

VERMONT SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF NURSING

In re Barbara A. Austin }
License No. 026-0022555 }
Docket No. NU 29-1104 }

DEFAULT ORDER

Upon the filing of a "Notice of Hearing for Default Judgment" by the Secretary of State, the Board of Nursing ("Board") heard this matter on Monday 14 January 2008. The hearing took place at the Secretary of State's Office of Professional Regulation, in the National Life Building at Montpelier, Vermont.

Board members Jeanine Carr, Ellen W. Leff, Donarae Metcalf, Sandra Norton, Deborah Robinson, Alan H. Weiss, DeAnn Welch and William White were present and participated in the hearing. Board member Linda M. Y. Rice (Chairperson) recused herself from the proceedings.

The Respondent appeared on her own behalf via telephone. Edward Adrian represented the State of Vermont. Board counsel Kevin F. Leahy presided.

Findings of Fact &
Conclusions of Law:

1. Respondent's licensing privileges are subject to the regulatory authority of this Board. 3 V.S.A. §§ 129 and 129a; 26 V.S.A. Chapter 28; Administrative Rules for the Board of Nursing ("Nursing Rules") and the Administrative Rules for the Office of Professional Regulation ("OPR Rules").
2. The State filed a Specification of Charges dated 23 October 2007 (charges), which allege that the Respondent engaged in unprofessional conduct by violating the terms of a board order that placed conditions on her license.
3. The violation includes failure to file employment status reports and to participate in counseling.
4. The Office of Professional Regulation ("OPR") served the Respondent notice of the charges via certified and first class mail. OPR used the address Respondent provided as required by 3 V.S.A. §129a (14).
5. The notice of charges contained instructions detailing the Respondent's legal obligation to answer the charges and explaining the consequences of failure to

file a timely response. OPR also served a notice of this default hearing to the Respondent by certified mail.

6. The Respondent did not answer the charges within the legally prescribed time as required by OPR Rule 3.3 or at any time thereafter.
7. The Respondent was unable to appear at the default hearing, but she participated and testified by telephone.
8. Upon taking notice of the Respondent's file pursuant to 3 V.S.A. § 810(4), the Board finds the Respondent to be in default. The Respondent received adequate and legal notice of the charges as evidenced by the Respondent's file kept by this Board and the State's presentation of the case to the Board. Because the Respondent failed to answer the charges of unprofessional conduct, the Board finds the Respondent in default and may accept the State's factual allegations as established pursuant to OPR Rule 3.4.
9. The factual allegations contained in the State's specification of charges shall serve as a partial basis for this order. *See* OPR Rule 3.4; 3 V.S.A. § 809(d) and 3 V.S.A. § 814(c).
10. Specifically, the Board finds that the Respondent violated the terms of the November 2006 order entered by this Board that placed conditions on Respondent's Vermont nursing license.
11. Although this was a default hearing, the Respondent did appear and presented evidence, which the Board considered, in addition to the factual allegations contained in the Charges, which the Board accepts as proven.
12. The Respondent testified that the New Hampshire discipline, on which Vermont based its November 2006 disciplinary order, has since been resolved. She testified that the New Hampshire Board of Nursing has entered an order reinstating Respondent's privileges and/or removing restrictions on her license.
13. This Board has not received a copy of the New Hampshire Board's most recent order. A condition of reinstatement of Respondent's Vermont license shall be that the Respondent provide to the Vermont Office of Professional Regulation all order(s) entered by the New Hampshire Board of Nursing and any motions, papers or other documents that she has filed with the New Hampshire Board of Nursing since the original New Hampshire suspension order entered on 23 September 2004.
14. The Respondent's license lapsed in March 2007.

