

**STATE OF VERMONT
SECRETARY OF STATE
BOARD OF NURSING**

In re: **Kerri Jo McIntosh**
License No.025.0009337

}
} Docket No. 2014-573 (LPN)
}

**Decision on
UNPROFESSIONAL CONDUCT CHARGE**

Participating Board Members:

Jeanine Carr, RN, Chair
Ellen Watson, APRN, Vice Chair
Deborah Swartz, RN
William G. White, Jr., Public Member
Douglas Sutton, RN
Jennifer Laurent, APRN
Sheila Davis, LPN
Kelly Sinclair, LNA
John Welch, Jr., Public Member

Appearances:

Prosecuting the case: S. Lauren Hibbert, Esq.
Respondent: Did not appear

Presiding Officer: George K. Belcher

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

The Vermont Board of Nursing held a hearing in the above matter on July 13, 2015 in Montpelier, Vermont.

The prosecution has the burden of proof in this matter. To prevail on any unprofessional conduct charge, it must prove the charge by a preponderance of the evidence.

Background

The Specification of Charges alleges that Respondent committed unprofessional conduct in violation of Vermont Statutes.

Findings of Fact

Based on the evidence presented, the documents filed in this matter, including the answer of the Respondent, and the arguments of counsel, the Board finds as follows:

1. Kerri Jo McIntosh, (the “Respondent”) is licensed as a Licensed Practical Nurse (LPN) and is therefore subject to the regulatory authority of this Board, pursuant to 3 V.S.A. §§ 129, 129a, 26 V.S.A. § 1582, the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation. Her license is active and is currently set to expire on or about January 31, 2016.
2. At all times relevant the Respondent was employed as a Licensed Practical Nurse at the Northland Jobs Corps wellness center in Vergennes, Vermont.
3. While carpooling to work, Respondent learned that her colleague and ride companion suffered from a painfully infected tooth and did not have the financial means to obtain care.
4. Without consulting an authorized prescriber or any other medical provider, Respondent inquired into her colleague’s allergy history and then dispensed to the colleague thirty (30) amoxicillin 500mg tablets belonging to the wellness center. Respondent advised the colleague to take two tablets at once, and then to take one tablet four times each day.
5. As a licensed practical nurse, Respondent was not trained, qualified, or lawfully permitted to independently assess and diagnose dental infections, nor to prescribe and dispense antibiotics.
6. The OPR investigator assigned to this matter discovered some evidence that the wellness center in question had reached an unusual and somewhat dubious arrangement with a local medical practice, whereby “Standing orders” purported to authorize a registered nurse to assess and administer medications, including prescription antibiotics to Jobs Corps students, obtaining physician sign-off on after the fact. A Jobs Corps official denied this was ever the case. One of the authorizing physicians affirmed that this was the case and noted that the wellness center had been without a registered nurse for a period. Written protocols never were found and were said to be missing. The Respondent asserted in her answer that the “Standing orders” also covered LPN’s as a guideline to treat students.
7. The Respondent further stated in her answer, in part, “I most of the time was without an RN to oversee me. I would sign papers as acting wellness manager. In the back of my mind thought I was wrong to be doing the stuff that I was doing or out of my scope of practice. But I was put in the position of doing these things on a daily basis while employed there.”
8. It was the position of the State and the Respondent that the Respondent’s license should be warned.

Conclusions of Law

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

9. Re: Alleged Violation of 3 VSA Sec. 129a(a)(13): The Prosecution has proven by a preponderance of the evidence that Respondent performed treatments and services which the licensee is not qualified to perform and which were beyond the scope of the licensee's education, training, capabilities, experience or scope of practice. (See also 26 VSA Sec. 1572(3)(A) for the scope of practice of Licensed Practical Nurses.) This is unprofessional conduct.
10. Re: Alleged Violation of 3 VSA Sec. 129a(b)(1) and (2): The Prosecution has proven by a preponderance of the evidence that Respondent failed to practice competently by performance of unacceptable patient care and failure to conform to the essential standards of acceptable and prevailing practice. This is unprofessional conduct.

Discussion and Order

The Board is of the view that a finding of unprofessional conduct and a warning or reprimand is not a sufficient remedy under the facts as found in this case. The potential harm which could have occurred from the unauthorized distribution of prescribed medication is significant. Likewise, the knowing breach of the scope of practice rules is a significant deviation from our professional standards. For the violations above, to protect the public, health, safety and welfare, the following sanction is necessary.

