

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

In re SAMUEL I. SALLS
License No. 075.0018316

}
}
} Docket No. 2019-138
}

Appearances:

Prosecutor: Aaron Kisicki, Esq.

Respondent: Did not appear

Hearing Officer: George K. Belcher

DEFAULT ORDER

The Hearing Officer of the Vermont Board of Nursing held a hearing pursuant to 3 VSA Sec. 129(f) in the above matter on November 12, 2019 at the Office of Professional Regulation in Montpelier, Vermont. Respondent did not attend and was not represented by counsel.

Findings of Fact

1. Respondent is a Licensed Nursing Assistant and is therefore subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, 26 V.S.A. Chapter 28, and the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation.
2. Charges were filed in this matter on September 16, 2019. The Respondent was sent a Notice of Charges in this matter by certified mail and first class mail to the address of the Respondent which was on file with the Office of Professional Regulation on September 17, 2019. The certified mail notice of charges was returned unclaimed. The ordinary mail notice was not returned. A copy of the Specification of Charges is attached to this Default Order.
3. OPR Rule 3.3 requires that an Answer be filed within 20 days of the date on which the notice of charges was mailed by the Director.
4. On October 18, 2019 a notice was sent to the Respondent advising of the hearing before the Board to find a default and advising that, "If you wish to contest the charges you must contact the office immediately at (802) 828-2367 and show good cause for failing to answer the charges against you." This notice was mailed by certified mail and regular mail. The certified mail notice and the ordinary mail notice were not returned as of the date of the hearing.
5. Respondent has not filed an answer to the charges, nor any communication concerning good cause for failure to answer. The Respondent did not appear at the hearing on default.
6. Upon consideration of the Prosecution's presentation and taking notice of the OPR file,

the Hearing Officer of the Board finds Respondent to be in Default. The allegations contained in the Specification of Charges are therefore treated as the facts on which the Board may issue an order of professional discipline. OPR Rule 3.4, 3 V.S.A. § 809(d), and 3 V.S.A. § 814(c).

7. It is specifically found that in 2017 and 2018 while working at a skilled nursing facility the Respondent repeatedly sent sexually suggestive and obscene communications, text messages, pictures and/or videos to co-employees. In addition the Respondent made unwanted physical contact with one employee and verbally made suggestive sexual comments to another employee. (See Specification of Charges.)
8. It was the recommendation of the State of Vermont that the Respondent's license be indefinitely suspended and that if the Respondent petitions for reinstatement, then the Board should impose the conditions set forth below and such conditions and the Board deems appropriate at that time.

Conclusions of Law

Respondent has received adequate or constructive notice of the charges in this matter as indicated by the Board's file and the Prosecution's presentation. Because Respondent has failed to answer the charges, the factual allegations in the Specification of Charges are treated as if proved. O.P.R. Rule 3.4. Accordingly, the Board finds, based upon the finding of Default from this Default Hearing held pursuant to 3 V.S.A. §809(d), that Respondent has engaged in the unprofessional conduct alleged in the Specification of Charges. The Respondent committed unprofessional conduct by violating 3 VSA Sec. 129a(b)(2) (Failure to practice competently by failure to conform to the essential standards of acceptable and prevailing practice); 26 VSA Sec. 1582(a)(3) (Engaging in conduct of a character likely to harm the public), and 3 VSA Sec. 129a(a)(15) (Failure to exercise independent judgment in the performance of licensed activities).

Proposed Order

In accordance with the above Findings of Fact and Conclusions of Law, and consistent with the recommendation by the State, the Board does **ORDER** that the Respondent's license be **Indefinitely Suspended**. In the event that the Respondent seeks to regain his license he must petition the Board for reinstatement.

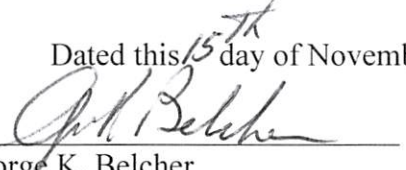
No more than forty-five (45) days prior to requesting reinstatement, the Respondent shall:

- A. Obtain an independent psychological evaluation report by a pre-approved psychologist that is in good standing with his or her licensing authority and meets all qualifications for approved evaluators listed in the Vermont Office of Professional Regulation Guidelines for Independent Evaluators. The Independent Evaluator shall also verify receipt and review of this Order. The independent evaluation shall indicate that the Respondent does not present a risk to the health, safety or welfare of Respondent's potential patients and co-workers and is safe to practice.

