

**STATE OF VERMONT
BOARD OF NURSING**

IN RE:

Joseph McIntyre
License No. 26-19751

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NU 40 - 0104
Case File No. ~~NU31-1003~~

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Introduction

The Vermont Board of Nursing ("the Board") held a hearing in this case on Monday, January 10, 2005 at 81 River Street in Montpelier, Vermont. Board members Susan Farrell, Elayne Clift, Dee-Ann Welch, Laurey Tyo, Ellen Leff and Donarae Metcalf participated in the decision. Edward Adrian, Prosecuting Attorney, appeared for the State. Joseph McIntyre ("the Respondent") was present and was represented by Attorney John Monahan. The presiding officer for the Board was Christopher Winters.

Findings of Fact

1. At all times relevant, the Respondent, Joseph McIntyre, was a Registered Nurse holding license number 026-19751 issued by the State of Vermont.
2. At all times relevant, the Respondent was employed by Gifford Memorial Hospital ("the Hospital") in Randolph, Vermont, as a registered nurse.
3. On or about October 27, 2003, C.W. accompanied patient H.S. to the Hospital after H.S. sustained a head injury. H.S. was a person in C.W.'s employ and had been injured the previous night when a birdcage fell on her head.
4. Upon arrival at the hospital, H.S. was directed to accompany the Respondent into an examination room. While following the Respondent into the exam room, the Respondent told H.S. to "ditch her", in reference to C.W.
5. In the exam room, the Respondent asked H.S. if she still worked for the Clara Martin Center, a mental health treatment facility in Randolph. The Respondent then said something to the effect of "She needs to go there," while gesturing toward C.W.
6. C.W. is a woman who has been in a car accident and who has received previous treatment and hospitalization at the hospital for anxiety attacks and back injuries and who is taking medications for mental health issues and back problems.

7. C.W. was very upset by the Respondent's remarks and began to cry after he left the room.
8. As C.W. and H.S. were leaving, the Respondent made a further comment to C.W. about her purse being gauche (socially awkward).
9. The Respondent asserts that it is his style as a nurse to banter and use humor to diffuse the tension that is often present with a hospital visit.
10. A complaint was also made to the Department of Aging and Disabilities ("DAD") because C.W. is a "vulnerable adult" by law. DAD substantiated abuse but worked out an agreement whereby the Respondent would not be placed on the abuse registry so long as he completed nine months of probation and took sensitivity training.
11. The Respondent has taken the sensitivity training and his probationary period will be up in May 2005.
12. The Respondent has worked as a licensed nurse for approximately thirty years and has no previous record of discipline in any state.
13. The Respondent regrets that C.W. was so offended by his remarks and insists they were not intended to be mean-spirited or offensive, though he can understand in hindsight that they were taken that way.

Conclusions of Law

- A. The Vermont State Board of Nursing ("the Board") has authority to approve consent orders, issue warnings or reprimands, suspend, revoke, limit, condition or prevent the renewal of current or lapsed licenses if, after disciplinary hearing, the Board finds that the Respondent has engaged in unprofessional conduct. 3 V.S.A. §129(a)(5); 3 V.S.A. §814(d); 26 V.S.A. §1582(a); Administrative Rules of the Board of Nursing; Rules of the Office of Professional Regulation.
- B. In accordance with the above findings, the Respondent has failed to comply with the provisions of state statutes or rules governing the practice of the profession (3 V.S.A. §129a(a)(3)) and demonstrated an inability to practice nursing by reason of any cause (26 V.S.A. §1582(a)(3)) by failing to conform to the essential standards of acceptable and prevailing nursing practice. See Board of Nursing Administrative Rules, Chapter 4, Rule IV(II)(B)(2).
- C. The Respondent has argued that his behavior is not within the Board's jurisdiction. Even though it does not involve actual technical skill or care of a patient, it is behavior that reflects poorly on the profession, was done while working as a nurse, and occurred in front of a patient, having the potential to interfere with care of that patient. No licensed professional should behave in such a fashion, and the standards of the profession include interaction with patients and others while working as a nurse. The Board recognizes that a violation of the "standards of the

profession" is an amorphous term when those standards are not specifically defined. But the legislature has left to the Board to determine those acceptable and prevailing standards, and the Board has determined that such conduct, as that demonstrated here, is not "acceptable" conduct from a licensed nurse and does offend the prevailing standards of the profession.