15. The Respondent testified that she was not working (and did not thereafter work) when Vermont conditioned her license in November 2006.
16. The Respondent does not currently possess an active Vermont license in good standing, and there is no need for the Board to attach or modify conditions from it November 2006 order.
17. However, the Board will require the Respondent to come into compliance with her license conditions, as required by this Board's November 2006 order, prior to having her Vermont license reinstated. In order to comply with this order, the Respondent shall demonstrate to the Board or its designee that she has come into compliance with this Board's November 2006 order prior to granting an application for license renewal.
18. The Board finds that the Respondent engaged in unprofessional conduct during the period 15 November 2006 through March 2007, while her license was still active, as a result of her lack of compliance with this Board's November 2006 order. Respondent's lack of compliance violated 3 V.S.A. §129a (a)(4) (failure to comply with board order or license condition is unprofessional conduct).

ORDER

In accordance with the above findings of fact and conclusions of law, the Board of Nursing ORDERS that the Respondent's Vermont registered nursing license shall not be re-issued until:

- A. Respondent provides the documentation from the New Hampshire licensing proceedings as explained in the above findings; and
- B. Respondent demonstrates compliance with the Board's November 2006 Order.

- END -

(signature page to follow)

Vermont Board of Nursing:

By:

Ellen W. Leff
Ellen W. Leff, RN
Board Vice-Chairperson

Dated: April 2, 2008

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 4/7/08

Appeal Rights

This is a final administrative determination by the Vermont Board of Nursing entered pursuant 3 V.S.A. § 812.

A party aggrieved by a final decision of a Board may appeal the decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Secretary of State's Office, National Life Building, FL2, 1 National Life Drive, Montpelier, Vermont 05602-3402 within 30 days of the entry of the order.

For more information about the procedure for filing an appeal, please see the Administrative Rules for the Office of Professional Regulation, which you can find at: <http://www.vtprofessionals.org/opr1/opr/admnrule.pdf> and the Rules are also available at the Office of Professional Regulation.

If you file an appeal, the Director of the Office of Professional Regulation shall assign the case to an appellate officer. The appellate officer will review the record (the tape recording, exhibits etc.) created before the board during the hearing of your case. In cases of alleged irregularities in procedure before the board, not shown in the record, proof related to that issue may be taken by the appellate officer. 3 V.S.A. §§ 129(d) and 130a.

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

IN RE:

BARBARA A. AUSTIN

License No. 026-0022555

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Docket No: NU29-1104

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Barbara A. Austin, R.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 pursuant to 3 V.S.A. §§129, §129a, and §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, Barbara A. Austin, is licensed in the State of Vermont as a Registered Nurse under license number 026-0022555. This license was originally issued on or about November 20, 1995 and lapsed on March 31, 2007.

3. By way of history, the Respondent's Vermont license is currently conditioned for one (1) year pursuant to a Reinstatement Stipulation and Consent Order (the Order) entered by the Board on or about November 15, 2006. Attachment A. The Respondent's license was conditioned based on disciplinary action taken against the Respondent by the New Hampshire Board of Nursing. Attachment A.

4. Sections A(3)-A(5) of the Order require that the Respondent enter into counseling with a treating professional; that the Respondent notify her treating professional of the Order and that her treating professional submit confirmation that he/she received a copy of the Order; and that the Respondent cause her treating professional to submit quarterly reports to the Board regarding the Respondent's treatment progress. Attachment A.

5. To date, the Board has received no information from the Respondent regarding whether the Respondent is participating in counseling or who her treating professional is. Furthermore, to date, the Board has received no information from the Respondent's treating professional regarding notification of the Order or quarterly reports as required by sections A(4) and A(5) of the Order.

STATE OF VERMONT



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

6. Sections A(6) and A(7) of the Order require that the Respondent notify any current or future employers of the Order; that the Respondent's employer submit confirmation that they received a copy of the Order; and that the Respondent's employer submit quarterly reports to the Board regarding the Respondent's work performance and attendance. Attachment A.

7. To date, the Board has received no information from the Respondent regarding her current employment status. Furthermore, the Board has received no information from the Respondent's employer regarding notification of the Order or quarterly reports as required by sections A(6) and A(7) of the Order.

Charges

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

- i. 3 V.S.A. § 129a(a)(4) (failure to comply with an order of the board or violating any term or condition of a license restricted by the board); and
- ii. 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).

