

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

IN RE:
LINDA M. YOUNG
License No. 025-0007500

DOCKET NO. NU45-0103

STIPULATION OF FACTS AND CONSENT ORDER

BOARD AUTHORITY

1. The Vermont Board of Nursing (the "Board") has jurisdiction to investigate and adjudicate allegations of unprofessional conduct committed by nurses pursuant to 3 V.S.A. §§129-129a; 26 V.S.A.Ch.28, and; the rules of the Board and the Vermont Office of Professional Regulation;
2. Failing to comply with provisions of Federal or State statutes or rules governing the practice of the profession is unprofessional conduct and is a basis upon which the Board may impose disciplinary action. 3 V.S.A. §129a(a)(3);
3. In the course of practice, gross failure to use and exercise on a particular occasion or the failure to use and exercise on repeated occasions that degree of care, skill and proficiency which is commonly exercised by the ordinary skillful, and prudent professional engaged in similar practice under the same or similar conditions, whether or not actual injury to a client, patient or customer has occurred, is unprofessional conduct and is a basis upon which the Board may impose disciplinary action. 3 V.S.A. §129a(a)(10);
4. Failure to conform to the essential standards of acceptable and prevailing practice is unprofessional conduct and is a basis upon which the Board can impose disciplinary action. 3 V.S.A. §129a(b)(2);
5. Inability to practice nursing competently by failure to conform to the essential standards of acceptable and prevailing nursing practice is unprofessional conduct and is a basis upon which the Board may impose disciplinary action. *Administrative Rules of Nursing*, Ch. 4, Rule IV(II)(B)(2).

FACTS

6. Linda M. Young("Respondent") of East Haven, Vermont is a licensed practical nurse holding license number 025-0007500 issued by the State of Vermont. Respondent was originally licensed on July 2, 1997 and her license is currently set to expire on January 31, 2006;
7. At all times relevant the Respondent was practicing as a licensed practical nurse at Pines Rehabilitation and Health Center("the facility") in Lydonville, Vermont;
8. At all times relevant the facility had a resident, referred to as A.R., who carried diagnoses of, among other things, schizophrenia and dementia. He had a history of aggression and conflict with other residents and staff.
9. On the morning of December 28, 2002, Respondent requested that A.R. leave the room he shared with another resident because he was being loud and aggressive. A.R. refused. Respondent alleges that A.R. was uncharacteristically threatening and swearing at his roommate's family;
10. Respondent called for H.P., a licensed nursing assistant, to assist with removing A.R. from his room. The Respondent alleges that A.R. was at his beside, holding on to his bed rail, kicking and screaming;
11. T.B.(another licensed nursing assistant) and H.P. allegedly asked respondent if they could try and talk to A.R. alone and Respondent replied "no". The Respondent denies this allegation but does not contest that if this matter proceeded to a merits hearing the State would be able to prove this allegation;
12. H.P. alleges that Respondent used highly inappropriate language when directing her in removal of A.R. from his room. The Respondent denies this allegation but does not contest that if this matter proceeded to a merits hearing the State would be able to prove this allegation;
13. Respondent forcefully removed A.R.'s hands from his bed-rail. Respondent, H.P. and T.B. then removed A.R. from his room by pulling and dragging him along the floor while supporting his legs, upper back and head. The Respondent alleges that is was her initial intention to carry A.R. out of the room. The Behavior Management Program in place for A.R. specifically said "do not attempt to drag this resident...";
14. As Respondent, H.P. and T.B. were removing A.R. from the room, H.P. fell to the floor;
15. H.P. alleges that she suggested moving A.R. using a blanket and that Respondent replied with highly inappropriate language. The Respondent denies this allegation but does not contest that if this matter proceeded to a merits hearing the State would be able to prove this

allegation;

16. Respondent subsequently placed A.R. in a geri-chair outside of his room in the hallway. A.R. continued to be agitated and verbally abusive to nearby staff and residents;
17. A.R. was kept in the geri-chair for approximately two hours;
18. H.P. allegedly advised respondent that A.R. was incontinent and respondent replied "just leave him." The Respondent denies this allegation and states that A.R. was not incontinent and was dry when Respondent took him to the bathroom directly from the location of the geri-chair. The Respondent does not contest that if this matter went to a merits hearing the State may be able to prove this allegation;
19. A.R. sustained no injury as a result of the events described in paragraphs 7-18, above.

