STATE OF VERMONT
BOARD OF NURSING

IN RE:	)	
Myrtle R. Pierce	)	Case File No. NU18-0803
License No. 25-3127	)	

ORDER

Introduction

The Vermont Board of Nursing ("the Board") held a special hearing in this case on Monday, June 27, 2005 at 81 River Street in Montpelier, Vermont. Board members Laurey Tyo, De-Ann Welch, Alan Weiss, Sandra Norton and ad hoc member Michelle Walker participated in the decision. Edward Adrian, Prosecuting Attorney, appeared for the State. Myrtle Pierce ("the Respondent") was present and was not represented by counsel. Christopher Winters presided for the Board.

At the start of the hearing, the parties agreed upon exhibits which were admitted into evidence by the Board. State's 1-6 were admitted, as were Respondent's A-J.

Stipulated Findings of Fact

1. The Respondent is a licensed practical nurse who holds license number 25-3127 issued by the State of Vermont.

2. The Respondent, at all times relevant, was employed as a licensed practical nurse by Correctional Medical Services, Inc., at the Dale Correctional Facility in Waterbury, , Vermont.

3. On or about September 19, 2002, the Respondent approached patient L.H. who was having a "seizure." L.H. had a history of seizures and "psuedo-seizures." A psuedo-seizure, like a standard seizure, is not faked and does result in a shaking of extremities. The patient believes and feels she is having a seizure.

4. The Respondent did an arm-drop test and a foot-test. Based on these, and the history of this patient, she believed the inmate was faking the seizure.

5. Respondent loudly stated to L.H. "come on cut this out, come on" and "you're faking." The Respondent also told L.H. "if you don't stop, you're going back to Chittenden."

This was intended to make L.H. stop "faking" a seizure.

6. The Chittenden Facility was referred to as a more "jail-like" facility, was faster paced, and not as comfortable as the Dale Facility. Dale was generaly preferred among the inmates and this particular inmate, L.H., did not want to go to the Chittenden Correctional Facility and feared being transferred there.

7. M.G. suffered from chronic pain. She was consistently asking for more pair medication and wanted pain medication as needed at night. There was no staff to provide M.G. with nighttime pain medication at Dale, and there was such staff at Chittenden.

8. One of the physicians indicated to the Respondent that if they could not get M.G.'s pain medications right and alleviate her pain at night, they would be forced to send this inmate to Chittenden where she could receive 24 hour care. The physician expected that the Respondent would repeat this information to the patient at some point.

9. On or about June 9, 2003, the Respondent told patient M.G. she would go "back to Chittenden" if M.G. did not stop complaining about pain M.G. was suffering.

10. On or about July 9, 2003, the Respondent incorrectly gave patient D.P. 30 mg of Methadone, when the prescribed dose was 20 mg.

11. Often times, there was much commotion around the medication cart. The inmates would crowd the cart and would not stay in line. Additionally, the medication charts were not in order on occasion. The Respondent cannot say for certain whether these circumstances contributed to this medication error.

12. On or about July 25, 2003, the Respondent instilled Debrox into the ear of client M.S. without having a physician order to do so, and after M.S. had informed the Respondent not to put the solution into M.S.'s ear because of a hole in M.S.'s eardrum.

13. The Respondent, immediately before attempting the Debrox solution, had previously attempted a different solution in M.S.'s ear which M.S. indicated caused her pain.

14. There was testimony about a protocol allowing ear irrigation, but the protocol could not be produced nor could any of the other nurses from the facility recall the specifics of the protocol. There was testimony that the physician should have been called prior to attempting this procedure with the Debrox on this inmate.

15. The Respondent's act of instilling the solution into M.S.'s ear caused M.S. severe pain, who described the solution as running into her neck. M.S. went to the emergency room and was on antibiotics for several days afterward.

16. The Respondent was trying to irrigate the inmate's ears so that she could have an appointment with an audiologist.

Conclusions of Law

A. The Board of Nursing may revoke, suspend, discipline or otherwise co the license of a nurse who engages in unprofessional conduct as defined by 26 V.S.A.

