

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

In re: TINA J. THURBER
License No. 026.0095008

}
} Docket No. 2015-352 (RN)
}

**Decision on
UNPROFESSIONAL CONDUCT CHARGE**

Participating Board Members:

Jeanine Carr, RN, Chair
Ellen Watson, APRN, Vice Chair
Deborah Swartz, RN
Kelly Sinclair, LNA
Virginia Hudson, RN
John Welch, Jr., Esq., Public Member
William White, Public Member
Luana Treadwell, LPN
Jennifer Laurent, APRN

Appearances:

Prosecuting the case: Rachel Allen, Esq.
Respondent's Counsel: Theodore C. Kramer, Esq.

Exhibits:

State Exhibit 1: Summary of texting messages
State Exhibit 2: Summary of Facebook Communications
State Exhibit 3: General Corrective Action Memorandum June 2, 2015
Respondent Exhibit 1: Course Completion Certificate; Ethics and Professionalism
Respondent Exhibit 2: Course Completion Certificate; Professional Boundaries

Presiding Officer: George K. Belcher

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

The Vermont Board of Nursing held a hearing in the above matter on October 10, 2016 in Montpelier, Vermont. The Specification of Charges alleges that Respondent committed unprofessional conduct in violation of Vermont Statutes.

Findings of Fact

Based on the evidence presented and the Answer which the Respondent filed to the Specification of Charges, the Board finds as follows:

1. Tina J. Thurber, (the "Respondent") is a Registered Nurse and is therefore subject to the regulatory authority of this Board, pursuant to 3 V.S.A. §§ 129, 129a, 26 V.S.A. Chapter 28, the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation. Her Vermont license is active and is currently set to expire on or about March 31, 2017.
2. Notice of the Specification of Charges was sent to the Respondent on May 6, 2016. The Respondent filed an answer on May 31, 2016.
3. The Respondent appeared at the hearing and was represented by Theodore C. Kramer.
4. The Respondent did not substantially contest the allegations set forth in the Specification of Charges. A copy of the Specification of Charges is attached to this order.
5. The Respondent and a former patient of the psychiatric hospital where the Respondent worked communicated by Facebook. The patient was 15 years old.
6. The Respondent was "verbally counselled" by her employer on June 2, 2015 for the communication with this patient and was instructed to "discontinue contact with any and all former patients who she has been in contact with" and "unfriend" on Facebook". State Ex. 3.
7. The Respondent ceased Facebook contact with the patient.
8. Thereafter the patient contacted the Respondent by cellphone text-messaging and the Respondent initially ignored the contact. She later responded to the contact out of concern for the patient. The patient was implying that she might harm herself. The Respondent discouraged the patient from contacting her and told the patient that she had jeopardized the Respondent's job by the contact.
9. The patient was readmitted to the hospital in July of 2015 and her mother disclosed to the hospital the contact with the Respondent subsequent to June 2, 2015.
10. It was unclear to what level the Respondent had received instruction by the hospital concerning out-of-facility communications with patients during her indoctrination. She worked at the hospital for only six months before being administratively discharged from the hospital by reason of her continued contact with the former patient.
11. The Respondent has been a Registered Nurse since May of 2013 and a Licensed Practical Nurse since June of 2011. She has no professional discipline prior to this action.
12. Since the Specification of Charges were filed the Respondent has completed two professional courses: "Professional Boundaries in Nursing" v.1.0.3 (9/21/16-9/22/16)(3.00 contact hours) (Respondent Ex. 2) and "Righting a Wrong: Ethics and Professionalism in Nursing" v 2.0.1 (9/22/16-9/24/16)(3.00 contact hours) (Respondent Ex. 1). The courses have "opened [her] eyes" about issues surrounding professional boundaries and ethical conduct in contacting patients outside of direct treatment.
13. The Respondent currently works in elder care.
14. The State has requested that the Board condition the license of the Respondent and require two (2) years of supervised practice and the completion of courses concerning ethical, professional boundaries. The Respondent has argued that supervision of practice is not necessary in this case and that it would constitute an undue burden on the current

practice of the Respondent and possibly end her current employment.

Conclusions of Law

Based on the evidence presented and Facts found above we conclude as follows:

1. The prosecution has the burden of proof in this matter. To prevail on any unprofessional conduct charge, it must prove the charge by a preponderance of the evidence. 3 VSA Sec. 129a(c).
2. Re: Alleged Violation of 3 V.S.A. Sec. 129a(b)(1) and (2): The Prosecution has proven by a preponderance of the evidence that Respondent failed to practice competently by failure to conform to the essential standards of acceptable and prevailing practice. Specifically, the Respondent's communication to the patient outside of the supervised setting of the hospital was outside the scope of her practice and overstepped the professional boundaries between a nurse and her prior patient. This is unprofessional conduct under the facts of this case.
3. The Board declines to find the alleged violations of 26 V.S.A. Secs. 1582(a)(3) or 1582(a)(10).
4. The Board has weighed the nature of the violation involved, the motivation of the Respondent in her actions, her past record, her current nursing practice, and the dilemma presented to a nurse of being contacted by a patient outside of the institution of employment. The Board concludes that a Reprimand with the required education is a proper remedy in this situation.