Request for Relief

WHEREFORE, the license of Barbara A. Austin should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

DATED at Montpelier, Vermont this 23rd day of October 2007.

STATE OF VERMONT
SECRETARY OF STATE

By: _____

Edward G. Adrian
State Prosecuting Attorney

nu.austin.soc

STATE OF VERMONT



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

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

In re: Barbara Anne Austin-Washburn }
License No. 026-0022555 } Docket No: NU 29-1104

UNPROFESSIONAL CONDUCT CHARGE
FINDINGS OF FACT, CONCLUSION OF LAW
& ORDER

On 12 December 2005, this matter came before the Vermont State Board of Nursing for a disposition hearing. Board members Kenneth W. Bush, Susan O. Farrell, Chairperson, Ellen W. Leff, Donarae Metcalf, Sandra Norton, Laurey M. Tyo and Alan Weiss participated. Linda Rice participated in the investigation and recused herself from participating in this matter. Prosecuting attorney Edward G. Adrian represented the State of Vermont. The Respondent did not appear. Kevin F. Leahy was the presiding officer.

Based on the evidence presented at the hearing, the Board makes the following finding and conclusions of law:

1. The Respondent is licensed by and subject to the disciplinary authority of this Board. 26 V.S.A. Chapter 28, 3 V.S.A. § 129(a), and the Administrative Rules of the Office of Professional Regulation.
2. Respondent holds a State of Vermont license as a Registered Nurse.
3. The state filed a "Specification of Charges" (attached) dated 28 June 2005 alleging that Respondent engaged in unprofessional conduct as evidenced by her suspension by the New Hampshire Board of Nursing. See, In the Matter of Barbara Austin-Washburn, Docket No. 04-0625-000, NH Bd. of Nursing, 23 September 2004 (the New Hampshire Order). State's Exhibit 1 (attached).
4. The Respondent did not appear at this hearing nor did she contest the charges brought by the State of Vermont.
5. The State offered no further evidence other than the findings and fact and conclusions of law established by the New Hampshire Board of Nursing. State's Exhibit 1.
6. The New Hampshire Order found, *inter alia*, that the Respondent engaged in unprofessional conduct by failing to comply with rules governing the nursing profession and failing to conform to the essential standards of acceptable and prevailing practice. The conduct found by the New Hampshire Board is grounds for discipline in Vermont. 3 V.S.A. §129a.
7. The State recommends to this Board that the Respondent's Vermont license be suspended and conditioned concordantly with the New Hampshire Order and conditions of probation.

8. This Board has heard no argument, and has received no evidence, suggesting that it should limit or add to any of the conditions already in place on the Respondent's New Hampshire license.
9. We further find that the State has presented good cause to adopt the New Hampshire Order.

ORDER

In light of its findings of fact and conclusions of law, the Board now ORDERS that the Respondent's Vermont nursing license be SUSPENDED and CONDITIONED as follows:

- (a) Respondent's Vermont nursing license shall be SUSPENDED until the New Hampshire Board of Nursing reinstates her New Hampshire nursing license.
- (b) Upon receiving proof that Respondent's New Hampshire nursing license has been reinstated, Respondent's Vermont license shall also be reinstated and reissued labeled "conditioned."
- (c) The Respondent's Vermont license no. 026-0022555 shall be conditioned for the same period that her New Hampshire license is on probation, and the Respondent's Vermont license shall be conditioned in a manner that carries all restrictions placed on the Respondent's New Hampshire license.
- (d) Respondent shall forward copies of all letters, notices, evaluations and reports, which are required under the New Hampshire Order, to the Vermont Board of Nursing as well.
- (e) The Respondent must continue to meet all Nursing Board requirements for maintaining a license, license renewal and license reinstatement.
- (f) This Order is a matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. §129(a).
- (g) Respondent shall bear all costs associated with complying with this Order.

