

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

<i>In re</i>	Glen S. Rudolph	}
License No.	025-0 007827	}
Docket No.	NU51-1107	}

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

On Monday 8 December 2008, the Vermont Board of Nursing (Board) heard this contested case of alleged unprofessional conduct. The State of Vermont brought a Specification of Charges ("Charges") dated 23 June 2008 against Respondent Glen S. Rudolph.

Board members Jeanine Carr, Ellen W. Leff (Vice Chairperson), Sandra J. Norton, Alan H. Weiss, DeAnn Welch and William White were present and participated in the hearing. Board member Linda M. Y. Rice recused herself from the proceedings.

The Respondent appeared without counsel. Edward G. Adrian represented the State of Vermont. Board counsel Kevin F. Leahy presided.

Summary:

This matter arises from allegations of unprofessional conduct related to Respondent's employment at the Starr Farm Nursing Center (the "Facility") located in Burlington, Vermont. Respondent worked at the Facility until November 2007.

The State alleges that the Respondent engaged in a pattern of behavior that created a hostile environment for his co-workers. The behavior involved inappropriate touching of female co-workers. The parties and the witnesses disputed whether the touching was unwanted or created either a hostile or an unprofessional environment.

After a review of the full evidentiary record, the Board found that Respondent engaged in unprofessional conduct. The Board determined that the Respondent's behavior was inappropriate and disrespectful in a professional work environment. The conduct was a potential risk to the delivery of patient care.

The Board therefore found in favor of the State of Vermont and determined that the Respondent engaged in unprofessional conduct in violation of 3 V.S.A. §129a.

In light of the Board's factual findings and conclusions of law, the Board voted to sanction the Respondent for conduct reasonably expected to create unsafe patient conditions.

Findings of Fact &
Conclusions of Law:

1. The Respondent previously held a Board issued State of Vermont practical nursing (LPN) license.
2. The Respondent also holds a New York license.
3. The Respondent let his Vermont license lapse in January 2008 and has not practiced in Vermont since that time.
4. The facts giving rise to this disciplinary case occurred while Respondent held an active Vermont license. This order pertains to the period when the Respondent's Vermont LPN license was active.
5. The Board of Nursing may exercise disciplinary authority if the Board finds that the State has proven allegations of licensee unprofessional conduct. 26 V.S.A. Chapter 28; 3 V.S.A. § 129(a); the Admin. Rules for the Bd. of Nursing ("Nursing Rules") and the Admin. Rules for the Office of Prof. Reg. ("OPR Rules").
6. The primary factual allegations contained in the State's Charges are that:
 - (a) Respondent is alleged by female co-worker ("Nurse J") to have been belligerent toward a subordinate coworker and to have cursed at subordinate health care provider. Respondent is alleged to have said "I can make your job hell" to a subordinate. The State alleges that the Respondent's co-worker asked the Facility to schedule her so that she would not have to work with the Respondent. *Charges* at ¶ 5-6
 - (b) Female co-worker ("Nurse P") said that Respondent patted her on the buttocks. *Charges* at ¶7-8.
 - (c) Female co-worker ("Nurse W") alleged that the Respondent engaged in inappropriate back rubbing and touching in the hallways of the Facility. *Charges* ¶11.

See, generally, Charges at ¶¶ 5-12.

7. 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).

8. The factual issue for the Board is to determine whether the State met its evidentiary burden at the hearing. If the State meets its evidentiary burden, then the Board must determine whether the facts constitute unprofessional conduct in violation of 3 V.S.A. §129a and whether disciplinary action is necessary.
9. Although he denies engaging in unprofessional conduct, the Respondent admitted some of the factual allegations in his Answer to the State's Charges or testimony to the Board. The Respondent acknowledges at least some of the touching. However, he characterizes his conduct as welcome and consistent with the atmosphere at the Facility. He argues that his conduct does not constitute unprofessional conduct within the overall context of the alleged events.
10. The Respondent specifically acknowledged touching his female colleagues in a manner similar to that alleged by the State and he characterized the touching as "giving backrubs" and "hugging."
11. Respondent suggested that his backrubs and hugs and massaging were all part of a Facility culture of mutual support.
12. Three of the Respondent's former colleagues testified.
13. It was uniformly evident from the testimony of these witnesses that his female colleagues did not perceive Mr. Rudolph's behavior as welcome or supportive. To the contrary, while caring for patients/residents, they found his conduct at the Facility to be disturbing or upsetting.
14. LNA "Ms. P," who was supervised by the Respondent at the Starr Farm Facility testified that Respondent walked up behind her and rubbed her. She testified that she "told him not to put his hands on me" and she said that she needed to tell him more than once before he stopped. Respondent was on notice that his conduct was unwanted.
15. Mr. Rudolph testified that he did not do anything intentionally to upset anyone, and he does not remember anyone, including LNA "P," asking him to stop his behavior.
16. Mr. Rudolph testified that he was surprised to hear that his colleagues were upset by his behavior. He stated that he never intended to make his co-workers feel uncomfortable.
17. Respondent's co-workers, LNA "W" and LNA "C," gave credible testimony in support of the State's allegations.
18. LNA W explained how the Respondent did not allow her to move past him in a hallway and gave her unsolicited hugs and rubbed her back. She also testified to seeing him rubbing other female employees.