B. Respondent, by engaging in the conduct described above, has committed unprofessional conduct by failing to comply with provisions of federal or state statutes or r governing the practice of the profession in violation of 3 V.S.A. §129a(a)(3) and 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 the Administrative Rules of the Board of Nursing, Chapter 4, Rule IV(II)(B)(1), and failing to conform to the essential standards of acceptable and prevailing nursing practice pursuant tc Administrative Rules of the Board of Nursing, Chapter 4, Rule IV(II)(B)(2).

C. More specifically, the Respondent committed unprofessional conduct in the above statutes and rules in that she:

(1) Inappropriately "threatened" to send an inmate to another facility whe inmate was having a seizure, false or not, and inappropriately accusing the inmate of "fa " the seizure when that inmate had a medical history of such seizures, whether standard or "psuedo-seizures."

(2) Inappropriately "threatened" to send an inmate to another facility becat she was complaining about her pain. Whether intended as a threat or not, this inmate, as as the previous inmate, took it as such.

(3) Gave 30 mg of Methadone when the prescribed dose was 20 mg.

(4) Went beyond her scope of practice in irrigating the ear of an inmate wit Debrox, without a physician's order, despite knowing the inmate had previously ruptured eardrum and had already indicated pain when another solution was used in the ear.

Opinion

While one medication error alone, or one instance of inappropriate behavior would certainly not constitute unprofessional conduct, the accumulation of several instances demonstrates a pattern of behavior which must be addressed by this Board.

Most serious of the violations is the way in which the Respondent exceeded her scope pf practice in looking into the inmate's ears, making an assessment, and then attempting to irrigate the ears. This should not have been done without a physician's order. The "threats" to send the inmates to other less favorable facilities, whether intentional or not, were perceived as such. There is a particular danger in this kind of inappropriate behavior: it may lead the

inmates to under report their pain or their medical problems for fear of transfer. This is no in the best interest of the clients.

Order

A. In light of the above findings and conclusions, the Board hereby CONDITIONS the Respondent's license for A MINIMUM OF ONE (1) YEAR from the date of entry of this Order. The CONDITIONS are as follows:

(1) Length of Time Conditions Imposed.

The conditions shall remain in place until Respondent has completed all conditions ordered. Respondent shall be subject to the conditions until Respondent completes one (1) year of supervised nursing practice in which Respondent works at least forty (40) hours every two (2) weeks as a nurse. Part time hours of less than forty (40) hours every two (2) weeks shall be credited on a prorated basis.

Course Work.

Respondent must complete (i.e.: receive a passing grade, if applicable) a course on: (1) the scope of practice of the licensed practical nurse; and (2) dealing with difficult patients. All courses shall have prior approval by the Board or its designee. The Respondent shall submit written documentation (certificate of completion, etc.) to verify completion to the satisfactic of the Board or its designee.

Notification to Employers.

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

Reports from Employers.

Within one (1) month of the date of entry of this Order and monthly thereafter, Respondent shall cause every employer Respondent has worked for during the relevant time period to submit to the Board an evaluation of Respondent's performance and attendance during that time period. This report shall be submitted in writing on forms issued by the Board.

Respondent shall sign a consent, upon request of the Board, to authorize Respondent's employer to provide all information requested by the Nursing Board, or its designee, either orally or in writing, at any time during the period the Order is in effect.

(5) Practice Under Supervision.

Respondent shall practice only in a setting where Respondent has on-site supervision for the entire shift by a registered nurse that is licensed and in good standing.

(6) Types of Employment Prohibited.

Respondent 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. The Respondent shall work no more than forty (40) hours per week.

(7) License Renewal.

In the event Respondent's license is scheduled to expire during the period thi Order is in effect, Respondent 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.

(8) Costs.

Respondent shall bear all costs of complying with this Order.

(9) Violation of Order.

If Respondent violates the terms of this Order in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke the terms of the conditional license and take further disciplinary action. If a complaint or charges are filed against Respondent during the term of this Order, the conditional license period shall be extended until the matter is final.

(10) Completion of Conditional License Period.

Upon completion of the conditional license period, Respondent may petition the Board to remove any and all conditions and after formal review by the Board, Respondent's nursing license may be formally restored by appropriate Board action. Respondent shall demonstrate, to the Board's satisfaction that Respondent fully complied with all the terms of this Order. If the Respondent demonstrates to the Board's satisfaction compliance with all conditions, then any and all conditions shall be removed.