Opinion

While the Board finds that unprofessional conduct has indeed occurred, its analysis of the Respondent's record, his remorse, and the actions already imposed by DAD are sufficient to ensure that the Respondent will not engage in this type of behavior again and the public is adequately protected without further imposition of sanctions other than that set forth below.

Order

Accordingly, the Respondent's license is hereby WARNED.

By: Susan Farrell
Susan Farrell
Chair

Date: January 24, 2005

OFFICE OF PROFESSIONAL REGULATION

Date of entry: 1/28/05

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

IN RE:)
JOSEPH ROSS MCINTYRE) **Docket No: NU 40-0104**
License No. 026-0019751)

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Joseph Ross McIntyre, R.N.:

Board Authority

1. The Vermont State Board of Nursing ("the Board") has authority to approve consent orders, issue warnings or reprimands, suspend, revoke, limit, condition or prevent the renewal of current or lapsed licenses if, after disciplinary hearing, the Board finds that the Respondent has engaged in unprofessional conduct. 3 V.S.A. §129(a)(5); 3 V.S.A. §814(d); 26 V.S.A. §1582(a); Administrative Rules of the Board of Nursing ("ARBN"); and the Rules of the Office of Professional Regulation.
2. The inability to practice nursing competently by reason of any cause is unprofessional conduct upon which the Board can base disciplinary action. 26 V.S.A. §1582(a)(3).
3. The inability to practice nursing competently includes the performance of unsafe or unacceptable patient care pursuant to ARBN, Chapter 4, Rule IV(II)(B)(1), and failing to conform to the essential standards of acceptable and prevailing nursing practice pursuant to ARBN, Chapter 4, Rule IV(II)(B)(2).
4. Engaging in conduct of a character likely to harm the public is unprofessional conduct upon which the Board can impose disciplinary action. 26 V.S.A. §1582(a)(7).
5. Failure to comply with the provisions of state statutes or rules governing the practice of the profession is unprofessional conduct upon which the Board can base disciplinary action. 3 V.S.A. §129a(a)(3).

Facts

6. The Respondent is licensed in the State of Vermont as a Registered Nurse under license number 026-0019751.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

7. Respondent's license was originally issued on September 17, 1990 and Respondent's license is currently set to expire on March 31, 2005.
8. At all times relevant, the Respondent was employed as an R.N. by Gifford Memorial Hospital (the "Hospital") in Randolph, Vermont.
9. On or about October 27, 2003, C.W. accompanied patient H.S. to the Hospital after H.S. sustained a head injury.
10. While following the Respondent into the exam room, the Respondent told H.S. to "ditch her", meaning C.W. C.W. continued to follow them into the exam room.
11. Once in the exam room, the Respondent asked H.S. if H.S. worked for the Clara Martin Center and then the Respondent stated to C.W. that "you need to go there". This comment upset C.W. and caused her to cry. By way of information, the Clara Martin Center is a mental health treatment facility located in Randolph, Vermont.
12. As C.W. and H.S. were leaving, the Respondent made a further comment to C.W. about her purse being gauche (socially awkward).

Charges

13. The acts, omissions and/or circumstances described above, constitute grounds for discipline because Respondent violated:
 - i. 26 V.S.A. §1582(a)(3) (is unable to practice nursing competently by reason of any cause) which includes the performance of unsafe or unacceptable patient care pursuant to ARBN, Chapter 4, Rule IV(II)(B)(1), and failing to conform to the essential standards of acceptable and prevailing nursing practice pursuant to ARBN, Chapter 4, Rule IV(II)(B)(2); and
 - ii. 26 V.S.A. §1582(a)(7) (engaging in conduct of a character likely to harm the public); and
 - iii. 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 Joseph Ross McIntyre should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

Dated at Montpelier, Vermont this 7th day of July 2004.

STATE OF VERMONT



Prosecuting Attorney
Office of
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Montpelier, VT 05602

STATE OF VERMONT
SECRETARY OF STATE

By: _____

Edward G. Adrian
State Prosecuting Attorney

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