

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

IN RE:	)	
FLORENCE M. ATHERTON	)	Docket No: NU60-0405
License No. 025-0006698	)	

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, through State Prosecuting Attorney, Edward G. Adrian, and the Respondent, Florence M. Atherton, L.P.N., who stipulate and agree as follows:

Board Authority

1. The Vermont State Board of Nursing ("the Board") has authority to issue warnings or reprimands, suspend, revoke, limit, condition current licenses, or prevent the renewal of lapsed licenses if, after disciplinary hearing, the Board finds that the Respondent has engaged in unprofessional conduct. 3 V.S.A. §129(a); 3 V.S.A. 129a; 3 V.S.A. §814(d); 26 V.S.A. §1582; the Administrative Rules of the Board of Nursing ("ARBN"); and the Rules of the Office of Professional Regulation.

Statement of Facts

2. The Respondent, Florence M. Atherton, is licensed in the State of Vermont as a practical nurse under license number 025-0006698. This license was originally issued on or about October 16, 1991 and is currently set to expire on January 31, 2008.

3. At all times relevant, the Respondent was employed as a licensed practical nurse at Richford Elementary School (the "School") located in Richford, Vermont.

4. On or about February 7, 2005 a male student injured his right ankle jumping off a piece of playground equipment during recess. Though student's ankle appeared swollen compared to his left ankle and was painful with self-movement, Respondent performed a resistive range of motion with the ankle. The ankle was later diagnosed as being fractured.

5. On or about March 18, 2005 a male student spent the afternoon outside, in deep snow, wearing only sneakers and low socks. Upon arrival back at school, the student's teacher, A.L., informed Respondent that the student's legs showed signs of frostbite due to his extended exposure to the cold and that they should be warmed up gradually. In response, Respondent took two cold packs from the refrigerator and applied them to the student's ankles and shins.

Charges

6. The acts, omissions and/or circumstances described above constitute grounds for discipline because the Respondent has committed unprofessional conduct in violation of:

- QA*
- i. ~~26 V.S.A. § 1582(a)(3) (is unable to practice nursing competently by reason of any cause) which includes performing unsafe or unacceptable patient care and failing to conform to the essential standards of acceptable and prevailing nursing practice pursuant to ARBN Chapter 4, Rule IV(II)(B)(1) and (2);~~
 - ii. 3 V.S.A. § 129a(b)(1) and (2) (failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct. Failure to practice competently includes: 1) performance of unsafe or unacceptable patient care and 2) failure to conform to the essential standards of acceptable and prevailing practice); and
 - iii. 3 V.S.A. § 129a(a)(3) (failing to comply with the provisions of state statutes or rules governing the practice of the profession).

Understandings

- 7. 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.
- 8. 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.
- 9. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
- 10. Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation and Consent Order.
- 11. 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.
- 12. Respondent voluntarily waives her right to a contested hearing before the Board of Nursing and waives any right to appeal from this Stipulation and Consent Order.
- 13. Although the Respondent does not admit to the truth of the State's allegations, she does not contest that the State would be able to present credible evidence from which a Board could conclude these facts by a preponderance of the evidence at a hearing.

ORDER

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

A. The Board of Nursing hereby **CONDITIONS** the Respondent's license to practice nursing for a minimum period of **SIX (6) MONTHS** commencing with the date of entry of this Stipulation and Consent Order. The conditions are as follows:

(1) Re-issue of License.

Upon the commencement of these conditions, Respondent shall be issued a license labeled "conditioned."

(2) Length of Time Conditions Imposed.

The conditions shall remain in place until Respondent has completed all conditions ordered. Respondent shall be subject to the conditions until Respondent completes **six (6) months** of supervised nursing practice in which she works forty (40) hours every two (2) weeks as a nurse. Part time hours of less than forty (40) hours every two (2) weeks shall be credited on a prorated basis. Respondent shall be prohibited from working more than forty (40) hours per week.

(3) 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 nursing 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.

(4) Reports from Employers.

