VERMONT SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF NURSING

In re	Jamie Lockwood	}	Docket No. NU30-1106
License No.	026-0024063	}	

FINDINGS OF FACT
CONCLUSIONS OF LAW & ORDER

Introduction:

On Monday 10 September 2007, the Board heard this contested case of alleged unprofessional conduct brought by the State of Vermont against Respondent Jamie Lockwood. Board members Kenneth W. Bush, Ellen W. Leff, Donarae Metcalf, Linda M. Y. Rice, DeAnn Welch and Alan Weiss participated in the hearing of this matter. The Respondent appeared with counsel Melvin Fink. Edward G. Adrian represented the State of Vermont. Board counsel Kevin F. Leahy presided.

The State brought a Specification of Charges (the "Charges") dated 11 April 2007 against the Respondent alleging unprofessional conduct for receiving diverted medication taken from the Corner Drug Co., Inc located in White River Jct., Vermont (the "Pharmacy"). The specific allegation against the Respondent is that she, in an interview with State investigators, admitted that:

> she had accepted diverted Hydrocodone from her sister-in-law, [who worked at the Pharmacy], for a period of approximately five (5) years ending in the summer of 2006. The Respondent admitted that her sister in law [] gave her twenty (20) to thirty (30) pills every couple of weeks over that [] period."

Charges at ¶ 6.

Findings of Fact &
Conclusions of Law:

1. Respondent holds a State of Vermont registered nursing license and works in the medical intensive care unit at Mount Ascutney Hospital in Windsor, VT (the "Facility").

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 the Admin. Rules for the Bd. of Nursing and the Admin. Rules for the Office of Professional Regulation.

3. 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).

4. In this case, the State must prove the operative facts alleged in its Charges and demonstrate the Respondent's conduct violates the laws governing professional conduct.

5. The State initially alleged that the Respondent violated 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). However, in the statement of facts contained in its Charges and in the evidence presented to the Board, the State did not allege that the Respondent violated any state or federal laws governing nursing practice.

6. The State also charged Respondent with violating 3 V.S.A. § 129a(b) (failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct). However, the State made no factual allegations and the Board heard no evidence that suggested Respondent performed unsafe or unacceptable patient or client care or that she failed to conform to the essential standards of acceptable and prevailing nursing practice in violation of 3 V.S.A. §129a(b).

7. This order will therefore dismiss the charge of violating 3 V.S.A. §129a (a)(3) (laws governing nursing practice), and this order shall also dismiss the charge of violating 3 V.S.A. §129a (b) (non-competent nursing on one or more occasions).

8. The State presented evidence in support of its allegation in ¶6 of the Charges and in support of its argument that the Respondent engaged in unprofessional conduct in violation of 26 V.S.A. § 1582(a)(3) (licensee unable to practice nursing competently by any cause).

9. The Respondent, in both testimony and in her Answer to the Charges, admits the operative fact alleged by the state in ¶6 of its Specification of Charges.

10. Respondent acknowledged that she received stolen Hydrocodone from her sister-in-law for an undefined period. She admits that she received the pills until the summer of 2006, and she admits to receiving approximately 20-30 of them per week. *See* Respondent Answer docketed 7 May 2007.

11. The State meets its evidentiary burden of proof based on the uncontested testimony of the Respondent, and her admissions prior to the hearing.

12. The next issue concerns the specific charge considered by the Board at the hearing.

13. The Specification of Charges alleges that the Respondent is "unable to practice nursing competently by reason of any cause" in violation of 26 V.S.A. § 1582(3).

14. In defense of this charge, the Respondent offered three witnesses from Mount Ascutney Hospital, who testified to the Respondent's qualifications as a nurse. These witnesses were Marlene Sachs, M.D., Judith Lasure and Jill Lord. All three witnesses work and worked at the Facility with the Respondent during the period covered in the

State's Charges.

15. The Respondent also testified on her own behalf regarding her ability to practice nursing.

16. Ms. Lord, the director of patient care at the Facility, testified that she has not seen the Respondent depart from the "highest standards of nursing care."

17. The Respondent testified that she practices competently and that her receipt of stolen medication was outside and unrelated to her work.

18. Ms. Lasure testified that the Respondent was placed on conditions by the Facility when the Facility learned she had received stolen opioids, and the conditions included a requirement that Respondent not be permitted to give narcotics to patients.