Vermont Board of Nursing

By: Susan Farrell
Susan Farrell, RN, Chairperson

Date: Jan. 19, 2006

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 1/23/06

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

IN RE:

BARBARA ANNE AUSTIN-WASHBURN
License No. 026-0022555

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)
Docket No: NU 29-1104

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Barbara Anne Austin-Washburn, R.N.:

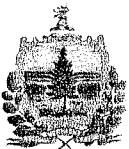
Board Authority

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 pursuant to 3 V.S.A. §§129, §129a, and §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.
2. Failure to comply with the provisions of state statutes or rules governing the practice of the profession is unprofessional conduct upon which the Board can base disciplinary action. 3 V.S.A. §129a(a)(3).
3. Failing to practice competently by way of failure to conform to the essential standards of acceptable and prevailing practice is unprofessional conduct upon which the Board can base disciplinary action. 3 V.S.A. §129a(b)(2).

Statement of Facts

4. The Respondent, Barbara Anne Austin-Washburn, is licensed in the State of Vermont as a Registered Nurse ("RN") under license number 026-0022555. This license was originally issued on November 20, 1995. It expired on March 31, 2005.
5. On or about October 14, 2004, the Vermont Nursing Board received a letter from Respondent explaining that her nursing license had been temporarily suspended in the State of New Hampshire for various practice issues.
6. The State of New Hampshire suspended Respondent's Nursing license for a minimum period of nine months. The New Hampshire Board of Nursing also imposed conditions for reinstatement of Respondent's Nursing license.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

7. The Respondent's license is currently suspended in New Hampshire until she meets the requirements set by the State Nursing Board and successfully petitions the Board for reinstatement.

Charges

8. The acts, omissions and/or circumstances described above constitute unprofessional conduct pursuant to:

- (i) 3 V.S.A. §129a(a)(3) (Whether or not the conduct at issue was committed within or outside the state, failing to comply with the provisions of state statutes or rules governing the practice of the profession shall constitute unprofessional conduct).
- (ii) 3 V.S.A. §129a(b)(2) (Failure to conform to the essential standards of acceptable and prevailing practice).

Relief Requested

WHEREFORE, the license of Barbara Anne Austin-Washburn should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

Dated at Montpelier, Vermont this 28th day of June 2005.

STATE OF VERMONT
SECRETARY OF STATE

By: _____

Edward G. Adrian
State Prosecuting Attorney

nu.austin-washburn.soc

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

DANW

BEFORE THE
NEW HAMPSHIRE BOARD OF NURSING

COPY

IN THE MATTER OF:

Barbara Austin-Washburn, RN #040991-21

DOCKET NO 04-0625-0007

RECEIVED

SEP 27 2004

FINDINGS OF FACT. CONCLUSIONS OF LAW
AND ORDER

A hearing chaired by the Board chairperson, Thom Bloomquist, ARNP, was held on September 21, 2004 at the Board of Nursing's office, 21 S. Fruit St., Ste. 16 in Concord, N.H. for Barbara Austin-Washburn, (Respondent) pursuant to the June 25, 2004 Notice of Hearing.

Present at the hearing were:

Respondent, Atty. Hengen and Atty. Lee

Respondent's Witnesses: L. Dathilas, Pediatric nurse, DHC; Dr. K. Boric, Family physician

Prosecutor Witnesses: S. Donnelly, RN; B. Mudge, RN

Board members: G. Barba, R. Brothers, M. Danderson, K. Day, S. Dyer, E. Gabler, B. Howard, L. Morel,
J. Nall, M. Potter

and Board staff: Susan Goodness, K. Dickson;

M.L. Leppanen, Investigator/Prosecutor for the Board

Following presentation of oral or written statements and exhibits the Board found for the following:

Prosecutors Findings of Fact:

