

Pownal

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

IN RE:)
JENNIFER AUSTIN) Docket No. 2011-236
License No. 025.0007962)

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COME the State of Vermont, by and through State Prosecuting Attorney S. Lauren Hibbert, and the Respondent, Jennifer Austin, LPN, 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, or 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 (the "ARBN"); and the Rules of the Office of Professional Regulation.

Stipulated Facts

2. Jennifer Austin (the "The Respondent") of Pownal, Vermont is licensed by the State of Vermont as a Licensed Practical Nurse under license number 025.0007962. This license was originally issued on or about August 31, 2000 and is currently set to expire on or about January 31, 2012.
3. At all times relevant, the Respondent was employed as a Licensed Practical Nurse at Centers for Living and Rehabilitation (the "Facility"), located in Bennington, Vermont.
4. On or about April 4, 2011, the Respondent voluntarily surrendered her licensure in Massachusetts indefinitely followed by a probation term of a minimum of six (6) months. This discipline was based on the Respondent's diversion of one (1) tablet of Effexor, an antidepressant medication, from the supply of a patient who was under her care. Attachment 1.
5. On or about April 29, 2011, in an interview with Investigator Pezzulo, the Respondent stated that she previously worked at North Adams Commons in Massachusetts as an LPN and she was investigated because she "borrowed" an Effexor tablet from one

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patient for another patient who was out of medication. The Respondent admitted to not telling her current employer about the diversion investigation in Massachusetts.

6. On or about May 2, 2011, in an interview with Investigator Pezzulo, when asked about the Massachusetts discipline case the Respondent now recalled diverting it for her own use. She advised that she had a prescription for Effexor, she diverted a pill for her own use and intended on replenishing it with her own. The Respondent stated she did not tell the Investigator this during the prior interview because she "wasn't even thinking on Friday."
7. Respondent has committed unprofessional conduct because she diverted medication for her own use and therefore, she did not conform to essential standards of suitable care, she acted with conduct of a character likely to deceive the public, and she failed to comply with the rules governing the practice of profession.

Violations

8. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because the Respondent has committed unprofessional conduct in violation of:
 - a. 26 V.S.A. § 1582(a)(7) (Engages in conduct of a character likely to deceive, defraud, or harm the public);
 - b. 3 V.S.A. § 129a(a)(3) (Failing to comply with provisions of federal or state statutes or rules governing the practice of the profession); and,
 - c. 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, whether actual injury to a client, patient, or customer has occurred. Failure to practice competently includes: (1) performance of unsafe or unacceptable patient or client care; or (2) failure to conform to the essential standards of acceptable and prevailing practice).

Understandings

9. Respondent admits the facts above are true and that the conditions below are necessary to protect the public.
10. 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.
11. 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.

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12. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
13. Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation and Consent Order.
14. 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.
15. 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.
16. Respondent agrees that the Order set forth below may be entered by the Board.

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 OF ONE (1) YEAR from the date of entry below**. The conditions will be as follows:

(1) Re-issue of License.

Upon the imposition 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 a **minimum of one (1) year** of supervised nursing practice in which she works at least 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. The Respondent shall be prohibited from working more than forty (40) hours per week during the conditioned period.

(3) Compliance with the Massachusetts Order

The Respondent must demonstrate to the Board on a quarterly basis that she is in compliance with the Massachusetts Order. See Attachment 1. Furthermore the Respondent must sign a release of information so the Board can obtain any and all documents from Massachusetts related to the Respondent's discipline. Specifically, the Board must receive within thirty (30) days of this order the following:

- a. Written documentation of completion (certificate of completion, etc.) of the courses mandated by Massachusetts, which included:

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- i. "Legal and Ethical Aspects of Nursing Practice" – three (3) contract hours;
- ii. "Critical Thinking and Judgment in Nursing" – three (3) contract hours; and,
- iii. "Dealing with Demented and/or Delusional Patients" – three (3) contract hours.

b. A copy of the mental health evaluation submitted to the Massachusetts Board of Nursing

(4) Notification to Employers/Nursing School.

