

THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH
STATE OF NEBRASKA

STATE OF NEBRASKA ex rel.,)	CASE NO. H08-1813
JON BRUNING, Attorney General,)	
)	
Plaintiff,)	FINDINGS OF FACT
)	CONCLUSIONS OF LAW
vs.)	AND ORDER
)	
KAREN VIVIAN, RN,)	
)	
Defendant.)	

INTRODUCTION

On July 8, 2008, the State of Nebraska, ex rel. Jon Bruning, Attorney General (referred to as “the state” or “plaintiff”) filed a petition for disciplinary action and praecipe with the Nebraska Department of Health and Human Services Division of Public Health (referred to as “DHHS” or “the department”). On July 17, 2008, a hearing officer issued a notice of hearing setting forth the date, time, location, rights, responsibilities and appropriate statutes and regulations for the hearing. On the same date, copies of the notice of hearing and petition for disciplinary action were mailed by USPS certified mail to Karen Vivian, RN (referred to as “defendant”) at 2418 Brahma Street, Grand Island, Nebraska, 68801. Defendant accepted service of these documents on July 18, 2008.

SUMMARY OF THE HEARING

A hearing on this matter was conducted by Terry R. Schaaf, designated hearing officer, on August 25, 2008. Appearing on behalf of the state was Susan M. Ugai, Assistant Attorney General. Defendant appeared *pro se*. Both sides were given an opportunity to call witnesses, present evidence and argue their respective cases.

FINDINGS OF FACT

1. The petition for disciplinary action, praecipe and notice of hearing met all substantive requirements, and were timely filed and served.
2. The following facts were proved by clear and convincing evidence:
3. Defendant has been the holder of a registered nurse license (#46650) issued by the department. Defendant has a multi-state registered nurse license.
4. Defendant committed nine medication errors from June 27, 2007 through February 2, 2008 at H.M. In addition, on August 8, 2007, defendant put Debrox ear drops in the right eye of a resident. On January 24, 2008, a resident complained that defendant did not remove her leg wraps at night. On January 31, 2008, the same resident complained again that defendant did not remove her leg wraps at night. Defendant stated that the resident refused to have the leg wraps removed; however the resident stated that she did not refuse.
5. Defendant's employment at H.M. in Aurora, Nebraska was terminated on February 8, 2008 due to incompetence, professional negligence, and unprofessional conduct.
6. Defendant was examined by Dr. E.C., who performed an independent medical examination. On May 16, 2008, Dr. E.C. found that, in his opinion, defendant is not currently safe to practice nursing due to her medical conditions.
7. Defendant was examined by Dr. G.B. on July 18, 2008. Dr. G.B. found that defendant had bipolar disorder II which had never been properly or adequately treated and which has made her vulnerable in the work environment. Dr. G.B. opined that defendant deserved a chance to comply with a period of treatment for her disorder, receive proper care and treatment, comply with medication and therapy while on a brief period of license suspension, and then be reassessed for the possibility of reinstatement.

8. Defendant testified that she has been regularly attending counseling sessions and psychiatric appointments.

CONCLUSIONS OF LAW AND ORDER

Neb. Rev. Stat. § 71-147(7) provides that a professional license may be disciplined for physical or mental incapacity to practice the profession as evidenced by a determination thereof by other lawful means. Defendant's conduct is grounds for discipline under this section.

Neb. Rev. Stat. § 71-147(10) provides that a professional license may be disciplined for unprofessional conduct. Neb. Rev. Stat. § 71-148(22) defines unprofessional conduct as "such other acts as may be defined in rules and regulations adopted and promulgated by the board of examiners in the profession of the ...licensee..." Title 172 NAC Chapter 101-007.03 defines unprofessional conduct as follows:

101-007.03(1) failure to utilize appropriate judgment in administering safe nursing practice.

101-007.03(3) failure to follow policies or procedures implemented in the practice situation to safeguard patient care.

101-007.03(8) failure to maintain an accurate patient record.

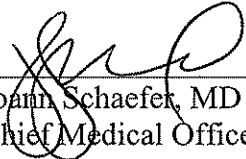
101-007.03(10) committing any act which endangers patient safety or welfare.

Defendant's conduct constitutes unprofessional conduct and is grounds for discipline.

Based on the foregoing facts and the testimony and evidence presented, I find, as a matter of law, that defendant's registered nursing license should be, and hereby is, suspended until such time that defendant produces competent medical/psychological evidence that she is psychologically fit to practice the profession of registered nursing, but in any event, not less than

one year from the date of this order. I further find that the costs of this action should be, and hereby are, taxed to defendant.


SO ORDERED on December 12, 2008.