1. The Board of Nursing (Board) has jurisdiction over nursing practice, pursuant to RSA 326-B and the Board's administrative rules Nur 100-900.) Barbara Austin-Washburn is a Registered Nurse in the State of New Hampshire having been licensed by endorsement on June 13, 1995, and over whom the Board has jurisdiction pursuant to RSA 326-B and the Board rules.
2. On February 5, 2004 the Board received a complaint from Aden Henry, RN, DNS, representing Children's Hospital, Dartmouth-Hitchcock Medical Center, Lebanon, NH alleging that from August - November, 2003 there were ten incidents in which Respondent had made medication errors, documentation errors, failed to complete ordered observations or diagnostic tests, and failed to complete ordered treatments. The specific allegations were:
 - A. July 8, 2003 - did not give full oral dose of drug to a patient.
 - B. July 25, 2003 - did not give or document drug
 - C. July 25, 2003 - every 2-hour circulation checks not completed on skin flap of patient.
 - D. August 9, 2003 - did not give or document drug and left it at bedside
 - E. August 9, 2003 - drug not fully administered to patient (morphine) and left at bedside
 - F. October 10, 2003 - did not follow chemotherapy protocol (e.g. urine specific gravity & pH) but charted that she had followed protocol; this resulted in the patient later requiring a bolus of bicarbonate because the urine was acidic
 - G. October 27, 2003 - documented a progress note on a physician order sheet
 - H. November 1, 2003 seven medication orders were transcribed that did not follow facility guidelines resulting in a delay in administration
 - I. November 17, 2003 - failed to do vital signs or neurology assessments for 4 hours on a newly admitted patient, failed to administer tylenol as ordered and the oncoming shift noted that the wrong IV solution was running
 - J. November 17, 2003 - parent complained of "lack of confidence in the nurse" because the child stated Respondent had not clamped her external ventricular [brain] drain prior to getting her up to the bathroom.

**STATE'S
EXHIBIT**

3. In a written statement, Respondent has admitted to the misconduct cited above in items A, B, D, F, G, and H; and during a Pre-hearing in this matter, Respondent asserted that she does not contest the misconduct cited above in items C, I, and J; therefore, all items of misconduct alleged above are determined to be true.
4. During the period when the misconduct cited above occurred (approximately July 1, 2003 to November 20, 2003) medical records note that Respondent was diagnosed as having depression caused by the recent separation between she and her husband, and was diagnosed as having "subclinical hypothyroidism."

Respondent's Findings of Fact:

1. In the more than eight years prior to July 2003 that Respondent worked at Dartmouth-Hitchcock, her performance evaluations were consistently favorable.
2. Respondent has never been subject to any other disciplinary investigation or action before the Board.
3. During the Summer of 2003, Respondent spoke openly to her co-workers and supervisors about the fact that her husband recently left her and about the physical, emotional and financial stress she was experiencing as a result.
4. The effects these medical conditions had on Respondent were noticeable to those who knew her work and observed her in the Summer of 2003.
5. These errors or oversights were clear departures from Respondent's prior performance at Dartmouth-Hitchcock.
6. When Respondent saw a medical professional on August 5, 2003, she was diagnosed as suffering from depression.
7. After Respondent was diagnosed with depression in August 2003, she requested a leave of absence.
8. In January of 2004, Respondent began treating with Sarah (Sally) Ricketts, M.D., a psychiatrist at Dartmouth-Hitchcock Medical Center.
9. Since leaving Dartmouth-Hitchcock, Respondent has worked at the Vermont Technical College and performed well.

Prosecutor's Conclusions of Law:

1. By her misconduct noted in the incidents cited in the paragraph 2. A-J above, Respondent has engaged in unprofessional conduct, failure to maintain accurate medical records, and acts of omission and commission in violation of RSA 326-B: 12 (2) (c); an established behavior pattern incompatible with that expected of persons licensed to practice nursing in violation of RSA 326-b: 12 II (d), has neglected individuals under her care in violation of Nur 215.01 (b) (6), has failed to maintain standards of practice in violation of Nur 215.01 (b) (8), and has administered therapeutic agents and recorded them in an inaccurate and negligent manner in violation of Nur 215.01 (b) (10).