The Board of Nursing hereby **REPRIMANDS** the Respondent's license and **CONDITIONS** the Respondent's license to practice as a licensed practical nurse for a minimum of six (6) months. The conditions and order terms are as follows:

(1) Terms of Conditions: Upon the imposition of these conditions, Respondent shall be issued a license labeled "conditioned." Respondent shall be subject to the conditions until Respondent completes a minimum of six (6) months of supervised licensed practical nurse practice in which she works at least forty (40) hours every two (2) weeks as a licensed practical nurse. Part time hours of less than forty (40) hours every two (2) weeks shall be credited on a prorated basis. The Respondent shall be prohibited from working more than forty (40) hours per week during the conditioned period.

(2) Required Course Work: Respondent must successfully complete (i.e., receive a passing grade, if applicable) a course which covers the subject of Scope of Practice and which has prior approval by the Board or its designee, and then submit written documentation of completion. This course must be completed within ninety (90) days of the date of entry of this Order.

(3) Notification to Employers: Within ten (10) days of the date of entry of this Order, Respondent shall provide a copy of this Order to all employers in any current employment or in the event of future practice, within ten (10) days, and inform them of Respondent's conditional license status. Respondent's immediate supervisor shall submit to the Board an employer agreement on the Board approved form. If the Respondent is in a nursing program that has a clinical portion involving patient care, Respondent shall give a copy of this Order to the Program Director. The Director shall submit to the Board a nursing program agreement on a Board

approved form.

(4) Practice Under Supervision: Respondent shall practice nursing only in a setting where Respondent has direct supervision for the entire shift by a registered nurse who is licensed and in good standing with the Board. Within one (1) month of receipt of the agreement form every nursing employer or program director shall submit to the Board an evaluation of Respondent's work performance and attendance on a monthly basis. These reports shall be submitted in writing on forms issued by the Board. All reports shall be satisfactory.

(5) Types of Employment Prohibited: Respondent shall not work for a nurse registry, traveling nurse agency, float-pool, home health care, temporary nursing employment agency, or as a private duty nurse or personal care provider requiring a nursing license during the effective period of this Order.

(6) Out-of-State Practice and Licensing: Before any out-of-state practice can be credited toward fulfillment of these terms and conditions, Respondent shall first obtain approval from the Board. Failure to seek approval shall result in out-of-state practice not being credited toward the fulfillment of the terms and conditions of this Order. If the Respondent receives discipline on a nursing license held in another state during the conditioned period, the Respondent must inform the Board of such, in writing, within ten (10) days of receiving such discipline.

(7) Notification of Employment/Personal Address/Telephone Number: Within ten (10) days of the date of entry of this Order, Respondent shall notify the Board, in writing, of her 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 (including resignation or termination), personal address, or telephone number.

(8) Notification to Other States: In the event that the Respondent is licensed in nursing in any other state(s), she must inform the other nursing licensing boards of the conditional status of her Vermont nursing license, within thirty (30) days of the date of entry.

(9) License Renewal and Costs: If the Respondent's license expires while this Order is still in effect, this Order does not automatically extend the license. Respondent must timely apply for renewal and pay the applicable fee. The Respondent shall bear all costs of complying with this Order.

(10) Violation of this Order: If the Respondent violates the terms of this Order in any respect, the Board, after giving the Respondent notice and an opportunity to be heard, may rescind or modify this Order and impose additional appropriate disciplinary actions. If a complaint of unprofessional conduct is made against the Respondent during the term of this Order, this Order shall be automatically extended until the unprofessional conduct matter is concluded.

(11) Completion of Conditional License Period: After the conditional license period, the Respondent may petition the Board to remove any and all conditions on her license. Respondent shall have the burden of proof.

(12) Continuing License Obligations: Notwithstanding any provision above, the Respondent must continue to meet all Nursing Board requirements for maintaining a license, license renewal and license reinstatement

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

SO ORDERED

Vermont Board of Nursing

By: Jeanine Carr
Jeanine Carr, RN, Chair

Date: July 20, 2015

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY

7/20/15

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, 89 Main Street, Fl. 3, 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 130