

**BEFORE THE OREGON
STATE BOARD OF NURSING**

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In the Matter of)	
Sean Malcolm, CMA)	FINAL ORDER
)	
Certificate No. 201020058CMA)	Reference No. 11-01126

The Oregon State Board of Nursing (Board) is the state agency responsible for licensing, regulating and disciplining certain health care providers, including Certified Medication Aides, in the State of Oregon. Sean Edward Malcolm (Certificate Holder) is a Certified Medication Aide in the State of Oregon.

This Matter was considered by the Board on April 20, 2011. The issue for the Board was whether to approve the Stipulation signed by Certificate Holder on March 18, 2011, and so dispense with this Matter pursuant to ORS 183.417(3).

Upon review of the Stipulation and the agency file in this Matter, the Board finds that reasonable factual and legal grounds exist to support approval of the Stipulation. It is hereby

ORDERED that the Stipulation signed by Certificate Holder on March 18, 2011, be approved and by this reference incorporated herein, and it is further

ORDERED that the Board accept the Stipulation for Reprimand of Sean Edward Malcolm's Certified Medication Aide certificate and that the Stipulation for Reprimand be adopted.

DATED this ____ day of April, 2011

Patricia Markesino, RN
Board President

SIGNATURES & DATED COPY FILED IN BOARD OFFICE

**BEFORE THE OREGON
STATE BOARD OF NURSING**

In the Matter of)	STIPULATION FOR REPRIMAND WITH CONDITIONS
Sean Malcolm, CMA)	
)	
Certificate No. 201020058CMA)	Reference No. 11-01126

The Oregon State Board of Nursing, (Board) is the agency responsible for licensing and regulating Certified Nursing Assistants and Certified Medication Aides in the State of Oregon. Sean Edward Malcolm, hereinafter referred to as "Certificate Holder," is a Certified Nursing Assistant and Certified Medication Aide in the State of Oregon. The Board issued Certificate Holder a Certified Nursing Assistant certificate by examination on April 4, 1995 and a Certified Medication Aide certificate by examination on June 9, 2010.

On or about December 3, 2010, Certificate Holder came to the attention of the Board when he was reported for a suspicious drug administration incident. The Board opened an investigation into the matter.

Certificate Holder attempted to administer Oxycodone PRN to a resident as requested by the resident. The administration was halted by the charge nurse and she discovered that the medication was not Oxycodone and looked more like a vitamin pill. Certificate Holder also failed to notify the charge nurse prior to his attempted administration.

Certificate Holder denied replacing the Oxycodone medication with a vitamin pill. He stated he was in a hurry during the administration process and did not look at the medication prior to his attempted administration. Certificate Holder admitted he failed to notify the nurse prior to his administration.

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The above conduct is a violation of the provisions of ORS 678.442 (2) (f), OAR 851-063-0090 (2) (h) and OAR 851-063-0100 (1) (11).

ORS 678.442 Certification of nursing assistants; rules.

(2) In the manner prescribed in ORS chapter 183, the Board may revoke or suspend a certificate issued under this section or may reprimand a nursing assistant for the following reasons:

(f) Conduct unbecoming a nursing assistant in the performance of duties.

OAR 851-063-0090 Conduct Unbecoming a Nursing Assistant

A CNA regardless of job location, responsibilities, or use of the title "CNA", who, in the performance of nursing related duties, may adversely affect the health, safety or welfare of the

public, may be found guilty of conduct unbecoming a nursing assistant. Conduct unbecoming a nursing assistant includes but is not limited to:

(2) Conduct related to other federal or state statutes/rule violations:

(h) Possessing, obtaining, attempting to obtain, furnishing or administering prescription or controlled drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs.

OAR 851-063-0100 Conduct Unbecoming a Medication Aide

Certified Medication Aides are subject to discipline as CNAs as described in these rules. In addition, CMAs are subject to discipline for conduct unbecoming a medication aide. Conduct unbecoming a medication aide includes but is not limited to:

(1) Failing to administer medications as ordered by a health care professional authorized to independently diagnose and treat;

(11) Failing to conform to the standards and authorized duties in these rules.

Certificate Holder admits to the above conduct and that such conduct constitutes the violations described above, and wishes to cooperate with the Board in resolving this matter. Therefore the following will be proposed to the Oregon State Board of Nursing and is agreed to by Certificate Holder:

That Sean Edward Malcolm, CMA, be Reprimanded with Conditions.

Certificate Holder shall read Division 63 of the Nurse Practice Act, specifically OAR 851-063-0070 Authorized Duties and Standards for Certified Medication Aides. Certificate Holder shall write a paper no less than two pages in length presenting an outline of the duties and standards for Certified Medication Aides. He shall document what he has learned, which can make a difference in his duties as a Certified Medication Aide. This course work must be completed and received by the Board 30 days after the mailing of the Final Order.

Certificate Holder understands that the conduct resulting in the violations of law described in this Stipulation are considered by the Board to be of grave nature and if continued, constitutes a serious danger to public health and safety.

Certificate Holder understands that in the event he engages in future conduct resulting in violations of law or the Nurse Practice Act, the Board may take further disciplinary action against his certificate, up to and including revocation of his certificate as a Certified Nursing Assistant and/or Certified Medication Aide.

Certificate Holder understands this stipulation will be submitted to the Board of Nursing at their next meeting for approval and is subject to the Board's confirmation.

Certificate Holder understands that this Stipulation will become a matter of public record at such time as the Board issues a Final Order adopting it.

Certificate Holder understands that by entering into the stipulated agreement, he waives the right to an administrative hearing and to appeal or otherwise challenge this agreement or a final order issued by the board based upon this stipulated agreement.

Certificate Holder states no promises or representations not stated herein, or any duress or coercion have been used to induce him to sign this stipulation.

Certificate Holder has read this stipulation and understands it completely.

Dated this _____ day of _____, 2011.

Sean Malcolm, CMA

FOR THE OREGON STATE BOARD OF NURSING

Marilyn Hudson RN, MSN, CNS, FRE
Investigation Manager
Investigation Department

Cheryl Martini
Investigator
Investigation Department

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