

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

IN RE:)
JESSICA AYRES) Docket No. 2020-74
License No. 026.0134252)

SECOND STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, by and through State Prosecuting Attorney Elizabeth A. St. James, and the Respondent, Jessica Ayres, represented by William Pettersen, Esq., 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. Chapter 28; the Administrative Rules of the Board of Nursing (the "ARBN"); and the Rules of the Office of Professional Regulation.

Stipulated Facts

2. Jessica Ayres ("Respondent") of Barre, Vermont, is registered in the State of Vermont as a Registered Nurse under license number 026.0134252. This license was first issued on November 6, 2017, and expired on March 31, 2021.
3. At all times relevant, Respondent was working as a Registered Nurse at the Brattleboro Retreat (the "Facility") in Brattleboro, Vermont. She was employed through Maxim Healthcare Staffing Services, Inc., a staffing agency.
4. The Facility is a psychiatric and addiction hospital.
5. Respondent began working at the Facility in January 2020.
6. On or about late February 2020, Respondent's coworkers reported concerns that she appeared under the influence while working as an RN at the Facility.
7. Several staff members reported concerns about Respondent's behavior and appearance over approximately two days towards the end of February.
8. Respondent appeared scattered, anxious, fidgety, her speech was not clear, and she was not able to communicate effectively.

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9. Based on the concerns over Respondent's appearance and behavior, Respondent was required to submit to a drug test through her staffing agency.
10. On February 29, 2020, Respondent submitted a urine drug screen, which tested positive for a metabolite of heroin.
11. Respondent denies using heroin during the time she has been licensed as a nurse in Vermont, but does admit to taking "Dayquil, Sudafed, things like that" on the last of the two days staff reported concerns about her behavior and appearance.
12. Based on the results of an independent evaluation and 3 random drug screens, the parties agree that the conditions below are appropriate.

Violation One: 3 V.S.A. §129a(a)(5) Practicing the profession when medically or psychologically unfit to do so.

13. The State re-alleges and incorporates Paragraphs 2 through 12 above.
14. As a Registered Nurse, Respondent shall practice only when medically and/or psychologically fit to do so.
15. Respondent practiced as a Registered when medically or psychologically unfit to do so as demonstrated in Paragraphs 2 through 12 above.
16. 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 3 V.S.A. §129a(b)(5).

Violation Two: 26 V.S.A. §1582(a)(3) Engaging in conduct of a character likely to deceive, defraud, or harm the public.

17. The State re-alleges and incorporates Paragraphs 2 through 12 above.
18. As a Registered Nurse, Respondent is prohibited from engaging in conduct of a character likely to deceive, defraud, or harm the public.
19. Paragraphs 2 through 12 above demonstrate Respondent engaged in conduct of a character likely to deceive, defraud, or harm the public.
20. 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 26 V.S.A. §1582(a)(3).

Violation Three: 3 V.S.A. §129a(a)(15) Failing to exercise independent professional judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the

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profession.

21. The State re-alleges and incorporates Paragraphs 2 through 12 above.
22. As a Registered Nurse, Respondent is required to exercise independent professional judgment in the performance of licensed activities.
23. Paragraphs 2 through 12 above demonstrate Respondent failed to exercise independent professional judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession.
24. 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 3 V.S.A. §129a(a)(15).

Violation Four: 3 V.S.A §129a(b)(1) 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.

25. The State re-alleges and incorporates Paragraphs 2 through 12 above.
26. As a Registered Nurse, Respondent has an obligation to provide safe and acceptable patient care.
27. Paragraphs 2 through 12 above demonstrate that Respondent provided unsafe and unacceptable patient care.
28. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent has committed unprofessional conduct in violation of 3 V.S.A. §129a(b)(1).

Understandings

29. This Stipulation is neither an admission of liability by the Respondent nor a concession by the State of Vermont that its charges are not well-founded. To avoid the delay, uncertainty, inconvenience, and the expense of protracted litigation, the Parties reach a full and final Stipulation pursuant to these Understandings and the Order below. The Respondent does not dispute that the State could prove the charges by a preponderance of the evidence if this matter went to a hearing and agrees to the conditions outlined below.
30. Respondent understands that the 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.