Joann Schaefer, MD
Chief Medical Officer
Director, Division of Public Health
Department of Health and Human Services

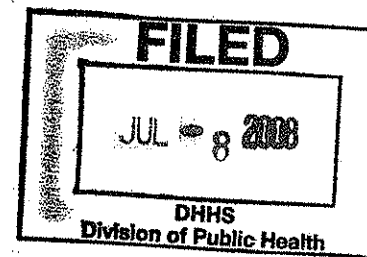
CERTIFICATE OF SERVICE

COMES NOW the undersigned and hereby certifies that on December 15, 2008, a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER was sent by certified United States mail, postage prepaid, return receipt requested, to **Karen Vivian, 2418 Brahma Street, Grand Island, NE 68801** and by interagency mail to **Susan M. Ugai**, Assistant Attorney General, 2115 State Capitol Building, Lincoln, Nebraska.



Ashlea Cedrone
DHHS Legal and Regulatory Services
PO Box 98914
Lincoln, NE 68509-8914
P: 402-471-7237 F: 402-742-2376

THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH
STATE OF NEBRASKA



STATE OF NEBRASKA, ex rel. JON)
BRUNING, Attorney General,)
)
Plaintiff,)
)
vs.)
)
KAREN VIVIAN, R.N.,)
)
Defendant.)

LICENSURE UNIT

JUL 17 2008

PETITION FOR RECEIVED
DISCIPLINARY ACTION

The Plaintiff alleges as follows:

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

1. Jurisdiction is based on NEB. REV. STAT. §§ 71-150 and 71-1,132.29 (Reissue 2003).
2. At all times relevant herein, the Defendant, Karen Vivian, R.N., has been the holder of license #46650 which was issued by the Nebraska Department of Health and Human Services Division of Public Health ("Department") to practice as a registered nurse. Defendant has a multi-state registered nurse license.
3. The Department is the agency of the State of Nebraska authorized to enforce the laws of Nebraska regulating the practice of nursing.
4. The Nebraska Board of Nursing considered the investigation of this matter and made its recommendation to the Attorney General, which recommendation has been considered. Such matters are privileged pursuant to NEB. REV. STAT. §§ 71-168.01(7) and 71-168.01(8) (Reissue 2003).

5. Defendant committed nine medication errors from June 27, 2007, through February 2, 2008, at H.M.

6. On August 8, 2007, Defendant put Debrox ear drops in the right eye of a resident.

7. On January 24, 2008, resident complained that Defendant did not remove leg wraps at night.

8. On January 31, 2008, resident complained again that Defendant did not remove leg wraps at night; Defendant circled that resident refused to have the leg wraps removed; and resident stated that she did not refuse.

9. Defendant's employment at H.M. in Aurora, Nebraska, was terminated on February 8, 2008, due to incompetence, professional negligence, and unprofessional conduct.

10. Defendant was examined by Dr. E.C., who performed an independent medical examination. On May 16, 2008, Dr. E.C. found that, in his opinion, Defendant is not currently safe to practice nursing due to her medical conditions.

FIRST CAUSE OF ACTION

11. Paragraphs 1 through 10 are incorporated herein by reference.

12. NEB. REV. STAT. § 71-147(7) (2006 Cum. Supp.) provides that a professional license may be disciplined for physical or mental incapacity to practice the profession as evidenced by a determination thereof by other lawful means.

13. Defendant's conduct is grounds for discipline.

SECOND CAUSE OF ACTION

14. Paragraphs 1 through 13 are incorporated herein by reference.

15. NEB. REV. STAT. § 71-147(10) (2006 Cum. Supp.) of the Uniform Licensing Law provides that a professional license may be disciplined for unprofessional conduct.

16. NEB. REV. STAT. § 71-148(22) (Reissue 2003) defines unprofessional conduct as "such other acts as may be defined in rules and regulations adopted and promulgated by the board of examiners in the profession of the ... licensee...."

17. Title 172 NAC Chapter 101-007.03 Regulations Governing the Practice of Nursing defines unprofessional conduct as follows:

101-007.03(1) failure to utilize appropriate judgment in administering safe nursing practice.

101-007.03(3) failure to follow policies or procedures implemented in the practice situation to safeguard patient care.

101-007.03(8) failure to maintain an accurate patient record.

101-007.03(10) committing any act which endangers patient safety or welfare.

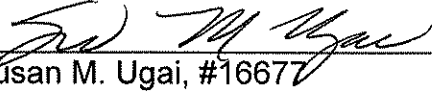
18. Defendant's conduct constitutes unprofessional conduct and is grounds for discipline.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that the Chief Medical Officer set this matter for hearing, order appropriate disciplinary action pursuant to NEB. REV. STAT. § 71-155 (Reissue 2003), and tax the costs of this action to the Defendant.

STATE OF NEBRASKA, ex rel. JON
BRUNING, Attorney General,
Plaintiff,

BY: JON BRUNING, #20351
Attorney General

BY: 
Susan M. Ugai, #16677
Assistant Attorney General
2115 State Capitol
Lincoln, NE 68509
(402) 471-2682

Attorneys for the Plaintiff.