

commenced to cut it. The witness further observed that the elderly patient became upset and was hollering "don't do it to the baby." She stated that even without specialized training, a person would know that those acts were wrong.

Donna Vitrone, R.N. is the nursing manager at Southridge. She has been employed at that facility since September 1997. Southridge has patients that are afflicted with Alzheimer's disease and dementia among other conditions. Specialized training, while not required, is offered there. Ms. Vitrone testified that she met with Ms. Ritchey regarding the above incident within 48 hours. The Respondent had a good record prior to January 30 and would have still been employed at Southridge had the incident not taken place. Ms. Ritchey admitted that the situation got "out of hand" and went too far. Ms. Ritchey's employment at Southridge was terminated due to the emotional abuse of the patient.

Phillip Jean, Administrator of Southridge since February 1998, testified that common sense dictates that a professional nurse does not behave in the manner exhibited by the Respondent on the night of January 30, 1997. In her defense, Ms. Ritchey's records indicated that she was generally competent although her records do not reveal an expression of her remorse regarding the offending incident.

In her February 20, 1998 response to the Board's Complaint (Ex. 4), Ms. Ritchey stated, *inter alia*, that the doll "looked like a doll from a horror movie." She also wrote that the C.N.A continued to shake and then spank the doll in front of the patient despite the Respondent's request that she stop. The Respondent then admitted to getting "caught up in this unprofessional behavior" and spanking the doll after which the C.N.A pretended to stab the doll. Ms. Ritchey stated that her actions were unprofessional but were not intended to be malicious and that she and the patient got along well.

CONCLUSIONS OF LAW

The relevant statutory and regulatory provisions regarding the above matter and as stated in the Complaint/Notice of Hearing are as follows:

32 M.R.S.A. Sec. 2105-A.2. Grounds for discipline. The board may suspend or revoke a license pursuant to Title 5 section 10004. The following are grounds for an action to issue, modify, suspend, revoke or refuse to renew the license of an individual licensed under this chapter:

E. Incompetence in the practice for which the licensee is licensed. A licensee is considered incompetent in the practice if the licensee has:

1. Engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public; or
2. Engaged in conduct that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which the licensee is licensed.

F. Unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a standard of professional behavior that

has been established in the practice for which the licensee is licensed.

H. A violation of this chapter or a rule adopted by the board.

Rules and Regulations of the Maine State Board of Nursing, Chapter 4.

3. Definition of Unprofessional Conduct. Nursing behavior which fails to conform to legal standards and accepted standards of the nursing profession, and which could reflect adversely on the health and welfare of the public shall constitute unprofessional conduct and shall include, but not be limited to, the following:

F. Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.

H. Intentionally or negligently causing physical or emotional injury to a patient.

The Board, by a vote of 6-0, concluded that Melissa S. Ritchey, R.N. violated the above standards regarding unprofessional conduct and/or incompetency by:

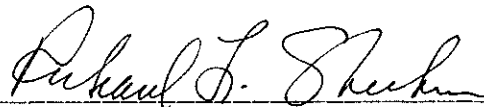
1. Admitting that her acts were unprofessional regarding the events that transpired on January 30, 1998.
2. Engaging in conduct that evidenced a lack of fitness to discharge the duty owed by her to the elderly patient.
3. Failing to stop the C.N.A from taking further action which resulted in harm to the elderly patient.
4. Negligently causing emotional harm to the elderly patient.

The Board, by a vote of 4-2, imposed the following sanction:

Written Letter of Reprimand for unprofessional conduct and conduct demonstrating incompetency in the practice of nursing.

SO ORDERED.

Dated: June 8, 1999



Richard Sheehan, Acting Chairman
Maine Board of Nursing

APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S.A. Sec. 10051.3, any party that decides to appeal this Decision and Order must file a Petition for Review within 30 days of the date of receipt of this Order with the Administrative Court, P.O. Box 7260, Portland, ME. 04112-7260.

The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the Maine State Board of Nursing, all parties to the agency proceedings, and the Maine Attorney General.