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31. Respondent specifically waives any claims that any disclosures made to the full Board during its review of this agreement have prejudiced Respondent's rights to a fair and impartial hearing if this agreement is not accepted by the Board and proceeds to a contested hearing.
32. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
33. Respondent is not under the influence of any drugs or alcohol at the time Respondent signs this Stipulation and Consent Order.
34. 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.
35. Respondent voluntarily waives Respondent's right to a contested hearing before the Board and waives any right to appeal from this Stipulation and Consent Order.
36. 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 for a **MINIMUM OF THREE (3) YEARS, commencing on the date of entry of this order.** The **CONDITIONS** shall be as follows:
 1. Re-issuance of License. Upon the commencement of these conditions, Respondent shall be issued a license labeled "conditioned."
 2. Length of Time of 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 three (3) years** of supervised nursing practice in which Respondent works at least eighty (80) hours every month as a nurse. Part time hours of fewer than eighty (80) hours every month shall be credited on a prorated basis. Respondent shall be prohibited from working more than forty (40) hours per week.
 3. Monitoring. The Office of Professional Regulation, through the Enforcement Case Manager, shall be responsible for monitoring Respondent's compliance with these Conditions. All reports or correspondence regarding compliance with these conditions shall be submitted to the Case Manager in accordance with the Conditions listed below.
 4. Random Drug and Alcohol Testing. Respondent shall submit to random drug and alcohol testing through the designated entity. All testing shall be done on a random, unannounced basis and analyzed by a lab qualified to analyze samples for

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forensic purposes. All specimens collected for tests shall be collected in an observed setting. All test results shall be negative.

Failure to appear for, refusal to provide, adulteration of, dilution of, or tampering with a sample for any test shall cause that test result to be presumed positive. Any positive test result shall constitute a violation of this Order. Failure to check-in to determine whether Respondent is selected for testing on any given day, regardless of whether Respondent is actually selected that day, may be considered a violation of this Order.

5. Abstain from Drug and Alcohol Use. Respondent shall abstain completely from the consumption or possession of alcohol and drugs.
6. Drug Use Exception. Respondent may take scheduled/controlled medications lawfully prescribed for a bona fide illness or condition by a health care practitioner disclosed to the Case Manager in writing by Respondent within forty-eight (48) hours of the prescription. If requested by the Enforcement Case Manager, Respondent's health care practitioner shall acknowledge, in writing and on appropriate letterhead, an understanding of Respondent's substance abuse issue(s) within seven (7) days of entering into the practitioner/patient relationship. Additionally, the practitioner shall inform the Case Manager of all scheduled/controlled medications prescribed – and the anticipation of how long such prescriptions will need to be taken – within seven (7) days of the prescription.

The Case Manager may request that the practitioner document the necessity for the prescribed scheduled/controlled medications or other medications known to have abuse potential.

Respondent shall provide the Case Manager with a current medication list of any medications taken on a scheduled or as-needed basis on forms issued by the Case Manager within seven (7) days of the date of reinstatement and shall update this list within forty-eight (48) hours of any change in these medications or when requested by the Case Manager.

7. Notification to Employers/Educational Programs. 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 entry of this Consent Order or of any subsequent nursing employment, Respondent shall cause Respondent's immediate supervisor to submit to the Case Manager an employer agreement form, 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 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 Case Manager a nursing program agreement form provided by the Case Manager, acknowledging receipt of the Stipulation and

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Consent Order and the ability of the program to comply with the conditions in the Consent Order during clinical experience.

