

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

In re: Nichols, Danielle }
License No. 026-0028470 } Docket No: NU10-0704

**UNPROFESSIONAL CONDUCT CHARGE
FINDINGS OF FACT, CONCLUSION OF LAW
& ORDER**

On 14 November 2005, this matter came before the Vermont State Board of Nursing for a disposition hearing. Board members Kenneth W. Bush, Susan Farrell, Chairperson, Ellen W. Leff, Donarae Metcalf, Sandra Norton, Linda Rice and Alan Weiss participated. Prosecuting attorney Edward G. Adrian represented the State of Vermont. The Respondent appeared before the board represented by her attorney, Jason J. Sawyer. Kevin F. Leahy was the presiding officer.

Based on the evidence presented to the Board at the hearing, the Board finds:

The Respondent is licensed by and subject to the disciplinary authority of this Board. 26 V.S.A. Chapter 28, 3 V.S.A. § 129(a), and the Administrative Rules of the Office of Professional Regulation.

2. Respondent holds a State of Vermont license as a Registered Nurse.
3. During the relevant period, Porter Hospital located in Middlebury, Vermont employed the Respondent as a Registered Nurse.
4. The State filed a "Specification of Charges" on 24 March 2004 (attached) alleging that on 14 July 2004 Respondent administered medication not in conformance with Porter Hospital's written protocol; on 15 July 2004 Respondent failed to properly monitor a patient's blood pressure; and on 22 July 2004 the Respondent administered the wrong IV to a patient.
5. The Respondent does not dispute the underlying allegations; and in a filing with the Board, admits that the three incidences occurred and states that she "accepts responsibility for her actions [and] inactions" as set forth in the State's charges. Respondent Sanction Memo at 1.
6. The Board accepts the representations of the parties and finds that the Respondent engaged in unprofessional conduct in the three instances referenced in the Specification of Charges.
7. The Respondent additionally brings to the Board's attention several factors that she asks the Board to consider in deciding the appropriate disposition of this disciplinary case.

8. Respondent notes that all the events occurred during an isolated period. She testified of a hostile work environment at the time of the three incidences. Respondent explained that the incidents occurred immediately subsequent to her return to full duty after suffering two herniated disks as a result of caring for a morbidly obese patient. Respondent further related the stresses of going through a child custody battle during the period in question.
9. Respondent also points to her nursing record since the July 2004 incidents as evidence of her fitness to practice competently. Respondent's colleagues, at her current employer Fletcher Allen Health Care (FAHC), also testified to her professionalism since joining FAHC in the fall of 2004.
10. Specifically, Meredith McClellan, who is Respondent's supervisor and a floor manager at FAHC and Kathryn Reilly, a colleague of the Respondent, both testified that they find the Respondent to be a competent nurse. Nurse McClellan reviews the Respondent's charts and testified that she is extremely thorough and Nurse Reilly said that the Respondent is reliable as well as thoughtful and very consistent in her documenting.
11. In light of the mitigating testimony, the Respondent argues against conditioning her license, as recommended by the State, since she is not a threat "to the health, safety or welfare of the public." Respondent Sanction Memo at 4.
12. The Board, however, does not apply the "threat to the health safety or welfare of the public" standard in a disposition hearing. See generally, 3 V.S.A. § 814(c) (authorizing the summary suspension of professional licenses where health, safety or welfare of the public imperatively requires emergency action by the Board).
13. Rather than making a determination under the emergency authority enabling statute, as set forth in 3 V.S.A. §814(c), the two questions before the Board are whether unprofessional conduct occurred; and if it did occur, what disposition of this case furthers the Board's purpose of "safeguard[ing] the life and health of the people of this state." 26 V.S.A. § 1571.
14. In light of the unprofessional conduct the Board has determined as well as the testimony of the Respondent and witnesses, the Board finds that the most appropriate safeguard is a conditioned license for a period of two years.

ORDER

In light of its findings of fact and conclusions of law, the Board now **ORDERS** that the Respondent's license be **CONDITIONED** as follows:

- (a) Respondent's license shall be reissued labeled "conditioned."
- (b) The Respondent's license shall be conditioned for a period of 2 (two) years;
- (c) Respondent shall practice only in a nursing setting where Respondent has direct supervision for the entire shift by a licensed nurse in good standing; and the Respondent shall not work as a supervising nurse, with the exception of LNAs and other unlicensed assistive persons.

- (d) Within one (1) month of the date of entry of this Order and monthly thereafter, Respondent shall cause every nursing employer for whom the Respondent has worked during the month to submit to the Board an evaluation of Respondent's work performance and attendance during that month. The reports shall be submitted on forms issued by the Board.
- (e) The Board further Orders that the Respondent shall not work more than 80 (eighty) hours in any 14 day (two week) period; and it is further ORDERED that
- (f) Respondent shall successfully complete (1) a course in nursing assessment and (2) a course in nursing delegation within 180 days of the entry of this Order. The Board or its designee must approve both courses in advance.

Vermont Board of Nursing

By: Susan Farrell
Susan Farrell, RN, Chairperson

Date: 12/03/05

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 12/8/05

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, 26 Terrace Street, Montpelier, Vermont 05609-1101 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 130a.

To request a stay of the Board's decision, please refer to the attached stay instructions.

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

IN RE:)
DANIELLE A. NICHOLS) **Docket No: NU 10-0704**
License No. 026-0028470)

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Danielle A. Nichols, 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 026-0028470.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

7. Respondent's license was originally issued on July 16, 2003 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 Porter Hospital located in Middlebury, Vermont.

9. On or about July 14, 2004, during a patient assessment, the Respondent confused the greater than (>) and less than (<) symbols in Porter Hospital's written protocol relative to the amount of Valium which can be given to a patient when certain behaviors indicate withdrawal. The Respondent gave the patient more Valium rather than less; administering approximately 100 mg during an eight hour shift.

10. On or about July 15, 2004, the Respondent reported to the charge nurse that a patient had a blood pressure reading of 79/42 at 10:00 a.m. The patient's physician was contacted and he requested that the patient's blood pressure be monitored. The Respondent failed to take the patient's blood pressure or insure that it was taken at any time following the 10:00 a.m. reading through the time of the Respondent's shift change at 3:00 p.m.

11. On or about July 22, 2004, the Respondent administered the wrong IV antibiotic to a patient. This antibiotic was one which the patient was allergic to, and required interventions to prevent anaphylaxis reaction. In administering the antibiotic, the Respondent had failed to follow Porter Hospital's protocol which requires the patient to identify himself/herself by name and date of birth, and then compare the verbal response with the patient's wrist identification band. The patient was wearing a wrist identification band and an allergy band, and the IV bag clearly indicated the antibiotic and had the name of another patient on the label.

Charges

12. 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).

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

Relief Requested

WHEREFORE, the license of Danielle A. Nichols should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

Dated at Montpelier, Vermont this 24th day of March 2005.

STATE OF VERMONT
SECRETARY OF STATE

By: _____

Edward G. Adrian
State Prosecuting Attorney

nu.nichols.soc

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602