



not been returned, and there was also no evidence of a returned receipt showing receipt of the certified mail. Evidence of prior attempts to notify Respondent of the allegations against her with the mail being unclaimed were presented.

The Presiding Officer took administrative notice of the Board's file, and included the file and its contents as part of the record.

The Respondent's license lapsed in May of 1993.

At the conclusion of the hearing, deliberations were conducted by the Board.

### ISSUES

1. Did the respondent violate 32 MRSA Section 2105-A(2)(F) and Chapter 4, Section 3(J) of the Rules of the Maine State Board of Nursing by breaching the confidentiality of a patient?
2. Did the Respondent violate 32 MRSA Section 2105-A(2)(F) and Chapter 4, Section 3(K) of the Rules of the Maine State Board of Nursing by the inaccurate recording, falsifying or altering of a patient or health care provider record?

Either violation, if true, constitutes unprofessional conduct.

### DISCUSSION AND DECISION

The Board's file on the Respondent was admitted into evidence. The file contained evidence of the various attempts to notify the Respondent by mail, both regular and certified, of the allegations against her, and the notice of the instant adjudicatory hearing.

The letter of complaint from Mr. and Mrs. Leeman to the Board was admitted into evidence, as well as a letter from Martha L. Rogers, Executive Director of the home care agency where the Respondent was employed, reporting the termination of the Respondent for violations of the agency's personnel policies involving breach of client confidentiality and false reporting.

Witness Cindi Leeman (mother of the client) testified that she received a telephone call on April 13, 1993, from an anonymous caller who told Mrs. Leeman that she knew the Respondent and was in fact related to her. The caller went on to relate to Mrs. Leeman that the Respondent had told the caller of Mrs. Leeman's son's condition. The Respondent had also told the caller that Mrs. Leeman's son was HIV positive (not true), had problems with his liver (not true), had been in the caller's home several times with Mrs. Leeman's son while on duty (an unapproved place to have the client) and had spanked her son for an inappropriate reason.

Mrs. Leeman also testified that on April 14, 1993, she called Elizabeth Tibbetts, R.N., Clinical Manager at the agency where the Respondent was employed, to relay the substance of the call she had received the previous evening.

Elizabeth Tibbetts then was called to testify. Ms. Tibbetts testified that on April 13, 1993, an anonymous caller telephoned the agency to relate substantially the same information to the agency that had been related to Mrs. Leeman.

Ms. Tibbetts went on to testify that on April 14, 1993, she received a telephone call from Mrs. Leeman relating the conversation she had with the anonymous caller the evening before. An investigation of these reports included a review of the Respondent's job application, the clinical record, and her time sheets. The investigation also included a review of a report from the anonymous caller that the Respondent was absent from work on April 6, 1993, allegedly to go to a doctor's appointment. However, the evidence revealed that the Respondent was in Augusta that day appearing before the Board on an earlier, unrelated, disciplinary matter concerning her previous employment at Camden Nursing Home.

Ms. Tibbetts testified that the investigation revealed that the Respondent did not list her last place of employment as being Camden Nursing Home despite the instructions on the form to do so and that she signed a statement that all of the information on the application was truthful.

It was also discovered that the Respondent told Ms. Tibbetts that she had been to see a doctor on April 6th about a job-related back injury and had back x-rays. However, the note from the doctor stated that she had been seen on April 8th, and that no test were done, and that she could return to regular duty on April 7th (sic).

At the Respondent's exit interview, the Respondent admitted to a breach of confidentiality concerning Mrs. Leeman's son in that she had given the client's name and discussed aspects of his care to people outside of the family and her employer. She also admitted to having falsified her employment application by not listing her last place of employment (Camden Nursing Home).

The hearing was closed and the Board immediately proceeded to conduct public deliberations.

At the conclusion of deliberations, the following findings of fact and conclusions of law were made by the Board:

1. By a unanimous vote, the Board found a violation of 32 MRSA Section 2105-A(2)(F) and Chapter 4, Section (J) of the Rules of the Maine State Board of Nursing (breach of the confidentiality of a patient) occurred when the Respondent

divulged to the anonymous caller information about her client (Mrs. Leeman's son) that only the Respondent would know about and that was in some instances untrue. Furthermore, the Respondent admitted to breaching the client's confidentiality with regards to the client's name and details of his medical status.

This violation was found by the Board to be an act of unprofessional conduct.

2. The Board also found, by a vote of 4-1, that a violation of 32 MRSA Section 2105-A(2)(F) and Chapter 4, Section 3(K) of the Rules of the Maine State Board of Nursing occurred when the Respondent falsely reported to her employer through the "incident or accident report" of her on the job-related back injury that she had been examined by a doctor on April 6th, and had received x-rays on that same day, when in fact, this was not the case. The Board also found that a violation of the above statute and rule occurred when the Respondent failed to disclose to her employer that her last employer had been Camden Nursing Home.

These violations were found to be an act of unprofessional conduct.

The Board then determined, after obtaining legal advise from its Counsel, that they could not sanction a lapsed license. However, the Board did unanimously vote to make a statement of fact that if the license had been active, they would have imposed a sanction of **90 days suspension** on the Respondent's license for violation of the confidentiality of the patient, and imposed a sanction consisting of a **reprimand** to the Respondent for her reporting and employment application violations.

#### APPEAL RIGHTS

Any party wishing to appeal this Decision must file a Petition for Review in the Administrative Court within 30 days of the date of receipt of this Decision, pursuant to 5 MRSA Section 11001 - 11008. If this Decision is not appealed, it shall become binding on the parties at the end of said 30-day period.

FOR THE MAINE STATE BOARD OF  
NURSING:

DATED: November 1, 1993

  
RICHARD L. SHEEHAN, CHAIR