

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

In re Andrea Nickerson }
License No. 025-008150 }
Docket No. NU18-0807 }

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

On Monday 8 September 2008, the Vermont Board of Nursing (Board) heard this contested case of alleged unprofessional conduct. The State of Vermont brought a Specification of Charges (the "Charges") dated 29 April 2008 against Respondent Andrea H. Nickerson. Board members Jeanine Carr, Ellen W. Leff (Vice-Chairperson), Donarae Metcalf, Sandra J. Norton, Deborah Robinson, Alan H. Weiss, DeAnn Welch and William White were present and participated in the hearing.

The Respondent appeared on her own behalf. Edward G. Adrian represented the State of Vermont. Board counsel Kevin F. Leahy presided.

The Board accepted the following into evidence:

State's Exhibit 1: Facility memo: Nurse manager to district manager re: Respondent;
State's Exhibit 2: Facility memo: Mary Krahn-Schliecher to nursing staff, 25 April 2007;
State's Exhibit 3: Respondent's answer to State's charges dated: 18 May 2008;
State's Exhibit 4: undated handwritten notes from Facility produced by Respondent;
Resp'nd Exhibit A: Springfield Hosp. letter of recommendation signed by nurse manager and clinical leader of medical surgical unit.

In addition to the Respondent's testimony, the Board heard testimony from Robert Begley district manager for Prison Health Services, Charleen Kolenda, Facility nurse and Mary Krahn-Schliecher, nurse manager at Southern Vermont Correctional Facility in Springfield, VT.

Summary:

This matter arises out of allegations of unprofessional conduct related to Respondent's employment at the Southern Vermont Correctional Facility in Springfield, Vermont (the "Facility") in 2007.

After a review of the full evidentiary record, the Board found that the Respondent engaged in unprofessional conduct. The Board determined that the Respondent violated 3 V.S.A. §129a (b) by failing to abide by essential standards of acceptable and prevailing practice. The Board found that the record did not support three of the State's charges and it therefore dismissed charges of violating 3 V.S.A. § 129a(a)(3) (violating laws

governing nursing); 26 V.S.A. § 1582(a)(3) (licensee not competent to practice nursing); and 26 V.S.A. § 1582 (a)(7) (fraud or deception against the public).

In light of the Board's findings of fact and conclusions of law, it voted to impose practice conditions on the Respondent's license to protect public safety.

Findings of Fact

1. The Board licenses the Respondent and may exercise its disciplinary authority if the Board finds that the State has proven allegations of Respondent unprofessional conduct. 26 V.S.A. Chapter 28; 3 V.S.A. § 129(a); the Admin. Rules for the Bd. of Nursing and the Admin. Rules for the Office of Prof. Reg.
2. Respondent holds a Board issued State of Vermont practical nursing (LPN) license.
3. The Respondent denies the factual allegations set forth in the Specification of Charges filed by the State of Vermont on 29 April 2008.
4. 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).
5. The issue for the Board, therefore, is whether the State met its evidentiary burden in the presentation of this case. If the State's evidence meets this burden, then the legal issue becomes whether the facts, as determined from the evidence received at the hearing, demonstrate a violation(s) of the unprofessional conduct statutes governing the Respondent's licensed practice.
6. The primary factual allegation is that on "July 8, 2007, the Respondent 'pre-poured' [over the counter medications]" prior to administering a medication pass to Facility inmates ("patients") who may have needed medication such as antacids, acetaminophen and naproxen.
7. The State brings four (4) statutory charges of unprofessional conduct based on its factual allegations. The State alleges the Respondent violated:
 - (i) 26 V.S.A. § 1582(a)(3) (is unable to practice nursing competently by reason of any cause);
 - (ii) 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. Failure to practice competently includes . . . failure to conform to the essential standards of acceptable and prevailing practice.)
 - (iii) 3 V.S.A. § 129a (a)(3) (failing to comply with laws governing nursing practice); and

(iv) 26 V.S.A. § 1582 (a)(7) (conduct likely to deceive or defraud the public).

