VERMONT SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF NURSING

In re: Donna M. O'Dell }
License No. 025-0008211 } Docket File No. NU01-0705

FINDINGS OF FACT CONCLUSIONS OF LAW & ORDER

On 13 March 2006, this matter came before the Vermont Board of Nursing for a disposition hearing. Board members Kenneth W. Bush, Susan O. Farrell, Chairperson, Donarae Metcalf, Sandra Norton, Linda Rice, and Alan Weiss participated. Board member Ellen W. Leff participated in the investigation and recused herself from participating in this decision. Prosecuting attorney Edward G. Adrian represented the State of Vermont. The Respondent appeared *pro se*. Board counsel Kevin F. Leahy presided.

Findings of Fact &
Conclusions of Law:

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

2. At all relevant times, Brookside Health & Rehab located in White River Junction Vermont (the "Facility") employed the Respondent.

3. The State of Vermont alleges, and the Respondent denies, that on 2 July 2005, she left a medication car unlocked and unattended in a hallway. *See* Specification of Charges, dated 7 December 2005 at ¶¶s 4, 5 and 6 (attached).

4. The State charges the Respondent with violating 26 V.S.A § 1582(a)(3) (is unable to practice nursing competently); 3 V.S.A. § 129a.(a)(3) (failure to comply with state or federal statutes related to practice of profession); and 3 V.S.A. § 129a.(b) (failure to practice competently by reason of any cause on a single occasion . . . may constitute unprofessional conduct).

5. 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).

6. The State's position in the hearing on this matter was that its evidence supported a finding of unprofessional conduct, and the conduct warranted a reprimand.

7. At the hearing, the state called three witnesses and the Respondent testified as well. The Respondent also submitted along with her Answer to the State's Charges a statement by Vickie Darling attesting to an incident occurring on the

date in question. The Respondent's Answer also contained a letter of recommendation from Dottie Ruderman, an administrator at the Facility. The Board also accepted into evidence nursing notes, written by two of the State's witnesses, that recall events on the date in question (State Exhibits 4 and 5).

8. Among the witnesses testifying for the state were Lisa Mattoon and Theresa Hayden, both licensed nursing assistants, who stated that they found a medication cart, for which the Respondent was responsible, unlocked and unattended in a hallway at the facility.

9. Both Ms. Mattoon and Ms. Hayden testified that the cart was unlocked and accessible to residents. They further stated that they alerted the Respondent to the situation, but she waited several minutes to return and secure the cart.

10. Both Ms. Mattoon and Ms. Hayden wrote incident reports regarding the events charged against the Respondent. State Exhibits 4 and 5.

The Respondent's memory of the events occurring on 2 July 2005 differs from Ms. Mattoon and Ms. Hayden.

12. The Respondent testified that she was responding to an emergency and that she locked the cart prior to leaving it unattended. The Respondent further testified that it is always her practice to lock the cart when she leaves it unattended such as, for instance, when she enters a patient's room.

13 All the witnesses agree that the cart was unattended. The disagreement centers on whether the Respondent locked the cart and the reason why the cart was unattended at this particular time.

14. There was testimony from all witnesses that some type of disturbance occurred at the facility this particular day, which distracted the Respondent from her duties.

15. However, it is not clear to the Board that the disturbance occurred at the same time the cart was found by Ms. Mattoon and Ms. Hayden. On balance, while the Board accepts that there was a disturbance of some sort on the day in question, we do not find that it caused the Respondent to leave her cart unattended.

16. Furthermore, the Board also finds the evidence given by the State's witnesses, that the cart was unlocked on this particular occasion, to be credible. The Board further finds to be credible the memories of Ms. Mattoon and Ms. Hayden who recalled a failure on the part of the Respondent to remedy the situation quickly after becoming aware that the cart was unlocked. State's Exhibits 4 and 5.

17. Based on the weight of credible testimony, the Board finds by a preponderance of the evidence that, on 2 July 2005, the medicine cart for which the Respondent was responsible, was both unattended and unlocked.

18. The Board finds that the state has met its burden by a preponderance of the evidence of showing that the Respondent performed unsafe and unacceptable patient care on a single occasion.