If reinstated, Respondent's license **SHALL BE CONDITIONED** pursuant to whatever terms are reasonable at the time of Respondent's reinstatement request, taking into account the facts contained in the Default Order, and any other relevant factors at that time.

The Hearing Officer reports the above facts, conclusions of law, and the finding of DEFAULT to the Board with the recommendation that the Board approve them and enter the Order as above.

Dated this 15th day of November, 2019.


George K. Belcher
Hearing Officer of the Vermont Board of Nursing

The Vermont Board of Nursing considered the report of findings of fact and conclusions of law at its meeting on _____. After considering the report, the Board takes the following action:

- / / Rejects the report and schedules the matter for hearing.
- / / Schedules the matter for additional evidence.
- / ☒ Accepts the report, adopts the findings of fact and conclusions of law, and orders the recommended discipline as set forth in the proposed order above.

SO ORDERED.

Vermont Board of Nursing

By: 
Ellen Watson, Chair
Vermont Board of Nursing

Date: 1-13, 2020
~~2019~~

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 1-15-2020

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, 89 Main St., Fl. 3, Montpelier, VT 05620-3402 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.



**STATE OF VERMONT
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BOARD OF NURSING**

IN RE:)
SAMUEL I. SALLS) **Docket No. 2019- 138**
License No. 075.0018316)

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont, and makes the following charges against respondent Samuel I. Salls.

Authority

1. The Vermont Board of Nursing ("Board") is authorized to adjudicate complaints of unauthorized practice and to issue warnings or reprimands, suspend, revoke, limit, condition, deny, or prevent the renewal of licenses if, after disciplinary hearings, it finds that a respondent has engaged in unprofessional conduct. 3 V.S.A. §§ 127, 129, 129a, 814(d); 26 V.S.A. Chapter 28; the Administrative Rules of the Board of Nursing; and the Administrative Rules of Practice of the Office of Professional Regulation.

Statement of Facts

2. Samuel I. Salls ("Respondent") of Randolph Center, Vermont is licensed by the State of Vermont as a Licensed Nursing Assistant ("LNA") under license number 075.0018316. The license was first issued on January 22, 2009, is active, and expires on November 30, 2020.
3. Respondent was employed as an LNA at Menig Nursing Home ("Facility") in Randolph Center, Vermont at all relevant times.
4. On or about February 14, 2017, Respondent received comprehensive sexual harassment training as part of his new hire orientation at the Facility, and Respondent signed a certificate acknowledging receipt of the training.
5. Starting no later than December 2017, Respondent repeatedly sent at least three Facility co-worker (together, "Employees") sexually suggestive and/or explicit electronic communications, including social media messages, text messages, pictures, and/or videos.

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6. Respondent's communications to Employees included and image of Respondent's erect penis, a video of Respondent masturbating and ejaculating, and images of oral sex and bondage outfits.
7. Respondent repeatedly made comments to Employees about their bodies in sexually-suggestive manner, and repeatedly sought to engage Employees in discussions of sexual activities and preferences while working on shift at the Facility with Employees.
8. Respondent made unwanted physical contact with at least one of the Employees ("Employee 1") on at least two occasions while working on shift at the Facility, including touching Employee 1's buttock.
9. Employee 1 deliberately stationed herself away from Respondent in a different area of the Facility in response to Respondent's unwanted physical contact.
10. Employee 1 began to reschedule work shifts in order to avoid having to work with Respondent.
11. On or about November 5, 2018, another one of the Employees ("Employee 2") reported to the Facility Human Resources Director and the Director of Nursing that she was "very uncomfortable working with [Respondent]." Employee 2 also reported, "[h]e says inappropriate things to me in front of residents such as 'oh that's what you are in too [sic], torturing.' He asks me what I am into sexually and I am very uncomfortable."
12. On or about November 5, 2018, Respondent met with the Facility Human Resources Director and the Director of Nursing to discuss Employee 2's complaints.
13. Respondent admitted to sending sexually explicit communications to Employee 2, and that he was aware that at Employee 2 was uncomfortable with his behavior.
14. Respondent was warned that delivery of sexually explicit communications to co-workers was inappropriate, and that such conduct should not continue.
15. On or about November 6, 2018, Respondent took a medical leave of absence from the Facility unrelated to the conduct discussed at the November 5 meeting.
16. Respondent continued to send sexually explicit communications to another one of the Employees ("Employee 3") while on medical leave after November 5, 2018.
17. On or about January 2, 2019, the Facility Director of Human Resources was alerted to Respondent's continued sending of sexually explicit communications to Employee 3.
18. On or about January 3, 2019, Respondent was terminated from the Facility.