Order

For the violations above, to protect the public, health, safety and welfare, the following sanction is necessary.

Respondent's license is hereby **REPRIMANDED**. In addition, the Respondent is ordered to have completed the two courses on professionalism [acknowledging that she has already completed these courses] as set forth on Respondent's Exhibits 1 and 2.

Vermont Board of Nursing

By: Jeanine Carr
Jeanine Carr, RN, Chair

Date: October 17 2016

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY

10/21/16

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, Office of Professional Regulation, 89 Main Street, Fl. 3, Montpelier, Vermont 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. To request a stay of the Board's decision, please refer to the attached stay instructions.

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

IN RE:)
Tina J. Thurber)
License No. 026.0095008)

Docket No. 2015-352

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Tina L. Thurber:

Board Authority

1. The Vermont State Board of Nursing (the "Board") has authority to issue warnings or reprimands; suspend, revoke, limit, or 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 (the "ARBN"); and the Rules of the Office of Professional Regulation.

Statement of Facts

2. Tina J. Thurber ("Respondent") of Brattleboro, Vermont, is licensed by the State of Vermont as a Registered Nurse under license number 026.0095008. This license was originally issued on or about May 22, 2013, and expires on or about March 31, 2017.
3. During the relevant time period, Respondent was employed as a Registered Nurse by Brattleboro Retreat ("Facility") in Brattleboro, Vermont.
4. On or about May 23, 2015, it was reported to the Facility that Respondent showed her colleagues a Facebook message she received from Patient, a 15 year-old minor who was discharged from the Facility. The Facebook message was about Patient contemplating self-harm and revealed that Respondent and the Patient were Facebook "friends".
5. Patient and Respondent communicated outside the Facility through Facebook messages, text messages, and phone calls about personal relationships, work issues, how much they missed one another, and the possibility of meeting outside of the Facility.
6. On or about May 29, 2015, Respondent messaged Patient that stated, "[h]ey, I got in trouble by the head of the hospital so I am going to delete you from FB but you can continue to message me. I won't block you just know one from here will know we are friends." Patient replied, "[o]k, I'm sorry you got in trouble, frown emoticon."

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Respondent messaged, "[n]o don't even worry about me. And like I said you have my cell number too."

7. On or about June 2, 2015, Respondent and her supervisor signed a General Corrective Action Memorandum that addressed the May 23, 2015 incident. Respondent was found to have violated the Facility's Interpersonal Boundaries policy and required Respondent to discontinue contact with any and all former patients and "unfriend" them on Facebook immediately.
8. From May 29, 2015, to July 6, 2015, Respondent communicated with Patient through text messaging.
9. On or about June 3, 2015, Patient sent Respondent a text that stated that she was afraid that she might start "thinking about suicide seriously again."
10. On or about June 4, 2015, Respondent replied that she almost lost her job because she was reported for being Facebook friends with Patient and said that Patient needed to talk to her mother about safety.
11. On or about June 6, 2015, Respondent spoke to Patient on the phone and stated, "[w]e aren't supposed to be talking. [B.G., a nurse employed by the Facility] had it out for me and tried to get me fired." Patient felt guilty for Respondent's employment issues and continued to decompensate. On this day, Patient was readmitted to the Facility.
12. The essential standards of acceptable and prevailing practice for Registered Nurses require that professional boundaries be maintained.

Charges

13. 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:
 - a. 3 V.S.A. § 129a(b)(1) and (2) (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: (1) performance of unsafe or unacceptable patient or client care; or (2) failure to conform to the essential standards of acceptable and prevailing practice);
 - b. 26 V.S.A. § 1582(a)(3) (Engaging in conduct of a character likely to deceive, defraud, or harm the public); and
 - c. 26 V.S.A. § 1582(a)(10) (Failing to comply with the patient bill of rights provisions of 18 V.S.A. § 1852 or other statutes governing the profession).

STATE OF VERMONT



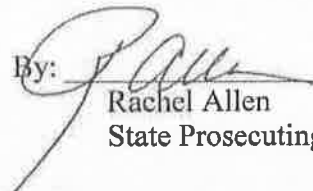
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Relief Requested

WHEREFORE, the license of Tina J. Thurber should be revoked, suspended, reprimanded, conditioned, or otherwise disciplined.

DATED at Montpelier, Vermont this 10th day of May, 2016.

STATE OF VERMONT
SECRETARY OF STATE

By: 

Rachel Allen
State Prosecuting Attorney

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