The 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 date of entry or any subsequent nursing employment, Respondent shall cause Respondent's immediate supervisor to submit to the Board an employer agreement form approved by the Board, acknowledging receipt of the Stipulation and Consent Order and the ability to comply with the conditions in the Consent Order.

In the event the Respondent is attending a nursing program which has a clinical portion that involves actual patient care, Respondent shall provide a copy of the Stipulation and Consent Order to the Program Director. Respondent shall cause the Program Director to submit to the Board a nursing program agreement form approved by the Board, acknowledging receipt of the Stipulation and Consent Order and the ability of the program to comply with the conditions in the Consent Order during clinical experience.

(5) Reports from Employers/Program Directors.

Within one (1) month of the date of entry and **monthly** thereafter, Respondent shall cause every 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. These reports shall be submitted in writing on forms issued by the Board. All employer reports shall indicate satisfactory performance (ie., consistently meeting all standards of nursing practice) and attendance.

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 her performance and attendance. These reports shall be submitted in writing on forms issued by the Board. All nursing program reports shall indicate satisfactory performance (ie., consistently meeting all standards of nursing practice) and attendance.

(6) Practice Under Supervision.

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Respondent shall practice nursing only in a setting where Respondent has direct supervision for the entire shift by a registered nurse that is licensed and in good standing with the Board.

(7) Types of Employment Prohibited.

Respondent shall not work in a supervisory role. Respondent shall not work for a nurse registry, traveling nurse agency, float-pool, home health care agency, temporary nursing employment agency, or as a private duty nurse or personal care provider requiring a nursing or nursing assistant license during the effective period of this Consent Order.

(8) Out-of-State Practice.

Before any out-of-state practice can be credited toward fulfillment of these terms and conditions, Respondent shall first obtain approval from the Board prior to Respondent practicing nursing outside the State of Vermont. If Respondent fails to receive such approval before practicing nursing outside the State of Vermont, none of the time spent practicing nursing 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 nursing practice so long as the Respondent can still comply with the provisions of this Consent Order. If the Respondent receives discipline on a nursing license held in another state during the conditioned period, the Respondent must inform the Board of such; in writing, within ten (10) days of receiving such discipline.

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

Within ten (10) days of the date of entry, 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 (including resignation or termination), personal address, or telephone number.

(10) Notification to Other States.

In the event that the Respondent is licensed in nursing in any other state(s), she must inform the nursing licensing board of the state(s) in which the Respondent is licensed of the conditional status of her Vermont nursing license within thirty (30) days of the date of reinstatement. If the Respondent fails to provide such notification, it will be considered a violation of this Order.

(11) 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 as a nurse, the Respondent must timely apply for renewal, pay the applicable fee and demonstrate that she has otherwise complied with the requirements for license renewal.

(12) Costs.

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

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(13) 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.

(14) 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 fully 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: 2/16/12

By: S. Lauren Hibbert
S. Lauren Hibbert
State Prosecuting Attorney

JENNIFER AUSTIN
RESPONDENT

Dated: 2/1/12

By: Jennifer Austin
Jennifer Austin

STATE OF VERMONT



APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 2/13/12

By: Jeanine Caw
Chairperson

Date of Entry: 2/15/12

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN NURSING

In the Matter of
Jennifer L. Austin
LN License No. 65664
License expiration date Aug. 9, 2011

Docket no. NUR-2010-0203

CONSENT AGREEMENT FOR SURRENDER FOLLOWED BY PROBATION

The Massachusetts Board of Registration in Nursing (Board) and Jennifer L. Austin (Licensee), a Licensed Practical Nurse (LPN) licensed by the Board, License No. 65664, do hereby stipulate and agree that the following information shall be entered into and become a permanent part of the Licensee's record maintained by the Board:

1. The Licensee acknowledges that a complaint has been filed with the Board against her Massachusetts Licensed Practical Nurse license (license¹) related to the conduct set forth in paragraph 2, identified as Docket No. NUR-2010-0203 (the Complaint).
2. The Licensee admits that while employed as a Licensed Practical Nurse at North Adams Commons nursing facility in North Adams, Mass., on or about July 28, 2010, she diverted a tablet of Effexor, an antidepressant medication from the supply of a patient who was under her care, when faced with a difficult, delusional patient. The Licensee acknowledges that her conduct constitutes failure to comply with the Board's Standards of Conduct at 244 Code of Massachusetts Regulations (CMR) 9.03(5), (20), (37) and (47) and warrants disciplinary action by the Board under Massachusetts General Laws (G.L.) Chapter 112, section 61 and Board regulations at 244 CMR 7.04, Disciplinary Actions.
3. The Licensee agrees to SURRENDER her nursing license for an indefinite period, commencing with the date on which the Board signs this Agreement (Effective Date).
4. After the Effective Date of this Agreement and when the Licensee can complete to the satisfaction of the Board all of the requirements set forth in this Paragraph the Licensee may petition the Board for reinstatement of her license. The petition must be in writing and must include the following documentation of the

¹ The term "license" applies to both a current license and the right to renew an expired license.
Jennifer L. Austin
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Attachment 1

Licensee's ability to practice nursing in a safe and competent manner, all to the Board's satisfaction:

- a. Evidence of completion of all continuing education required by Board regulations for the two (2) renewal cycles immediately preceding the date on which the Licensee submits her petition ("petition date");
 - b. Documentation that she has successfully completed the following continuing education² after the Effective Date:
 - i. Three (3) contact hours on the topic of "Legal and Ethical Aspects of Nursing Practice;"
 - ii. Three (3) contact hours on the topic of "Critical Thinking and Judgment in Nursing;" and
 - iii. Six (6) contact hours in "Dealing with Demented and/or Delusional Patients."
 - c. Submit a report of a mental health evaluation, which meets the requirements set forth in Attachment B2.
5. If and when the Board determines that the Licensee has complied to the Board's satisfaction with all the requirements contained in Paragraph 4, the Board shall send written notice to the Licensee³ which shall terminate the Surrender Period. The Licensee understands and agrees that her license shall be placed on PROBATION for no less than six months (Probationary Period) commencing immediately upon the date of reinstatement, which will be specified in the Board's notice of termination of the Surrender Period.
6. During the Probationary Period, the Licensee further agrees that she shall comply with all of the following requirements to the Board's satisfaction:
- a. Comply with all laws and regulations governing the practice of nursing, and not engage in any continued or further conduct such as that set forth in Paragraph 2.
 - b. Notify the Board in writing within ten (10) days of each change in her name and/or address.

² These continuing education courses must be in addition to any contact hours required for license renewal. They may be taken as home study or as correspondence course, provided that, they meet the requirements of Board Regulations at 244 CMR 5.00, Continuing Education.

³ In all instances where this Agreement specifies written notice to the Licensee from the Board, such notice shall be sent to the Licensee's address of record.

- c. Timely renew her license to practice nursing.
 - d. Maintain active employment in a position that requires a nursing license, in a setting where the Licensee receives consistent, on-site supervision by a qualified licensed nurse⁴, for a minimum average of twenty (20) hours per week throughout the Probationary Period. The Licensee may not accept any home care, travel or temporary staffing assignment, or other practice assignment where consistent, on-site supervision is not in place.
 - i. Within 30 days of the Effective Date, the Licensee shall notify the Board's Probation Monitor in writing if the Licensee is not employed in accordance with paragraph 6d.
 - e. Review this Agreement with each of her nursing supervisors, and arrange for each nursing supervisor to submit directly to the Board:
 - i. a completed and signed "Supervisor Verification Form" (Form 1), provided with this Agreement, within thirty (30) days of
 - (1) the Effective Date *and*
 - (2) any subsequent employment commenced during the Probationary Period
 - ii. *quarterly* written reports⁵, using the "Supervision Report Form" (Form 2) provided with this Agreement attesting to the quality of the Licensee's nursing practice, reliability and attendance and specifically addressing Licensee's including any errors and incidents⁶.
 - f. Notify the Board's Probation Monitor in writing within ten (10) days of any change in the Licensee's employment status, including each change in Employer, each resignation or termination, and the name, address and telephone number of each new Employer.
7. If and when the Board determines that the Licensee has complied to the Board's satisfaction with all the requirements contained in Paragraph 6, and no earlier than six (6) months after the date of reinstatement, the Board shall send written notice to the Licensee which shall terminate the Probationary Period.