19. While failure to practice competently on a single occasion *may* be unprofessional conduct, in this case the Board determines that the Respondent's conduct *does* rise to the unprofessional level thus warranting discipline. 3 V.S.A. § 129a.(b).

20. In light of these findings, the Board accepts the State's recommendation of a reprimand rather than warning since the Board determines that it appropriately reflects the severity of this single act.

21. Finally, the Board dismisses the charge that the Respondent violated 26 V.S.A § 1582(a)(3) (is unable to practice nursing competently). As noted above, the State argued that its evidence warranted a reprimand. The State did not argue, and the Board did not receive into evidence, anything indicating that the Respondent was "unable to practice nursing." Title 26 § 1582(a)(3) is therefore inapplicable to this case. Also, relative to 3 V.S.A. § 129a.(a)(3) (failure to comply with state or federal statutes related to practice of profession), the state did not seek to admit evidence that the Respondent violated any statute other than the one (3 V.S.A. §129a.(b)) with which she was charged and which the Board has already considered. The Board does not, therefore, need to evaluate a potential violation of 3 V.S.A 129a.(a)(3).

Order:

Based on the evidence before the Board and in light of its findings of fact and conclusions of law, the Vermont Board of Nursing ORDERS the Respondent's license be REPRIMANDED.

Vermont Board of Nursing:

By: Susan O. Farrell Date: 4/27/06
Susan O. Farrell, RN, Chairperson

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 5/1/06

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:	)	
DONNA M. O'DELL	)	**DOCKET No. NU01-0705**
License No. 025-0008211	)	

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Donna M. O'Dell, L.P.N.:

Board Authority

1. The Vermont State Board of Nursing ("the Board") has authority to issue warnings or reprimands, suspend, revoke, limit, condition current licenses, or prevent the renewal of lapsed licenses if, after disciplinary hearing, the Board finds that the Respondent has engaged in unprofessional conduct. 3 V.S.A. §129(a); 3 V.S.A 129a; 3 V.S.A. §814(d); 26 V.S.A. §1582; the Administrative Rules of the Board of Nursing ("ARBN"); and the Rules of the Office of Professional Regulation.

Statement of Facts

2. Donna M. O'Dell (the "Respondent") of Monroe, New Hampshire is a licensed practical nurse holding license number 025-0008211, issued by the State of Vermont. This license was originally issued on or about August 13, 2002 and is set to expire on January 31, 2006.

3. At all times relevant, Respondent was employed as a licensed practical nurse at Brookside Health & Rehab ("the Facility") located in White River Junction, Vermont.

4. On or about July 2, 2005, the Respondent left a medication cart unlocked and unattended in a hallway of the Facility. Two L.N.A.s, T.H. and L.M., discovered the unlocked cart and noted a plastic cup containing pills on top of the cart as well as a card of pills lying next to the plastic cup.

5. After redirecting a resident who approached the cart, L.M. located the Respondent and asked the Respondent if she would like L.M. to put the pills away and lock the cart. Respondent told L.M. no, that she would be right there.

6. L.M. and T.H. attended the cart until Respondent returned approximately ten minutes later.

STATE OF VERMONT

Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

Charges

7. The acts, omissions and/or circumstances described above constitute grounds for discipline because the Respondent has committed unprofessional conduct in violation of:

(i) 26 V.S.A. § 1582(a)(3) (is unable to practice nursing competently by reason of any cause) which includes, but is not limited to, performing unsafe or unacceptable patient care and failing to conform to the essential standards of acceptable and prevailing nursing practice pursuant to ARBN Chapter 4, Rule IV(II)(B)(1) and (2); and

(ii) 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); and

(iii) 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: (1) performance of unsafe or unacceptable patient care; or (2) failure to conform to the essential standards of acceptable and prevailing practice).

Relief Requested

WHEREFORE, the license of Donna M. O'Dell should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

DATED at Montpelier, Vermont this 7th day of December, 2005.

STATE OF VERMONT
SECRETARY OF STATE

By: _____
Edward G. Adrian
State Prosecuting Attorney

nu.odell.soc

STATE OF VERMONT

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