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Violation One: 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, whether actual injury to a client, patient, or customer has occurred. Failure to practice competently includes: (2) failure to conform to the essential standards of acceptable and prevailing practice.

19. The State re-alleges and incorporates Paragraphs 2 through 18 above.
20. The essential standards of acceptable and prevailing practice prohibit Respondent from engaging in sexually demeaning behavior, which may be reasonably interpreted as humiliating, embarrassing, threatening, or harmful to current or former patients or key parties. *See* National Council of State Boards of Nursing (“NCSBN”) Model Rules § 7.3(d)(3)(m).
21. Paragraphs 2 through 18 demonstrate that Respondent engaged in sexually demeaning behavior that may be reasonably interpreted as humiliating, embarrassing, threatening, or harmful to co-workers.
22. The essential standards of acceptable and prevailing practice prohibit Respondent from transmitting information via electronic media that may be reasonably interpreted as sexual or sexually demeaning to current or former patients or key parties. *See* NCSBN Model Rules § 7.3(d)(3)(p).
23. Paragraphs 2 through 18 demonstrate that Respondent transmitted information via electronic media that may be reasonably interpreted as sexual or sexually demeaning to co-workers.
24. The essential standards of acceptable and prevailing practice prohibit Respondent from showing a current or former patient or key party sexually explicit materials, other than for health care purposes. *See* NCSBN Model Rules § 7.3(d)(3)(n).
25. Paragraphs 2 through 18 demonstrate that Respondent showed co-workers sexually explicit materials unrelated to health care purposes.
26. The essential standards of acceptable and prevailing practice prohibit Respondent from making inappropriate statements to current or former patients or key parties regarding their body parts, appearance, sexual history, or sexual orientation.
27. Paragraphs 2 through 18 demonstrate that Respondent made inappropriate statements to co-workers regarding their body parts, appearance, sexual history, or sexual orientation. *See* NCSBN Model Rules § 7.3(d)(3)(l).
28. The essential standards of acceptable and prevailing practice prohibit Respondent from engaging in behavior, gestures, statements or expressions that may reasonably be interpreted as romantic or sexual. *See* NCSBN Model Rules § 7.3(d)(3)(k).

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29. Paragraphs 2 through 18 demonstrate that Respondent engaged in behavior, gestures, statements or expressions that may reasonably be interpreted as romantic or sexual.
30. The essential standards of acceptable and prevailing practice prohibit Respondent from discussing his sexual history, behaviors, or fantasies. *See* NCSBN Model Rules § 7.3(d)(3)(j).
31. Paragraphs 2 through 18 demonstrate that Respondent discussed his sexual history, behaviors, or fantasies with co-workers.
32. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent has committed unprofessional conduct in violation of 3 V.S.A. §129a(b)(1).

Violation Two: 3 V.S.A. §129a(a)(15) Failing to exercise independent professional judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession.

33. The State re-alleges and incorporates Paragraphs 2 through 18 above.
34. Paragraphs 2 through 18 above demonstrate Respondent's failure to exercise professional judgment in the performance of licensed activities when that judgment was necessary to avoid action repugnant to the obligations of the profession.
35. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because the Respondent has committed unprofessional conduct in violation of 3 V.S.A. §129a(a)(15).

Violation Three: 26 V.S.A. § 1582(a)(3) Engaging in conduct of a character likely to deceive, defraud, or harm the public.

36. The State re-alleges and incorporates Paragraphs 2 through 18 above.
37. Paragraphs 2 through 18 above demonstrate Respondent engaged in conduct of a character likely to deceive, defraud, or harm the public.
38. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because the Respondent has committed unprofessional conduct in violation of 3 V.S.A. §129a(a)(15).

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Relief Requested

WHEREFORE, Samuel I. Salls's license should be revoked, suspended, reprimanded, conditioned, or otherwise disciplined.

DATED at Montpelier, Vermont this 16th day of September, 2019.

STATE OF VERMONT
SECRETARY OF STATE

By: _____

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