Charges at ¶7 (i) - (iv).

8. At the hearing, the Board received conflicting accounts of the events and circumstances surrounding the medication pass on or about 8 July 2007; and the Board heard conflicting accounts regarding the Facility's medication administration processes.

9. The Respondent testified that she did not pre-pour medications for multiple patients as alleged by the State.

10. The evidence showed that in July of 2007, Mary Krahn-Schliecher, as nurse manager for the facility, learned of OTC medication co-mingling in medication storage containers. This was the second discovery of co-mingled OTC medication in the Facility's "Foxtrot" wing.

11. As a result of this contamination, Ms. Krahn-Schliecher removed containers of acetaminophen and naproxen from the "Foxtrot" wing of the Facility.

12. Ms. Krahn-Schliecher investigated the matter by reviewing work schedules and discussing the situation with nurses working on the particular wing of the Facility.

13. As part of her review of the situation, Ms. Krahn-Schliecher discussed the matter of co-mingled OTC medications with the Respondent. According to Ms. Krahn-Schliecher's testimony and a memorandum she wrote at the time (State's Ex. 1), Ms. Krahn-Schliecher explained that the Respondent admitted that "perhaps she had inadvertently mixed the medications." *Id.*

14. Upon finishing her investigation into the matter, Ms. Krahn-Schliecher determined that Respondent had poured OTC medications prior to performing the medication pass for the patients that might need them on an "as needed" or "PRN" basis.

15. By a preponderance of the evidence, the Board finds that the Respondent placed OTC medications in one or more containers prior to medication pass in case patients needed certain medications such as naproxen, acetaminophen or antacids. This resulted in comingling of the OTC medications when surplus medication was returned to original containers subsequent to the medication pass.

16. The witnesses, Ms. Krahn-Schliecher, Mr. Begley, Charleen Kolenda (who initially discovered the co-mingled OTC medications) and the Respondent agreed that it violates acceptable and prevailing nursing practice standards to pre-pour, potentially for administration to multiple patients, as-needed OTC medications prior to a medication pass. Thus while the testimony varied as to what happened, the witnesses were generally agreeable about what should and should not happen.

17. By a preponderance of the evidence, the Board finds the account of events presented by Ms. Krahn-Schliecher to be the most likely and the most complete account

of the July 2007 events. Her testimony supports the allegations in the State's Charges. See 3 V.S.A. §129a (c).

18. The Board therefore finds that the Respondent pre-poured the OTC medications into containers for patients as explained by Ms. Krahn-Schliecher's testimony.

19. The Board also finds that the Respondent's conduct is unprofessional conduct that warrants conditional licensure.

Conclusions of Law:

20. The State charges Respondent with violating 3 V.S.A. §129a (b)(1) (unsafe patient care may be unprofessional conduct) and (b)(2) (failing to conform to essential standards of acceptable and prevailing practice of nursing may be unprofessional conduct). The Board finds that the Respondent violated this statute for the reasons stated in the Board's findings of fact.

21. Under the circumstances of this case, and considering that the evidence demonstrates medication became co-mingled as a result of Respondent's conduct, the Board further finds that the Respondent's conduct rises to unprofessional conduct in violation of 3 V.S.A. §129a (b).

22. Regarding 26 V.S.A. § 1582(a)(3) (is unable to practice nursing competently by reason of any cause), the Board's order shall dismisses this charge. There is no reason to conclude that the Respondent unable to practice as a nurse. While the Board is concerned about her practice and will impose conditions on her license, the Board does not find the State's evidence supports the legal conclusion that Respondent is "unable to practice nursing." *Id.* Additionally, the Respondent produced evidence from her current employer, Springfield Hospital, demonstrating that she has worked there competently for almost a year, and hospital medical professionals described her as a competent nurse who treats patients with "respect" while providing quality care.