19. The witnesses explained the reason Respondent's practice was restricted was to protect the Respondent from any accusations that she may be diverting medication and to protect the hospital from any charges that it was not protecting its patients. The witnesses indicated that restricting the Respondent's practice was precautionary and not a result of any practice problems with the Respondent. *See also* Exhibit A (satisfactory Facility performance evaluations for period 2001-2006).

20. The witnesses all testified that Respondent is a competent nurse and that she performs well and safely at the Facility.

21. The Respondent further testified that she suffers from pain caused by a chronic condition and that opioid analgesics are part of her treatment regimen. *See,* Exhibit B (showing Respondent prescription records from approximately 2002-2007 that include prescriptions for opioids, anti-inflammatory pain medications and other narcotics).

22. There was no evidence that Respondent has been impaired on or off the job.

23. Dr. Sax testified that she is the Respondent's treating physician as well as a staff physician at the Facility.

24. Dr. Sax confirmed the Respondent's need for pain medication.

25. Respondent's argument is, essentially, that the Board must look only to her nursing record and abilities when considering the State's charge of violating 26 V.S.A. § 1582(3) and that the Board should ignore the mistakes she made in her personal life.

26. The Board disagrees with the Respondent and does not constrain its analysis so narrowly.

27. In light of Respondent's conduct, the State asks that the Board impose two years of conditions on Respondent's license for using substances obtained through illicit means.

28. The evidence showed an undisputed lack of judgment, which the Respondent admits, in her personal life. The Board does not ignore this fact.

29. The lack of judgment in Respondent's personal life is also unprofessional conduct.

30. The Board will therefore adopt the State's recommended two-year conditioned license as the appropriate sanction for unprofessional conduct.

31. The conditions to be placed on Respondent's license are set forth in "Appendix A" attached to this order.

ORDER

Based on the findings of facts and conclusions of law set forth above, the Board of Nursing therefore CONDITIONS the Respondent's license as stated in Appendix A, which is attached to this order.

- END -
(signature page to follow)

Vermont Board of Nursing:

By: Linda Rice APRN Date: 11-30-07
Linda M. Y. Rice, APRN
Board Vice-Chairperson

OFFICE OF PROFESSIONAL REGULATION
DATE OF ENTRY: 12/4/07

APPENDIX "A"

(1) Re-issue of License.

Upon the commencement of these conditions, Respondent shall be issued a license labeled "conditioned."

(2) Length of Time Conditions Imposed.

The conditions shall remain in place until Respondent completes two (2) years of supervised nursing practice in which Respondent works forty (40) hours every two (2) weeks as a licensed registered nurse. Part time hours of less than forty (40) hours every two (2) weeks shall be credited on a prorated basis. Respondent shall be prohibited from working more than forty (40) hours per week.

(3) Completion of Drug and Alcohol Abuse Counseling and Treatment Plan.

Respondent shall enter into and continue drug and alcohol abuse counseling with a treating professional approved by the Board until the treating professional certifies that counseling is no longer necessary. Respondent shall comply with the substance abuse treatment plan approved by the Board and the treating professional.

(4) Notification to Treating Professional.

Respondent shall provide a copy of this Order to Respondent's substance abuse treating professional and cause Respondent's treating professional to inform the Board, in writing and on professional letterhead, of receipt of the Order and the treating professional's ability to comply with the conditions related to treatment and with all other terms of this Order.

(5) Reports from Treating Professional.

Respondent shall authorize and cause Respondent's treating professional to submit evidence of satisfactory progress with the treatment plan during the effective period of this Order. These reports shall be submitted on forms issued by the Board. The first report is due commencing the month after the date of the commencement of the conditions and subsequent reports are due every month thereafter.

Respondent shall authorize Respondent's treating professional to provide (either orally or in writing) information requested by the Nursing Board while this Order is in effect.

(6) Notification to Employers/Nursing School.

Respondent shall provide a copy of this Order to all employers in any current or future setting in which Respondent practices nursing 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 nursing employment, Respondent shall cause Respondent's immediate supervisor to write

to the Board, on the employer's letterhead, acknowledging receipt of the Order and the ability to comply with its conditions.

In the event Respondent attends a nursing program, Respondent shall cause the Program Director to write to the Board, on school letterhead, acknowledging receipt of the Order and ability of the program to comply with the conditions in the Order during clinical experience.

(7) Reports from Employers.