2. The Board concluded that Respondent had mental and physical impairments sufficient to render her incapable of safe nursing care, therefore:
 - A. By Respondent's own assertion that her diagnosed mental and physical impairments contributed to her acts of misconduct cited in paragraph 2. A-J above, and because said impairments are supported by her medical records, Respondent has violated RSA 326-B: 12 II (d) which is grounds for discipline under the Nurse Practice Act.

Respondent's Rulings of Law:

1. The Board has discretion to impose disciplinary action or not when it finds that misconduct has occurred. RSA 326-B:12, III ("The board *may* take disciplinary action...")
2. Pursuant to RSA 326:12, III, the Board may apply any of the enumerated examples of disciplinary action or tailor a remedy appropriate to the specific circumstances of a given case, as it sees fit.
3. The American with Disabilities Act and RSA chapter 354-A are expressions of public policy and prohibitions against discriminating against individuals with disabilities without considering reasonable accommodations.
4. The Board's primary interest in this matter is in protecting the public welfare.

Orders:

1. Respondent's Registered Nurse license shall be **suspended for a minimum of 9 months**. Said suspension shall continue until Respondent successfully petitions the Board for reinstatement of said license.
 - A Respondent shall not seek reinstatement of licensure before June, 2005.
2. Respondent shall provide a copy of this Settlement Agreement to all nurse-licensing boards where currently licensed and schools of nursing where currently enrolled **within 30 days** of receipt of the NH Board-executed copy. Respondent shall also provide a copy of this Agreement to all nurse-licensing Boards or schools of nursing for which Respondent makes future application, at the time of such application.

If Respondent wishes to petition for reinstatement of the RN license, Respondent shall, in a letter to the Board, petition the Board for reinstatement. Respondent shall demonstrate to the Board the ability to safely perform nursing activities through evidence of successful rehabilitation, character references, personal testimony and written exhibits; said evidence shall specifically include, but is not limited to:

1. Respondent shall have a mental health provider submit a brief report of a mental health evaluation. The Board's Executive Director (E.D.) shall review said report and if she determines that the report is consistent with an ability to safely provide nursing care, shall notify Respondent that she may commence the probation period under the specific conditions and restrictions further enumerated below. If the E.D. determines that the report is not consistent with an ability to provide safe nursing care, the E.D. shall notify Respondent and Respondent may petition the Board for review of that determination. The report from the mental health counselor shall provide information as to:

- a Respondent's diagnoses, including a summary of any substance abuse issues and psychological test results, and the impact, if any, on Respondent's ability to safely provide nursing care.
 - b whether any work restrictions are needed to protect public safety and/or assist Respondent in providing safe nursing care, and
 - c whether Respondent is taking any prescription medications, the reason therefore, and what effect, if any, said medications may have on Respondent's ability to safely provide nursing care.
2. Three letters of reference that address Respondent's professionalism, timeliness and productive work habits during the suspension period. If Respondent has been employed since the date of this agreement, at least one of the references must be from an employer;
3. A letter from Respondent specifically addressing what steps she will take to ensure that she administers and records medications in accordance with standards of practice and her employer's policies; and
4. Through oral presentation in support of Respondent's petition, provide the Board with a comfort level that Respondent is able to safely provide nursing care as an RN.

Upon the reinstatement of Respondent's Registered Nurse license and obtaining employment as a Registered Nurse, a **Probation period shall commence and continue for 1 year**, or until Respondent successfully petitions the Board for termination of probation, whichever is later. During this probation period the following restrictions and conditions are imposed:

1. Respondent shall practice nursing in a structured health-care environment where other health-care providers are employed;
2. Respondent shall not practice nursing in a home care environment or be employed by a staffing agency;
3. Upon obtaining registered nurse employment, Respondent shall notify the Board in writing of such employment within ten days and provide a copy of this Agreement to the registered nurse supervisor. Within one (1) month after beginning such employment, said nursing supervisor shall submit a report directly to the Board, in writing, setting forth:
 - a. the name and address of Respondent's employer;
 - b. the duties and responsibilities to be performed by Respondent;
 - c. a discussion of the quality of nursing care provided by Respondent, including a discussion of the ability of the Respondent to practice nursing with skill and safety to patients; and
 - d. the nursing supervisor shall acknowledge that this Agreement was read and that the role of the nursing supervisor is understood;
4. Respondent shall submit to the Board on a quarterly basis work performance evaluations from Respondent's nursing supervisor on a Board-provided form. Said evaluation shall include:

- a. name and address;
 - b. number of hours worked, timeliness and efficiency;
 - c. quality and safety of nursing care;
 - d. ability to safely practice nursing with reasonable skill;
 - e. adherence or failure to adhere to Board stipulations.
 - f. whether any substance abuse testing was conducted and the results of those tests.
5. Respondent is limited to working in one assigned unit during a shift and will not float to other units. Respondent shall limit daily work hours to no more than 12-hours, shall not work in excess of 40 hours per week and shall not work after 11:30 PM.
6. Respondent shall continue counseling sessions with a counselor. If and when the counselor determines that counseling is no longer necessary, Respondent shall ensure that the counselor submits a written report within 30 days of such determination summarizing Respondent's status/progress to the Respondent's employer and the Board of Nursing. Respondent shall also require the counselor to submit quarterly reports regarding the Respondent's progress to the Board. Quarterly reports shall indicate Respondent's:
 - a. name and address;
 - b. number and frequency of visits;
 - c. progress in maintaining a safe life-style;
 - d. adherence, or failure to adhere, to Board stipulations and counselor's therapy.
7. Said restrictions and conditions shall be in force only while the Respondent is employed in a capacity for which a Registered Nurse license is required and subject to adequate supervision approved by the Board. Respondent is required to notify the Board, in writing, within 10 days after the commencement, termination or change in role in any such employment;
8. In the event the Board determines that any complaint or negative written report is substantiated and is a violation of RSA 326-B and/or the Board rules, it shall be considered grounds for disciplinary action pursuant to RSA 326-B:12 III. The complaint or report shall be reviewed by the Executive Director who shall determine whether immediate suspension or other action is warranted and take such action.

Respondent shall notify the Board of address change within fifteen (15) days of such relocation;

At the end of this probation period, Respondent may, in a letter to the Board, petition the Board for termination of probation and removal of the restrictions and conditions set forth above. Respondent shall demonstrate to the Board the ability to safely practice nursing through evidence of successful continuing rehabilitation, character references, personal and professional testimony and/or written exhibits; said evidence shall specifically include, but is not limited to:

1. Three letters of reference that address Respondent's punctuality, honesty, integrity and productive work habits. If Respondent has been employed since the date of this Agreement, one letter should be from the employer.
2. Respondent shall appear before the Board to provide an oral presentation in support of the petition.
3. Should Respondent apply for any New Hampshire license under RSA 326-B authority on or after the date of this Order, Respondent shall by the act of filing such an application, automatically waive any statute of limitations or laches defense which may otherwise be available concerning the misconduct allegations set

forth above, and consents to these allegations being fully addressed in the context of her license application. Respondent shall bear the burden of proving that Respondent possesses sufficient knowledge, judgment and skills, and character qualifications to be licensed in any such future licensing proceedings;

4. Any relief from this Order shall be pursuant to RSA 326-B:14.
5. This Order becomes a public document upon signature.

The Board found for the above because:

- Respondent admitted she has made previous medication errors without reprimand;
- Concerned with Respondent's statements "It was not misconduct; I didn't do it on purpose; It was out of my control".
- Working with very vulnerable population, questioned Respondent's ability to protect them;
- Changed from nightshift suggested after 1st warning, but Respondent declined due to child daycare issues
- Minimized the seriousness of issues;
- Respondent did not disclose she was in counseling for depression;
- Admitted no memory of adverse actions but could recall any non-incriminating situations.

BY ORDER OF THE BOARD:

Margaret J. Walker

Margaret J. Walker, MBA, BS, RN
Executive Director

9-23-04

Date