⁴ The Licensee must receive direct supervision from a licensed nurse who must have at least one (1) year of clinical nursing practice experience, no open complaints, no past discipline of the nurse's license, and who is physically located at all times in each facility in which the Licensee practices nursing.

⁵ The Licensee is responsible for ensuring that these reports on the required form are received by the Board commencing ninety (90) days after the Effective Date and on the first day of every third month thereafter.

⁶ The Board may take action under paragraph 6 in the event that the reports reveal a practice issue which the Board deems significant.

Jennifer L. Austin

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8. If the Licensee does not comply with each requirement of this Agreement, or if the Board opens a Subsequent Complaint⁷ during either the Surrender Period or the Probationary Period, the Licensee agrees to the following:
- a. The Board may upon written notice to the Licensee, as warranted to protect the public health, safety, or welfare:
 - i. EXTEND the Surrender Period and/or the Probationary Period; and/or
 - ii. MODIFY the Surrender Period and/or the Probationary Period requirements; and/or
 - iii. IMMEDIATELY SUSPEND the Licensee's nursing license.
 - b. If the Board suspends the Licensee's nursing license pursuant to Paragraph 8(a)(iii), the suspension shall remain in effect until:
 - i. the Board gives the Licensee written notice that the Probationary Period is to be resumed and under what terms; or
 - ii. the Board and the Licensee sign a subsequent agreement; or
 - iii. the Board issues a written Final Decision and Order following adjudication of the allegations (1) of noncompliance with this Agreement, and/ or (2) contained in the Subsequent Complaint.
9. The Licensee agrees during the Surrender Period and/or if the Board suspends her nursing license in accordance with Paragraph 8, she will immediately return her current Massachusetts license to practice as a Licensed Practical Nurse to the Board, by hand or certified mail. The Licensee further agrees that during the Surrender Period and/or upon suspension, she will no longer be authorized to engage in the practice of nursing in the Commonwealth of Massachusetts and shall not in any way represent herself as a Licensed Practical Nurse until such time as the Board reinstates her license⁸.

⁷ The term "Subsequent Complaint" applies to a complaint opened after the Effective Date, which (1) alleges that the Licensee engaged in conduct that violates Board statutes or regulations, and (2) is substantiated by evidence, as determined following the complaint investigation during which the Licensee shall have an opportunity to respond.

⁸ Any evidence of unlicensed practice or misrepresentation as a Licensed Practical Nurse during the Surrender period and/or after the Board has notified the Licensee of her license suspension shall be grounds for further disciplinary action by the Board and the Board's referral of the matter to the appropriate law enforcement authorities for prosecution, as set forth in G.L. c. 112, §§ 65 and 80A.

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10. The Board agrees that in return for the Licensee's execution and successful compliance with all the requirements of this Agreement it will not prosecute the Complaint.
11. The Licensee understands that she has a right to formal adjudicatory hearing concerning the Complaints and that during said adjudication she would possess the right to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on her own behalf, to contest the allegations, to present oral argument, to appeal to the courts, and all other rights as set forth in the Massachusetts Administrative Procedures Act, G.L. c. 30A, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 et seq. The Licensee further understands that by executing this Agreement she is knowingly and voluntarily waiving her right to a formal adjudication of the Complaint.
12. The Licensee acknowledges that she has been at all times free to seek and use legal counsel in connection with the Complaint and this Agreement.
13. The Licensee acknowledges that after the Effective Date, the Agreement constitutes a public record of disciplinary action by the Board. The Board may forward a copy of this Agreement to other licensing boards, law enforcement entities, and other individuals or entities as required or permitted by law.
14. The Licensee certifies that she has read this Agreement. The Licensee understands and agrees that entering into this Agreement is a voluntary and final act and not subject to reconsideration, appeal or judicial review.