Within one (1) month of the date of entry of this Order or within one (1) month of the commencement of registered nursing employment and **monthly** thereafter, Respondent shall cause every registered nursing employer the Respondent has worked for during the month to submit to the Board an evaluation of Respondent's work 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 his 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.

(5) Practice Under Supervision.

~~The parties have not reached agreement on this condition. The Respondent will be free to argue at a disposition hearing for what she feels is a reasonable condition.~~

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SA
PC
~~The State recommends that~~ The Respondent practice only in a setting where Respondent has on-site supervision for the entire shift by a licensed practical nurse or a registered nurse that is in good standing with the Board. *Except on Sundays at Our Lady of the Meadow Community Care Home, so long as on R.N. is on-call by telephone for the entire shift.*

(6) 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.

(7) Notification of Place of Employment/Personal Address/Telephone Number.

Within five (5) days of the date of entry of this Order, Respondent shall notify the Board, in writing, of her current place of employment, personal address, and telephone number. Respondent shall further notify the Board, in writing, within forty-eight (48) hours of any change in employment, personal address, or telephone number.

(8) License Renewal.

If the Respondent's license expires while this Order is still in effect, this Order does not automatically extend the license. In that situation, in order to continue to practice nursing, the Respondent must timely apply for renewal, pay the applicable fee and demonstrate that she has otherwise complied with the requirements for license renewal.

(9) Costs.

The Respondent shall bear all costs of complying with this Consent Order.

(10) Violation of this Order.

If the Respondent violates the terms of this Order in any respect, the Board, after giving the Respondent notice and an opportunity to be heard, may rescind or modify this Order and impose additional appropriate disciplinary actions. If a complaint of unprofessional conduct is made against the Respondent during the term of this Order, this Order shall be automatically extended until the unprofessional conduct matter is concluded.

(11) Completion of Conditional License Period.

After the conditional license period, the Respondent may petition the Board to remove any and all conditions on her license. The Respondent must present proof that she has full complied with the terms of this Order.

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

C. 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).

D. 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.

AGREED TO:

STATE OF VERMONT
SECRETARY OF STATE

Dated: 9/11/06

By: Judith L. Cutler for
Edward G. Adrian
State Prosecuting Attorney

FLORENCE M. ATHERTON
RESPONDENT

Dated: 9/11/06

By: Florence M. Atherton
Florence M. Atherton

APPROVED AS TO FORM:

ATTORNEY FOR RESPONDENT

Dated: 9/11/06

By: Beth A. Dannon, Esq.
Beth A. Dannon, Esq.

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 9/11/06

By: Jessie Farrell
Chairperson

Date of Entry: 9/12/06

nu.atherton.stip

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

IN RE:)
FLORENCE M. ATHERTON) **Docket No: NU60-0405**
License No. 025-0006698)

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Florence M. Atherton, L.P.N.:

Board Authority

1. The Vermont State Board of Nursing ("the Board") has authority to issue warnings or reprimands, suspend, revoke, limit, condition current licenses, or prevent the renewal of lapsed licenses if, after disciplinary hearing, the Board finds that the Respondent has engaged in unprofessional conduct. 3 V.S.A. §129(a); 3 V.S.A. 129a; 3 V.S.A. §814(d); 26 V.S.A. §1582; the Administrative Rules of the Board of Nursing ("ARBN"); and the Rules of the Office of Professional Regulation.

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STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

Charges

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- ii. 3 V.S.A. § 129a(b)(1) and (2) (failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct. Failure to practice competently includes: 1) performance of unsafe or unacceptable patient care and 2) failure to conform to the essential standards of acceptable and prevailing practice); and
- iii. 3 V.S.A. § 129a(a)(3) (failing to comply with the provisions of state statutes or rules governing the practice of the profession).

Relief Requested

WHEREFORE, the license of Florence M. Atherton should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

DATED at Montpelier, Vermont this 20th day of March 2006.

STATE OF VERMONT
SECRETARY OF STATE

By:

Edward G. Adrian
State Prosecuting Attorney

nu.atherton.soc

STATE OF VERMONT



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