23. Regarding 26 V.S.A. § 1582(a)(7) (conduct likely to deceive or defraud the public), the Board's order shall dismiss this charge as well. This case is about practice errors, and there is nothing in the record to indicate deception or fraudulent conduct.

24. Relative to 3 V.S.A. §129a (a)(3), the Charges do not identify a state or federal law governing nursing practice that the Respondent allegedly violated. The Board therefore has no reason to consider this charge of unprofessional conduct.

ORDER

Based on the findings of fact and conclusions of law set forth above, the Board of Nursing therefore finds that the Respondent engaged in UNPROFESSIONAL CONDUCT in violation of 3 V.S.A. §129a (b); and

The Board ORDERS that the Respondent take a course with emphasis on medication administration; and

The Board ORDERS that the Respondent comply with the CONDITIONS OF LICENSURE as outlined in Appendix A attached to this Order for a period of TWO YEARS and until removed by this Board; and

The Board DISMISSES the three individual statutory charges of violating (i) 3 V.S.A. §129a (3); (ii) 26 V.S.A. § 1582(a)(3); and (iii) 26 V.S.A. § 1582(a)(7).

- END -

(signature page to follow)

Vermont Board of Nursing:

By:

E. Leff
Ellen W. Leff
Board Vice-Chairperson

Date:

10-19-08

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 10/22/08

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/admrule.pdf> and the Rules are also 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.

APPENDIX A

Consistent with the preceding Board Order entered *In re Andrea H. Nickerson*, the following conditions shall apply to the practical nursing license of Respondent Andrea Nickerson (Licensee).

- (a) The Respondent's Board issued LPN license shall be re-issued labeled "conditioned."
- (b) These conditions shall remain in place until Licensee has completed all conditions ordered.

Licensee shall be subject to the conditions until completion of two (2) years of supervised licensed practical nurse practice in which Licensee works at least forty (40) hours every two (2) weeks as a licensed practical nurse.

Licensee shall receive credit on a prorated basis for part-time hours of less than forty (40) hours every two (2) weeks.

- (c) Notification to Employers: Licensee shall provide a copy of this Order to all employers in any current or future setting in which she practices as a licensed practical nurse and inform them of the conditional license status. Within ten (10) days of the date of entry of this Order or of any subsequent employment, Licensee shall cause her immediate supervisor to write to the Board, on the employer's letterhead, acknowledging receipt of the Order and the ability to comply with the conditions in the Order.

- (d) Reports from Employers: Within one (1) month of the date of entry of this Order and monthly thereafter, Licensee shall cause every employer Licensee has worked for during the relevant period as a licensed practical nurse to submit to the Board an evaluation of Licensee's performance during that period. This report shall be on forms issued by the Board.

- (e) In the event the Licensee is attending a nursing program, Licensee shall cause the Program Director to write to the Board, on school letterhead, acknowledging receipt of this Order and ability of the program to comply with the conditions in the Order during clinical experience.

- (f) Practice Under Supervision: Licensee shall practice only in a setting where Licensee has direct supervision for the entire shift by a licensed nurse in good standing.

- (g) Types of Employment Prohibited: Licensee 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.

- (h) License Renewal: In the event Licensee's license is scheduled to expire during the period this Order is in effect, Licensee shall apply for renewal of the license, pay the

applicable fee, and otherwise maintain qualifications to practice as a nurse in the State of Vermont.

- (i) Course in Medication Administration: Licensee shall successfully complete a course in medication administration within ninety (90) days of the entry of this order.
- (j) Completion of Conditional License Period: Upon completion of the conditional license period, Licensee may request the Board to remove the conditions.
- (k) Upon receipt of petition to remove conditions, the Board will consider removing the conditions on Licensee's practical nursing privileges and restoring full privileges of licensure. Licensee shall demonstrate that she fully complied with all terms of this Order. If the Licensee demonstrates, to the Board's satisfaction, compliance with all conditions set forth in the Board's order, the Board will remove these conditions.

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