B. 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).

C. This Order will remain part of Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

Appeal Rights

This is a final administrative determination by the Vermont Board of Nursing. You may appeal by sending a notice of appeal in writing to the Director of the Office of Professional Regulation within 30 days of the date of entry of this order. If you wish to request a stay of the Board's decision, please refer to the attached stay instructions.

By: Laurey M. Tyo RN Date: 7-10-05
Laurey Tyo, R.N.
Acting Board Chair

OFFICE OF PROFESSIONAL REGULATION

Date of entry: 7/20/05

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

IN RE:	)	
MYRTLE R. PIERCE	)	**Docket No: NU 18-0803**
License No. 025-0003127	)	

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Myrtle R. Pierce, 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)(5); 3 V.S.A. §814(d); 26 V.S.A. §1582(a); Administrative Rules of the Board of Nursing.

2. 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).

3. The inability to practice nursing by reason of any cause is unprofessional conduct upon which the Board can base disciplinary action. 26 V.S.A. §1582(a)(3).

4. The inability to practice nursing competently includes the performance of unsafe or unacceptable patient care pursuant to the Administrative Rules of the Board of Nursing, Chapter 4, Rule IV(II)(B)(1), and failing to conform to the essential standards of acceptable and prevailing nursing practice pursuant to the Administrative Rules of the Board of Nursing, Chapter 4, Rule IV(II)(B)(2).

Facts

5. The Respondent is licensed in the State of Vermont as a Licensed Practical Nurse under license number 025-0003127.

6. The Respondent's license is currently set to expire on January 31, 2006.

7. At all times relevant, the Respondent was employed as an L.P.N. by Correctional Medical Services, Inc. at the Dale Correctional Facility in Waterbury, Vermont.

STATE OF VERMONT

Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

8. On or about September 19, 2002, the Respondent approached patient L.H. who was having a seizure, and who had a history of seizures, and Respondent loudly stated to L.H. "come on cut this out, come on" and "you're faking". The Respondent also told L.H. "if you don't stop, you're going back to Chittenden".

9. On or about June 9, 2003, the Respondent threatened to send patient ~~M.H.~~ M.G. "back to Chittenden" if ~~M.H.~~ M.G. did not stop complaining about pain ~~M.H.~~ M.G. was suffering.

10. On or about July 9, 2003, the Respondent incorrectly gave patient D.P. 30 mg of Methadone, when the prescribed dose was 20 mg.

11. On or about July 25, 2003, the Respondent instilled Debrox into the ear of client M.S. without having a physician order to do so, and after M.S. had informed the Respondent not to put the solution into M.S.'s ear because of a hole in M.S.'s eardrum.

12. The Respondent's act of instilling the solution into M.S.'s ear caused M.S. severe pain. Due to this pain, M.S. had to be sent to the emergency room at Central Vermont Hospital.

Charges

A. The above 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 the Administrative Rules of the Board of Nursing, Chapter 4, Ru IV(II)(B)(1), and failing to conform to the essential standards of acceptable and prevailing nursing practice pursuant to the Administrative Rules of the Board of Nursing, Chapter 4, Rule IV(II)(B)(2); and

(ii) 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 Myrtle R. Pierce should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

Dated at Montpelier, Vermont this 16th day of March 2004.

OF STATE

By:

STATE OF VERMONT

Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

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State of Vermont
Secretary of State's Office
Office of Professional Regulation
Prosecuting Attorneys

August 30, 2005

Christopher Winters, Esq., OPR Director
Vermont Secretary of State's Office
26 Terrace Street
Montpelier, Vermont 05609-1101

Re: Appeal of Myrtle R. Pierce

Dear Chris:

The parties have reached the following understanding in respect to the above referenced matter. It is the State's position that the July 20, 2005 Order of the Board of Nursing prohibiting employment as a "personal care provider"is not applicable to Ms. Pierce's current employment as a Personal Care Attendant through Addison County Home Health and Hospice (Attachment A). Therefore, she may continue in this capacity or in a similar capacity without being in violation of the July 20, 2005 Order. I have discussed this interpretation with the executive director of the Board of Nursing and she is willing to agree with this construction.

Therefore, the parties have reached the following agreement: 1) the State agrees to abide by the representation above; 2) based on this representation the Respondent shall withdraw her appeal; 3) the State's representation shall be in effect for the duration of the Board's Order; 4) if the Respondent fails to withdraw her appeal, the State's representation shall be null and void; and 5) the State reserves the right to investigate and if necessary prosecute any reports that the Respondent has exceeded the scope of the job description of a Personal Care Attendant as outlined in Attachment A.