Within one (1) month of the date of entry of this Order or within one (1) month of the commencement of nursing employment and monthly thereafter, Respondent shall cause every nursing employer for which Respondent worked during that month to submit an evaluation of Respondent's work performance and number of days worked. This report shall be submitted in writing on forms issued by the Board.

In the event the Respondent is attending a nursing program, Respondent shall cause the Program Director to submit to the Board, on a monthly basis, a written evaluation of Respondent's performance and attendance. This report shall be submitted in writing on forms issued by the Board and accompanied by a cover letter on the school's letterhead.

(8) Practice Under Supervision.

Respondent shall practice only in a setting where Respondent has direct supervision for the entire shift by a licensed registered nurse who is in good standing.

(9) Participation in Recovery Group.

Respondent shall participate in a substance abuse recovery group as recommended by Respondent's treating professional.

(10) Random Drug and Alcohol Testing.

Respondent shall submit to random drug and alcohol screenings at the request of the Board or its designee pursuant to Board procedures. Testing shall be random. Urine specimens collected for tests shall be collected in an observed setting. All screens shall be negative.

(11) Abstain from Drug and Alcohol Use.

Respondent shall abstain completely from the consumption or possession of alcohol and drugs with the exception of prescribed medications while these conditions are in place.

(12) Drug Use Exception.

The Respondent may only use scheduled/controlled medications that are lawfully prescribed. Respondent shall make a prescribing physician, dentist, or nurse practitioner's identity known to the Board in writing within forty-eight (48) hours of the establishment of the practitioner/patient relationship. Respondent shall ensure that the

physician, dentist or nurse practitioner confirms, in writing and on appropriate letterhead, having knowledge of Respondent's substance abuse history within one (1) week of entering into the practitioner/patient relationship. Respondent shall inform the Board in writing of all scheduled/controlled medications prescribed, including the name of the prescribing practitioner, within forty-eight (48) hours of receiving the prescription.

The Board or its designee may request that the practitioner document the continued necessity for scheduled medications if the term exceeds 14 days. This includes medications administered as necessary.

(13) Records.

Respondent shall keep a written record of all medications currently taken, including over the counter drugs and produce the record upon the request of the Board or its designee.

(14) Types of Employment Prohibited.

Respondent shall not work in a supervisory role with the exception of supervising unlicensed assistive persons. 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.

(15) Out of State Practice/Residence.

Before the Board credits any out-of-state practice or residence toward fulfillment of these terms and conditions, Respondent must obtain Board approval prior to Respondent leaving the State of Vermont. If Respondent fails to receive approval, the Board will not credit time spent out-of-state toward the fulfillment of the terms and conditions of this Order. The Board will approve out-of-state practice so long as the Respondent can still comply with the provisions of this Order.

(16) Notification of Place of Employment/Personal Address/Telephone Number.

Within five (5) days of the date of entry of this Order, Respondent shall notify the Board, in writing, of Respondent's current place of employment, personal address, and telephone number. Respondent shall further notify the Board, in writing, within forty-eight (48) hours of any change in employment, personal address, or telephone number.

(17) Notification to Other States.

In the event that the Respondent is licensed in nursing in any other state(s), Respondent must inform the nursing licensing board of the state(s) in which the Respondent is licensed of the conditional status of Respondent's Vermont nursing license within thirty (30) days of the date of entry of this Order.

(18) License Renewal.

Respondent must timely apply for renewal and otherwise comply with the requirements for license renewal.

(19) Release of Information Forms.

In fulfilling the conditions of this Order, the Respondent must authorize various persons to report information or to discuss the Respondent with the Board. The Respondent must execute a consent form to disclose form that allows disclosure to the Board or its designee. Consent revocation may be considered a violation of this Order.

(20) Violation of this Order.

If the Respondent violates the terms of this Order, the Board, after giving the Respondent notice and an opportunity to be heard, may impose additional disciplinary actions.

(21) Completion of Conditional License Period.

After the conditional license period, the Respondent may petition the Board to remove the license conditions. The Respondent must present proof that Respondent has complied with the terms of this Order. The Respondent must also present proof of successful rehabilitation in order that Respondent can practice safely without supervision.

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.

If you file an appeal, the Director of the Office of Professional Regulation will assign the case to an appellate officer. The appellate officer will hear the appeal and make a decision based on the record of evidence created before the Board of Nursing. In cases of alleged mistakes in the procedure followed before the board, which is not shown in the record, the appellate officer may allow proof on that particular issue. *See* 3 V.S.A. §§ 129(d) and 130a.