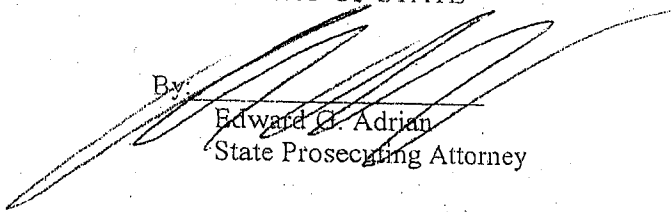
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- C. This Stipulation and Consent Order is a matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. § 129(a).
- D. This Stipulation and Consent Order will remain part of Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

AGREED TO:

STATE OF VERMONT
SECRETARY OF STATE

Dated: 2/10/09

By: 

Edward G. Adrian
State Prosecuting Attorney

AMANDA J. MAYER
RESPONDENT

Dated: 2/3/09

By: Amanda J. Mayer

Amanda J. Mayer

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 3-9-09

By: Janice Carr

Chairperson

Date of Entry: 3/10/09

nu.mayer.stip

STATE OF VERMONT



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