Karl Austin 3-28-11
Witness (sign and date)

Jennifer L. Austin 3/28/11
Jennifer L. Austin, L.P.N.
Licensee (sign and date)

Karl Austin
Witness (print name)

Rula F. Harb
Rula F. Harb, M.S.N., R.N.
Executive Director
Board of Registration in Nursing

April 4, 2011
Effective Date of Surrender followed by Probation Agreement

Jennifer L. Austin
Docket no. NUR-2010-0203

Doc. Effective 11/28/08

ATTACHMENT B 2**Minimum requirements for mental health evaluations to be submitted to the Board****Mental Health evaluation**

A comprehensive mental health evaluation of the Licensee conducted by a licensed clinical psychologist (Ph.D or Psy.D or Ed.D) or a licensed, board certified psychiatrist written on said provider's letterhead, sent directly to the Board by the provider and completed within thirty (30) days before submission of the petition for reinstatement or other submission to the Board. The evaluation shall state that the provider has reviewed this document and any Board Consent Agreement, Order, and/or other relevant documents, and that he or she has reviewed the specific details of the Licensee's underlying conduct alleged or otherwise described.

The evaluation shall provide a detailed, clinically based assessment of the Licensee and shall be completed in accordance with all accepted standards for such an evaluation. The purpose of the evaluation is to provide the Board with the provider's analysis of the following materials and his or her opinion as to whether the Licensee is able to practice nursing in a safe and competent manner. To be most useful to the Board, the evaluation should include, but not be limited to, the following:

- a. Record Review. A review of the Licensee's written or electronic mental health records (for at least the preceding two years) (and medical records from the same time frame if pertinent);
- b. Conversation(s) with Provider(s). Follow up conversations with any currently or recently treating mental health providers (and primary care physicians or advanced practice nurses as relevant);
- c. Review of Prescriptions. A list of all of the Licensee's prescribed medications with the medical necessity for each prescription; if there are or may be other prescribers than the evaluating provider, then the evaluation should include a review of all of the Licensee's pharmacy records for the preceding two years;
- d. In-Person Interview(s). Mental health (and medical if pertinent) history obtained by the provider through in-person interviews with the Licensee, which are as extensive as needed for the provider to reach a clinical judgment;
- e. Detailed Statement of History. A detailed statement of the Licensee's mental health (and medical if pertinent) history including diagnoses, treatments and prognoses;
- f. Detailed Description(s) of Current Conditions. Detailed descriptions of the Licensee's existing mental health conditions with the corresponding status,

treatments and prognosis including, but not limited to, each condition, if any, which gave rise to the conduct which is the subject of the Board's interest;

g. Specific Assessments. Assessments of the Licensee in each of the following areas:

- i. Cognition status - orientation to time, place and person; ability to recognize and organize responsibilities accurately and to make accurate, appropriate decisions; critical thinking ability sufficient for appropriate clinical judgment; and ability to collect and analyze data to problem solve efficiently and accurately, and to identify cause and effect relationships accurately.
- ii. Affective status- interpersonal skills sufficient to interact appropriately and honestly with individuals, families and groups; and ability to recognize and conform to lawful standards of social conduct.
- iii. Ability to recognize the limits of professional boundaries and the risk that the Licensee will violate professional boundaries with patients.
- iv. Ability to control her/his impulses; and the likelihood that she/he will repeat any of the conduct that gave rise to the Board's review of his/her safety and competency in nursing practice.

h. Summary of Progress and/or Limitations. A summary of the progress Licensee has made in treatment and detailed description of any and all corresponding existing or continuing limitations of any kind;

i. Ongoing Treatment Plan. Recommendations for the Licensee's on-going treatment and specific treatment plan, if any;

j. Evaluating Physician's Opinion as to Safety and Competence. The provider's opinion as to whether the Licensee is presently able to practice nursing in a safe and competent manner (in light of all of the above); and

k. Provider's C.V. A copy of the provider's curriculum vitae should be attached.