

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

In re: Nancy Swanson }
License No. 025-0008491 } Docket No: NU 31-1104

**UNPROFESSIONAL CONDUCT CHARGE
FINDINGS OF FACT, CONCLUSION OF LAW
& ORDER**

On 12 December 2005, this matter came before the Vermont Board of Nursing for a disposition hearing. Board members Kenneth W. Bush, Susan O. Farrell, Chairperson, Ellen W. Leff, Donarae Metcalf, Sandra Norton, Laurey M. Tyo and Alan Weiss participated. Linda Rice participated in the investigation and recused herself from participating in this matter. Prosecuting attorney Edward G. Adrian represented the State of Vermont. The Respondent appeared in person and represented herself. Kevin F. Leahy was the presiding officer.

Based on the evidence presented at the hearing, the Board makes the following finding and conclusions of law:

1. The Respondent is licensed by and subject to the disciplinary authority of this Board. 26 V.S.A. Chapter 28, 3 V.S.A. § 129(a), and the Administrative Rules of the Office of Professional Regulation.
2. Respondent holds a State of Vermont license as an LPN.
3. At all relevant times, Saint Johnsbury Health and Rehabilitation Center in St. Johnsbury, Vermont employed the Respondent as an LPN.
4. The State and the Respondent jointly filed a Stipulation of Fact and Understanding" (attached) executed by the parties on 21 November 2005 and 5 November 2005, respectively, in which the Respondent acknowledges failing a "med pass audit" conducted at St. Johnsbury Health and Rehabilitation on 8 November 2004. Stipulation at ¶ 8.
5. The Board appreciates that the Respondent has taken full responsibility for the mistakes documented on the med pass audit; and in anticipation of the hearing before this Board, she proactively sought out and successfully completed a course in medication administration. The Board also notes that the Respondent has been practicing as an LPN for approximately thirty years and her record, both before and after 8 November 2004, is unblemished.
6. The state originally sought a two year conditioned license in light of the facts acknowledged by the Respondent. Stipulation at 2-3.
7. Given the Respondent's history with no disciplinary action, and the admirable manner in which she has thus far handled the proceedings related to this one

incident, the Board finds that a one year conditioned license is the most appropriate sanction.

ORDER

In light of its findings of fact and conclusions of law and , the Board now ORDERS that the Respondent's Vermont nursing license be CONDITIONED for a period of one year as follows:

- (a) Respondent's license shall be reissued labeled "conditioned."
- (b) The Respondent's license shall be conditioned for a period of 1 year.
- (c) Respondent shall practice only in a nursing setting where Respondent has on-site supervision by a licensed nurse in good standing; and the Respondent shall not work as a supervising nurse, with the exception of LNAs and other unlicensed assistive persons.
- (d) Within one (1) month of the date of entry of this Order and monthly thereafter, Respondent shall cause every nursing employer for whom the Respondent has worked during the month to submit to the Board an evaluation of Respondent's work performance and attendance during that month. The reports shall be on forms issued by the Board.
- (e) In the event that the Respondent is attending a nursing program, Respondent shall cause the Program Director to submit to the Board monthly, on forms issued by the Board, a written evaluation of performance and attendance.
- (f) The Board acknowledges that the Respondent has already successfully completed an approved course in medication administration.
- (g) Respondent shall bear all costs associated with complying with this Order.

Vermont Board of Nursing

By: Susan Farrell
Susan Farrell, RN, Chairperson

Date: January 19, 2006

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 1/23/06

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:)
NANCY SWANSON) **Docket No: NU 31-1104**
License No. 025-0008491

STIPULATION OF FACT AND UNDERSTANDING

NOW COMES the State of Vermont, by and through its State Prosecuting Attorney Edward G. Adrian and makes the following Charges against the Respondent, Nancy Swanson, 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 pursuant to 3 V.S.A. §§129, 129a, and 814; 26 V.S.A. §1582; the Administrative Rules of the Board of Nursing; and the Rules of the Office of Professional Regulation.
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. This 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).

Stipulation of Facts

5. The Respondent, Nancy Swanson, is licensed in the State of Vermont as a Licensed Practical Nurse under license number 025-0008491. This license was originally issued on May 6, 2004, and is currently set to expire on January 31, 2006.
6. At all times relevant, the Respondent was employed as a L.P.N. by Saint Johnsbury Health and Rehabilitation Center ("the Facility"), located Saint Johnsbury, Vermont.

STATE OF VERMONT



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

7. On more than one occasion in or around November 2004, the Respondent gave resident D.S. over the counter Benadryl "on the nights that the resident didn't get her sleeping pill." The Respondent did not have a physician's order authorizing the use of Benadryl on this resident, nor did the Respondent document having administered the Benadryl. The Respondent did not check the patient records in making this determination, but relied on information from a colleague.