UNDERSTANDINGS

20. Respondent does not admit to the facts above, but agrees that the Board may accept them as proven by the State in order to resolve the pending matter and that the Order set forth may be entered by the Board
21. Respondent understands that the Nursing Board must review and accept the terms of the Consent Order. If the Board rejects any portion, the entire Stipulation and Consent Order shall be null and void.
22. Respondent specifically waives any claims that any disclosures made to the full Board during its review of this agreement have prejudiced her rights to a fair and impartial hearing in future hearings if this agreement is not accepted by the Board.
23. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
24. Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation and Consent Order.
25. 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 and Consent Order.
26. Respondent voluntarily waives her right to charges and a contested hearing before the Board of Nursing.

CONSENT ORDER

Based on the Stipulation above, it is **ORDERED AND ADJUDGED** as follows:

27. The Board of Nursing hereby **CONDITIONS** the Respondent's license for a minimum period of eighteen (18) months. The conditions are as follows:

1. Anger Management

Respondent has completed a course in managing anger offered by Nursing Education of America as recommended by Antia Ristau, R.N.;

2. Mental Health Counseling

Respondent has entered and will continue therapy with a qualified mental health professional for the duration of **conditioned** licensure. Upon request by the Board, Respondent agrees to execute an appropriate release to permit Board communication with the qualified mental health professional;

3. Practice Under Supervision

The Respondent and State have agreed in principle that future practice under supervision for the duration of **conditioned** licensure is appropriate and have elected to submit the question of appropriate terms and conditions to this Board.

Respondent reached an agreement with the Department of Aging and Disabilities in connection with this matter on 22 July 2003. The terms of the agreement include, among other things, heightened workplace supervision. Since July Ms. Young has met with her employer's Director of Nursing and Administrator on a weekly basis, been subjected to random performance assessments, and has had regular performance evaluations furnished to the Commissioner of the Agency of Human Services every three months.

The Respondent currently works the 3:00 to 11:00 shift at Greensboro Nursing Home five (5) days a week. In addition to the supervision provided under the terms of the agreement with Commissioner Flood, Respondent is under the supervision of Director of Nursing Beverly Hawlk, R.N. for some portion of each weekday shift. Similar supervision is not available on weekends.

The Respondent requests that any additional supervision imposed by this Board be limited to that already available and underway. The employer facility cannot accommodate any changes in Ms. Young's schedule and any further supervision requirement would cause her to lose her employment.

The State takes the position that Ms. Young should be required to work only under the constant supervision of a L.P.N. ~~or~~ R.N. *JDB*

4. Length of Time Conditions Imposed

These conditions shall remain in place until Respondent has completed (18) months of supervised nursing practice in which Respondent works at least forty (40) hours every two (2) weeks in nursing. Part time hours of less than forty (40) hours every two (2) weeks shall be credited on a prorated basis.

5. Notification of Place of Employment/Personal Address/Telephone Number

Within five (5) days of the date of the commencement of these conditions, Respondent shall notify the Board, in writing, of her current place of nursing, employment, personal address, and telephone number. Respondent shall further notify the Board, in writing, within ~~forty-eight~~ (48) hours of any change in nursing employment, personal address, or telephone number. *JDB*

6. Notification to Employers/Nursing School

During the conditioned period, Respondent shall provide a copy of this Stipulation and Consent 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 commencement of these conditions or of any subsequent employment, Respondent shall cause Respondent's immediate supervisor to write to the Board, on the employer's letterhead, acknowledging receipt of the Stipulation and Consent Order and the ability to comply with the conditions in the Consent Order.

In the event Respondent is attending a nursing program which has a clinical portion which involves actual patient care, she shall provide a copy of the Stipulation and Consent Order to the Program Director. Respondent shall cause the Program Director to write to the Board, on school letterhead, acknowledging receipt of the Stipulation and Consent Order and ability of the program to comply with its conditions during clinical experience.

7. Reports from Employers/Nursing School

Within one (1) month of the date of commencement of these conditions or within one (1) month of the commencement of employment, and every month thereafter for both years the conditions are in place, Respondent shall cause every employer Respondent has worked for during the month to submit to the Board an evaluation of Respondent's performance and attendance during that month. This report shall be submitted in writing on forms issued by the Board.