Thank you for your understanding in this matter. For now, I remain,

Very truly yours,

Edward G. Adrian

cc: Mitchell L. Pearl, Esq.
Anita Ristau, Executive Director

NU343.cor.wpd

Addison County Home Health & Hospice, Inc.

PERSONAL CARE ATTENDANT

Responsible to
Medicaid Waiver Coordinator

Description
Provides support services, under the supervision of the appropriate professional staff, to maintain, strengthen and safeguard the care of patients who have been accepted into the Medicaid Waiver Program.

RESPONSIBILITIES

Assessment:

1. Applies safety principles and proper body mechanics in the performance of specific techniques of personal and supportive care.
2. Recognizes emergency situations and follows appropriate emergency procedures when indicated.

Planning:

1. Demonstrates basic infection control procedures and follows agency guidelines especially with regard to handling of hazardous wastes.
2. Renders services in strict accordance with the written plan of care.

Implementation:

1. Provides personal care service, such as:
   - maintaining a clean, safe and healthy environment
   - bed, sponge, tub, or shower bathing
   - shampooing in sink, tub or shower
   - caring for nails and skin
   - oral hygiene
   - assisting with toileting and elimination
2. Prepares and provides adequate nutrition and fluid intake and/or prepares medically prescribed diets under the direction of the Medicaid Waiver Case Manager or primary RN.
3. Gives simple emotional support to patient and family.
4. Performs homemaking and other environmental services that facilitate sanitary and safe care at home. Routine housework including but not limited to: laundry, mopping, dusting.
5. Observes, reports and documents changes in patient status to the Medicaid Waiver Case Manager or primary RN.
6. Maintain records and keep activity records current, submits paperwork and daysheets according to agency guidelines.
7. Performs support services, such as meal preparation, laundry, grocery shopping and errands

Attachment A

within the guidelines of the written plan of care.

8. When necessary provides transportation to appointments and for family functions or outings

Evaluation:

1. Attends inservice programs according to agency guidelines as directed.

PROFESSIONAL BEHAVIORS

Assessment:

1. Understands the mission of the agency and the role of the individual employee in carrying out the mission.
2. Demonstrates consistently the ability to use critical thinking skills for decision making and problem solving.

Planning:

1. Demonstrates the ability to be self directed; completes work and documentation in an organized, efficient manner.
2. Demonstrates awareness of and adherence to agency policies and procedures.
3. Maintains and conserves agency resources.

Implementation:

1. Represents the agency in a professional manner both in appearance and behavior.
2. Maintains patient, co-worker and agency privacy and confidentiality at all times.
3. Follows the Agency Corporate Compliance Plan and the Agency HIPAA Regulations.
4. Demonstrates the ability to communicate effectively with individuals and within groups.
5. Demonstrates the ability to work collaboratively with individuals and within groups.
6. Demonstrates adaptability, flexibility, self control and maturity in job performance and behavior.

Evaluation:

1. Assumes responsibility for pursuing and obtaining appropriate continuing education opportunities.

QUALIFICATIONS

1. Educational: Must be 18 years of age.
2. Licensure: Valid drivers license.
3. Experience: Takes oral and written instructions well; can read and write. Works in a team responsibly and independently without direct supervision. Records observations and activities. Good communication skills.
4. Knowledge and Abilities:
   a. Demonstrates knowledge and skills necessary to provide care to and communicate with

individuals over the life span.

b. Shows an interest in and an aptitude for working with the sick, disabled or elderly in their homes.

DEGREE OF TRAVEL

Home visits daily. Periodic office meetings. Must have reliable transportation and agency-required liability insurance.

DEGREE OF DISRUPTION TO ROUTINE, OVERTIME

Must be able to adapt to frequent schedule changes, based on patient needs, staffing, weather and environmental conditions and new patients.

SAFETY HAZARDS IN JOB

May be required to lift patients and/or equipment. Possible infection from patients and their home setting, exposure to potentially hazardous secretions or environments. Possible auto accidents, hazardous winter driving conditions.

Revised: 10/97 Board Endorsed: 11/11/97
Revised: 11/21/02