8. Practice Under Supervision. Respondent shall practice as a nurse only in a setting where Respondent is supervised for the entire shift by a licensed registered nurse that is in good standing with the Board. The level of supervision required is on-Site Supervision. On-Site supervision means the supervising nurse is present in the same facility as Respondent.
9. Reports from Employers/Program Director. Within one (1) month of the date of reinstatement or within one (1) month of the commencement of nursing employment and **monthly** thereafter, Respondent shall cause every nursing employer Respondent has worked for during the month to submit to the Case Manager an evaluation of Respondent's work performance and attendance during that month. Moreover, on a **quarterly** basis, these reports shall include the results of the employer's medication audits of Respondent's medication administration and practices, if and when Respondent engages in medication administration. In the event Respondent is attending a nursing program, Respondent shall cause the Program Director to submit to the Case Manager, on a monthly basis, a written evaluation of Respondent's performance and attendance. These reports shall be submitted in writing on forms issued by the Case Manager. All employer reports shall indicate satisfactory performance (ie., consistently meeting all standards of nursing practice) and attendance.
10. 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, temporary nursing employment agency, or as a private duty nurse or personal care provider requiring a nursing license during the effective period of this Consent Order.
11. Interview with the Board or its Designee. Respondent shall appear in person or by telephone for interviews with the Board or Case Manager upon request.
12. 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 Case Manager. Out-of-state nursing practice will be approved so long as Respondent can still comply with the provisions of this Consent Order. If Respondent receives discipline on a professional license held in another state during the conditioned period, Respondent must inform the Case manager of such, in writing, within ten (10) days of receiving such discipline.
13. Notification of Place of Employment/Personal Address/Telephone Number. Within ten (10) days of the date of entry of this Consent Order, Respondent shall notify the Case Manager, in writing, of Respondent's current place of employment, personal address, email address, and telephone number. Respondent shall further notify the Case Manager, in writing, within forty-eight (48) hours of any change in employment (including resignation or termination), personal address, email address, or telephone number.

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14. Notification to Other States. In the event that Respondent is licensed in nursing in any other state(s), Respondent must inform the nursing licensing board of the state(s) in which Respondent is licensed of the conditional status of Respondent's Vermont nursing license within thirty (30) days of the date of entry of this Order.
15. License Renewal. This Order does not automatically extend the license and Respondent must comply with the requirements for license renewal.
16. Release of Information Forms. This Order requires Respondent to authorize drug and/or alcohol treatment providers to report information in verbal and/or written format and/or to discuss Respondent and any and all treatment rendered to Respondent for drugs and/or alcohol with the Board and Case Manager. Any and all of this information may be provided to the Office of Professional Regulation investigators and prosecutors, and that the information may be used for further prosecutions if so warranted or if the Office of Professional Regulation determines that said information violates the terms of this Order or any rules or laws governing the profession of nursing.

Respondent is entitled to revoke this consent at any time. However, any revocation shall be considered a violation of this Order. This consent expires when the conditions are removed from Respondent's nursing license.

This Stipulation and Consent Order shall itself constitute a valid written consent pursuant to the requirements of 42 C.F.R. § 2.31. Respondent understands that the Treating Professional may require Respondent to sign a separate and distinct consent meeting the requirements of 42 C.F.R. § 2.31.

17. Costs. Respondent shall bear all costs of complying with this Consent Order.
 18. Violation of this Order. If Respondent violates this Order the Board, after giving 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 Respondent during the term of this Order, this Order shall be automatically extended until the unprofessional conduct matter is concluded.
 19. Completion of Conditional License Period. Respondent shall submit a petition to the Docket Clerk to remove any and all conditions from Respondent's license. The State will assent to or oppose Respondent's petition. The Board will conduct a hearing if necessary. Respondent bears the burden of proof and must present evidence that Respondent has fully complied with the terms of this Order and these conditions are no longer necessary to protect the public.
- B. Notwithstanding any provision above, the Respondent must continue to meet all Board requirements for maintaining a license, license renewal and license reinstatement.

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- 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: July 08, 2021

By: E-SIGNED by Elizabeth St. James
on 2021-07-08 08:45:05 EDT
Elizabeth A. St. James
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JESSICA AYRES
RESPONDENT

Dated: July 07, 2021

By: E-SIGNED by Jessica Ayres
on 2021-07-07 12:10:18 EDT
Jessica Ayres

APPROVED AS TO FORM ONLY:

WILLIAM PETTERSEN, ESQ.
ATTORNEY FOR RESPONDENT

Dated: July 06, 2021

By: E-SIGNED by William Pettersen
on 2021-07-06 12:57:42 EDT
William Pettersen, Esq.

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: July 12, 2021

By: E-SIGNED by Jennifer Laurent
on 2021-07-12 12:50:32 EDT
Chairperson

Date of Entry: 7/13/2021

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