19. In another instance, LNA W stated that when moving a Facility fan and commenting about the "air blowing" from the fan, Respondent made a crude joke about "blowing him away," which she apparently understood as a reference to fellatio.

20. She stated that witnessing, and receiving, Respondent's touching and massages made her feel uncomfortable.

21. LNA W testified as follows:

Question: Was Mr. Rudolf acting as your supervisor . . . when this behavior occurred?

Answer: "[The Respondent] was one of my supervisors"

Question: Relative to the testimony about making you feel "uncomfortable" because of the touching, "did these feelings [of being uncomfortable] affect how you provided [patient] care or how you were able to communicate with [Respondent] about patient care issues?"

Answer: I would not work on the same shift as [the Respondent] after that. He had switched to, I believe, night shift and I had told them that I would stay and cover some shifts. And after I had covered the shift that I told them I would cover, I told them that if he is on that [the same or adjoining] unit I would not work with [the Respondent].

Hearing Disk No.1 at Minute 36:00-39:00 (questions asked by Board Member Ellen Leff).

22. In light of the evidence, the Board finds that Respondent could not have reasonably interpreted his colleagues' reactions, as he explained at the hearing.

23. Respondent testified that his co-workers accepted his conduct as behavior consistent with an environment of camaraderie among people working closely together in a stressful environment.

24. The testimony that at least one other health care worker would not take certain assignments in the Facility, due to Respondent's physical proximity, underscored the seriousness of the conduct.

25. The co-workers' testimony cast doubt upon Respondent's characterization of the touching. They did not perceive, as Mr. Rudolf did, that his conduct toward them at the Facility reflected "mutual support" or merely camaraderie among health care workers in a stressful environment.

26. The Board finds that the testimony of Respondent's colleagues makes Mr. Rudolph's perception of his conduct untenable.
27. From the preponderance of evidence presented at the hearing, the Board finds that the State met its burden of proof.
28. The State having met its evidentiary burden, the Board must decide whether the facts demonstrate a violation of the unprofessional conduct statutes governing the Respondent's license.
29. The State brings four (4) separate unprofessional conduct charges. The alleged violations are: 26 V.S.A. § 1582(a)(3) & § 1582(a)(4); and 3 V.S.A. § 129a (a)(3) and § 129(b).
30. The Board's decision goes to the charge that Respondent violated 3 V.S.A. § 129a (b) (failure to practice competently on one or more occasions, regardless of whether injury occurs, may be unprofessional conduct). The Board finds that Respondent failed to conform to the essential standards of acceptable and prevailing practice on multiple occasions.
31. The Board will dismiss the other three charges.¹
32. Under Vermont law, violating 3 V.S.A. § 129a (b) "*may* constitute unprofessional practice."
33. The Board finds the Respondent's conduct evidenced a serious deviation from essential practice standards, which rises to a the level of unprofessional conduct.
34. The Board also finds, based on the credible witness testimony presented by the State, that the Respondent should have known his conduct, particularly the touching/rubbing/hugging etc., would be unreasonably upsetting to his colleagues.
35. This evidence demonstrated that the Respondent's behavior caused an unreasonably intimidating environment that potentially risked the delivery of patient care.

¹ The Board dismisses 3 V.S.A. § 129a (a)(3) (violation of laws governing nursing). The "statement of facts" contained within the State's Specification of Charges does not identify a state or federal law governing nursing practice that the Respondent allegedly violated and which could support a charge of violating 3 V.S.A. § 129a (3). The charge of violating 26 V.S.A. § 1582(a)(4) is dismissed for the same reason. Also dismissed is the charge of violating 26 V.S.A. § 1582(a)(3) (not able to practice nursing). The State presented no evidence and did not allege that the Respondent was no longer unable to practice nursing. Rather, the issue was whether his conduct affected the delivery of health care to patients, particularly by other health care providers at the Facility or whether he engaged in unprofessional conduct on one or more occasions.

CONCLUSION

36. The Board is not putting itself in the place of determining what is sexual harassment or any other workplace issue that is not under the Board's jurisdiction.
37. The State argued at the hearing that it was not asking the Board to find that the Respondent engaged in "sexual harassment" as that term is used in employment law. Rather the crux of the State's case was whether the Respondent's behavior was intimidating or unwanted toward co-workers and subordinates to the extent that it did or could have hampered the delivery of patient care.
38. The Board agrees that employment issues belong to other agencies. It is licensee conduct affecting the delivery of patient care that is the purview of the Board of Nursing. It is on this basis that the Board evaluated the Respondent's conduct.
39. Specifically, the question the Board asked is "did the Respondent engage in a pattern of inexcusably harassing or intimidating behavior to the point that his behavior may have hampered the delivery of care to patients?"
40. The board's finding of unprofessional conduct is based on the fact that Respondent crossed an essential professional boundary with co-workers that complicated health care delivery.

ORDER

Based on the findings of fact and conclusions of law set forth above, the Board of Nursing REPRIMANDS Respondent Glen Rudolph's license, which was active until January 2008, for Respondent's unprofessional conduct in violation of 3 V.S.A. §129a(b) while practicing as Vermont licensed practical nurse.

All other charges are DISMISSED.

- END -

(signature page to follow)

Vermont Board of Nursing:

By: Ellen W. Leff
Ellen W. Leff
Presiding Board Member

Date: May 20, 2009

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 5/22/09

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/admnrule.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.