In the event the Respondent is attending a nursing program, Respondent shall cause the Program Director to submit to the Board, on a monthly basis, a written evaluation of her performance and attendance. This report shall be submitted in writing on forms issued by the Board and accompanied by a cover letter on the school's letterhead.

8. Types of Employment Prohibited

Respondent shall not work as a supervisor of other nurses but may work as a supervisor of nursing assistants. 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 Consent Order.

9. Violation of the Consent Order

If Respondent violates the terms of this Stipulation and Consent 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 Consent Order, the conditional license period shall be extended until the matter is final.

10. Out of State Practice/Residence

Before any out-of-state practice or residence can be credited toward fulfillment of these terms and conditions, Respondent shall first obtain approval from the Board prior to Respondent leaving the State of Vermont. If Respondent fails to receive such approval before leaving the State, none of the time spent out-of-state will be credited toward the fulfillment of the terms and conditions of this Consent Order. The Board will approve out-of-

state practice so long as the Respondent can still comply with the provisions of this Consent Order.

11. Completion of Conditional License Period

Upon completion of the conditional license period, Respondent may petition the Board to remove any and all conditions on her license. The Respondent shall be reinstated without conditions if she has satisfied all conditions. Respondent shall demonstrate, to the Board's satisfaction that Respondent fully complied with all the terms of this Consent Order.

12. Notwithstanding any provision above, the Respondent must continue to meet all Nursing Board requirements for maintaining a license, license renewal and license reinstatement.

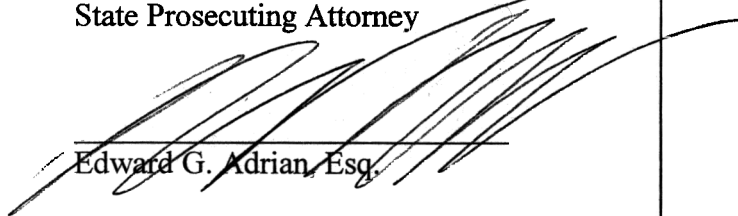
13. This Stipulation and Consent Order is a matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. §129(a).

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

Respectfully submitted,

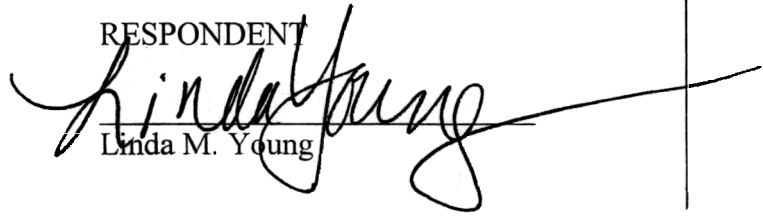
Dated at Montpelier, Vermont this 10th day of April, 2004.

VERMONT SECRETARY OF STATE
State Prosecuting Attorney


Edward G. Adrian, Esq.

Dated at Berlin, Vermont this 11th day of April, 2004.

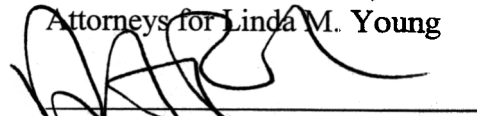
RESPONDENT


Linda M. Young

APPROVED AS TO FORM:

Dated at Montpelier, Vermont this 15th day of April, 2004.

THERIAULT & JOSLIN, P.C.
Attorneys for Linda M. Young


John Davis Buckley, Esq.

DATE: 4-13-04

CHAIR: Linda Rocco

DATE OF ENTRY: 5/3/04

**STATE OF VERMONT
BOARD OF NURSING**

IN RE:	)	
Linda Young	)	Case File No. NU45-0103
License No. 25-7500	)	

ORDER

Introduction

The Vermont Board of Nursing ("the Board") held a hearing in this case on Monday, April 12, 2004, at the Central Vermont Hospital in Berlin, Vermont. Board members Elayne Clift, Sandra Norton, Donarae Metcalf, Ellen Leff, Linda Rice, Alan Weiss and De-Ann Welch participated in the decision. Edward Adrian, Prosecuting Attorney, appeared for the State. Linda Young ("the Respondent") was present, and was represented by Attorney Davis Buckley.

The parties submitted a Stipulation and Consent Order for the Board's approval, but left one supervision provision open for argument and discussion, asking the Board to decide what would be appropriate. The condition regarding practice under supervision is numbered 27(3).