8. On or about November 8, 2004, the Respondent failed a "med pass audit" at the Facility, which included the following errors:

- a. The Respondent failed to sign off in the medication administration record having administered any of the 4:00 pm, 5:00 pm, 6:00 p.m. or 7:00 pm meds, with the exception of one of resident M.S.'s 4:00 pm meds.
- b. The Respondent removed a resident T.T.'s Nitro patch at 7:00 pm when it was scheduled for removal at 8:00 pm. The Respondent believed that she was within a one hour window when this was done.
- c. The Respondent gave resident L.S. Senna and APAP at 4:00 pm when they had been scheduled to be given at 8:00 pm., and gave the resident Lactulose at 8:00 pm when it had been scheduled to be given at 4:00 pm. The Respondent did so at the L.S.'s request.
- d. The Respondent attempted to obtain a finger stick from resident C.C. without wearing gloves. The Respondent stopped herself before actually obtaining a fingerstick.
- e. The Respondent gave resident P.L. both doses of VHC at one time when it had been scheduled to be given four hours apart. The Respondent did this at P.L.'s request.
- f. The Respondent allowed only five seconds between inhalations while administering an inhaler to resident T.T., and allowed only seven seconds to resident C.C., when one minute between inhalations are recommended.
- g. The Respondent gave several residents meds past the medication administration window for compliance. The Respondent claims that her administration times were delayed because of a medication audit that was being conducted.

Understanding

- A. The Respondent admits the facts above are true.
- B. The Respondent recognizes that based on the facts admitted above, the Board has the authority to discipline her license to practice nursing.
- C. At this time, the Respondent does not wish to enter into a consent agreement with the State concerning the appropriate disciplinary sanction in this matter.
- D. The Respondent agrees that since the facts are not disputed in this matter, she voluntarily waives her right to a hearing on the merits. Instead, the State and Respondent agree to proceed to a disposition hearing.
- E. At the disposition hearing, the State is free to argue for what it deems to be the appropriate sanctions. The State shall be capped at asking for a two year conditioned

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license. Likewise, the Respondent is free to argue for what she feels are the appropriate sanctions, if any.

- F. The State and the Respondent agree to abide by the decision of the Board concerning sanctions.
- G. The Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation.
- H. The Respondent voluntarily enters into this agreement after the opportunity to consult with legal counsel and is not being coerced by anyone into signing this Stipulation.
- I. Respondent voluntarily waives her right to a contested hearing on the merits before the Board of Nursing.

AGREED TO:

Dated

11/21/05

STATE OF VERMONT
SECRETARY OF STATE

By:

Edward G. Adrian
State Prosecuting Attorney

NANCY SWANSON
RESPONDENT

Dated

11-5-05

By:

Nancy Swanson
Nancy Swanson

nu.swanson.fact.stip

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

IN RE:

NANCY SWANSON

License No. 025-0008491

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Docket No: NU 31-1104

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Nancy Swanson, 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 pursuant to 3 V.S.A. §§129, 129a, and 814; 26 V.S.A. §1582; the Administrative Rules of the Board of Nursing; and the Rules of the Office of Professional Regulation.
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. This 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).

Statement of Facts

5. The Respondent, Nancy Swanson, is licensed in the State of Vermont as a Licensed Practical Nurse under license number 025-0008491. This license was originally issued on May 6, 2004, and is currently set to expire on January 31, 2006.
6. At all times relevant, the Respondent was employed as a L.P.N. by Saint Johnsbury Health and Rehabilitation Center ("the Facility"), located Saint Johnsbury, Vermont.
7. On more than one occasion in or around November 2004, the Respondent gave resident D.S. over the counter Benadryl "on the nights that the resident didn't get her

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sleeping pill.” The Respondent did not have a physician’s order authorizing the use of Benadryl on this resident, nor did the Respondent document having administered the Benadryl.

8. On or about November 8, 2004 the Respondent failed a “med pass audit” at the Facility, which included the following errors:

- a. The Respondent left a med cart unlocked with a basket of insulin sitting on top of the med cart unattended.
- b. The Respondent failed to sign off in the medication administration record having administered any of the 4:00 pm, 5:00 pm, 6:00 p.m. or 7:00 pm meds, with the exception of one of resident M.S.’s 4:00 pm meds.
- c. The Respondent failed to check the medication administration record to see if orders were still effective for three cocktails administered to the residents that get one every night, nor did she sign off in the medication administration record as having given them.
- d. The Respondent removed a resident T.T.’s Nitro patch at 7:00 pm when it was scheduled for removal at 8:00 pm.
- e. The Respondent gave resident L.S. Senna and APAP at 4:00 pm when they had been scheduled to be given at 8:00 pm., and gave the resident Lactulose at 8:00 pm when it had been scheduled to be given at 4:00 pm.
- f. The Respondent attempted to obtain a finger stick from resident C.C. without wearing gloves.
- g. The Respondent handled a number of meds without gloves, and gave meds without washing hands between residents.
- h. The Respondent gave resident P.L. both doses of VHC at one time when it had been scheduled to be given four hours apart.
- i. The Respondent allowed only five seconds between inhalations while administering an inhaler to resident T.T., and allowed only seven seconds to resident C.C., when one minute between inhalations is required.
- j. The Respondent gave several residents meds past the medication administration window for compliance.

Charges

9. The acts, omissions and/or circumstances described above constitute grounds for discipline because Respondent violated:

(i) 3 V.S.A. §129a(a)(3) (Failure to comply with the provisions of state statutes or rules governing the practice of the profession);

(ii) 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 an

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prevailing nursing practice pursuant to the Administrative Rules of the Board of Nursing, Chapter 4, Rule IV(II)(B)(2).

Relief Requested

WHEREFORE, the license of Nancy Swanson should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

Dated at Montpelier, Vermont this 28th day of June 2005.

STATE OF VERMONT
SECRETARY OF STATE

By: _____

Edward G. Adrian
State Prosecuting Attorney

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STATE OF VERMONT



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