Typically, in cases of failing to conform to the essential standards of acceptable and prevailing nursing practice would result in direct supervision for the entire shift by a registered or licensed practical nurse in good standing with the board. This is the kind of supervision requested by the State. In this instance, the Respondent presented some mitigating factors:

1) Respondent's immediate supervisor and a co-worker testified to their experiences with the Respondent in her current employment situation, as well as her past employment with them as a co-worker. They hold her in high regard.

2) The Respondent's supervisor has agreed to be available to her at all times by beeper and telephone and the testimony indicates that the Respondent will often seek guidance this way if she has a concern.

3) The Respondent was able to enter into an agreement with the Department of Aging and Disabilities to address the issues at hand.

After careful consideration, the Board finds that the Respondent may be allowed less than full-time direct supervision in her current place of employment. Her Director of Nursing or another licensed nurse in good standing must be immediately available to her by telephone at all times when a supervisor is not present at the facility.

Her supervisor shall perform random, occasional, drop-in supervision on nights and weekends when the Respondent is unsupervised.

This deviation from the Board's typical supervision requirements is specific to this case and this particular employment situation for this Respondent only. Should the Respondent change employment, direct, on-site supervision for the entire shift would apply.

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: Linda Rice
Linda Rice
Acting Chair

Date: 4-12-04

OFFICE OF PROFESSIONAL REGULATION

Date of entry: 5/3/04

State of Vermont. Respondent was originally licensed on July 2, 1997 and Respondent's license is currently set to expire on January 31, 2004.

7. At all times relevant to these charges, the Respondent was practicing as a licensed practical nurse at Pines Rehabilitation and Health Center (the "Facility") in Lyndonville, Vermont.
8. On or about December 28, 2002, patient A.R. was forcefully removed from his bed by the Respondent in the presence of A.R.'s roommate's family.
9. Respondent requested that patient A.R. leave the room since he was being loud and A.R. refused.
10. Respondent then "yelled" for T.B., a licensed nursing assistant, and H.P., a licensed nursing assistant, to assist in removing A.R. from his room.
11. T.B. and H.P. asked Respondent if they could try and talk to A.R. alone and Respondent replied "no."
12. H.P. advised Respondent used highly inappropriate language in directing her regarding the removal of A.R. from his room.
13. The Respondent, H.P. and T.B. then proceeded to "drag him (A.R.) out to the hall."
14. As Respondent, H.P. and T.B. were removing A.R. from the room, A.R.'s legs "went out from under him" and Respondent, H.P., T.B. and A.R. fell to the floor.
15. H.P. suggested that they move A.R. using a blanket. Respondent replied with highly inappropriate language in directing H.P. in the removal of A.R. from his room.
16. A.R. was placed in a Geri chair out in the hall and when a visitor of A.R.'s roommate attempted to give A.R. coffee and a donut, Respondent replied "you're rewarding bad behavior" and took the coffee and donut.
17. Respondent made this statement in the hall in the presence of others in the Facility.
18. A.R. was left in the Geri chair for approximately two hours.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

19. H.P. advised Respondent A.R. was incontinent and Respondent replied "just leave him."

Charges

20. By committing the above act(s), circumstance(s) and/or omission(s), the Respondent has:

- a. Committed unprofessional conduct by failing to comply with provisions of federal or state statutes or rules governing the practice of the profession in violation of 3 V.S.A. §129a(a)(3);
- b. Committed unprofessional conduct by in the course of practice, gross failure to use and exercise on a particular occasion or the failure to use and exercise on repeated occasions that degree of care, skill and proficiency which is commonly exercised by the ordinary skillful, and prudent professional engaged in similar practice under the same or similar conditions, whether or not actual injury to a client, patient or customer has occurred in violation of 3V.S.A. §129a(a)(10)
- c. Committed unprofessional conduct by failing to conform to the essential standards of acceptable and prevailing practice in violation of 3 V.S.A. §129a(b)(2);
- d. Committed unprofessional conduct by failing to conform to the essential standards of acceptable and prevailing nursing practice in violation of Administrative Rules, Chapter 4, Rule IV(II)(B)(2).

Relief Requested

WHEREFORE, the nursing license of Linda M. Young should be revoked suspended or otherwise disciplined.

Dated at Montpelier, Vermont this 27th day of October 2003.

State of Vermont
Secretary of State

By: _____

Edward Adrian
State Prosecuting Attorney

m.young.soc

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602