

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

IN RE:
PATRICIA F. BERGERON
License No. 026-0026169

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)
)
Docket No: NU88-0606

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, by and through State Prosecuting Attorney Edward G. Adrian, and the Respondent, Patricia F. Bergeron, R.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. §§14(d); 26 V.S.A. §1582; the Administrative Rules of the Board of Nursing ("AREN"); and the Rules of the Office of Professional Regulation.

Statement of Alleged Facts

2. The Respondent, Patricia F. Bergeron, is licensed in the State of Vermont as a registered nurse holding license number 026-0026169. This license was originally issued on or about February 23, 2001 and is currently set to expire on March 31, 2011.

3. At all times relevant, the Respondent was employed as a registered nurse at Wake Robin (the "Facility") located in Shelburne, Vermont.

4. During the Respondent's period of employment at the Facility, the Respondent received ongoing verbal and written counseling regarding practice issues. The issues the Respondent received counseling for include, but are not limited to the issues set out below.

5. On or around the week of June 5, 2006, the Respondent assessed a resident with a history of cardiac disease and increasing episodes of angina. The resident was experiencing arm tremors and based on the Respondent's assessment, the Respondent reported that the resident was experiencing seizure activity. After an evaluation by the nursing supervisor using information provided by the patient as well, the nursing supervisor determined the resident had experienced a vasovagal response and was not having a seizure. After a telephone conversation with a physician regarding the incident, the physician concurred with the nursing supervisor's determination. Despite the nursing

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supervisor and the physician's agreement that the resident experienced a vasovagal response, the Respondent reported to the oncoming shift that the resident had experienced a seizure.

6. On or about June 8, 2006, the Respondent removed a "Sarmiento" brace from resident M.S.'s arm in order to bathe it. Nursing staff had been instructed a number of times not to remove the brace for any reason. Although the nursing assistants whom were also caring for M.S. advised the Respondent that the brace should not be removed, the Respondent removed the brace without speaking to M.S.'s physical therapist to verify that it was safe for the patient. Additionally, Facility staff had previously cared for a patient who required the same kind of brace and it was well known that only physical therapists were competent to remove or apply the brace.

7. In an interview with the Respondent conducted by Clinical Coordinator K.L. on or about June 8, 2006, the Respondent advised that she did not "know much" about the brace, but assumed it was could be removed for bathing if the affected arm was properly supported.

8. On or about January 10, 2004, the Respondent poured Ultram 24mg to be administered to a patient. After it was poured, the Respondent discovered that medication had been discontinued. The Respondent charted that the medication was wasted and not given to the patient. However, instead of wasting the medication, the Respondent placed the medication on the counter with the other medications to be administered and a nursing assistant mistakenly administered the Ultram to the resident.

9. On or about October 13, 2006, the Respondent administered morphine 2mg to patient L.B. Instead of administering injectable liquid morphine subcutaneously as ordered, the Respondent administered concentrated oral morphine subcutaneously.

Charges

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

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 pursuant to ARBN Chapter 4, Rule IV(II)(B)(1); failing to conform to the essential standards of acceptable and prevailing nursing practice pursuant to ARBN Chapter 4, Rule IV(II)(B)(2); and

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; or (2) failure to conform to the essential standards of acceptable and prevailing practice).

Understandings

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11. 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 delay, uncertainty, inconvenience, and expense of protracted litigation of the charges above, 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 these charges by a preponderance of the evidence if this matter went to a hearing and agrees that the conditions below are necessary to protect the public.
12. 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.
13. 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.
14. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
15. Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation and Consent Order.
16. 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.
17. 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.
18. Respondent agrees that the Order set forth below may be entered by the Board.

ORDER

- A. As of the date of entry of this Order the Respondent *W.H. [signature]* has successfully completed an assessment course, with prior approval by the Board or its designee, and submitted written documentation of completion to verify the same to the satisfaction of the Board or its designee; and 2) successfully completed a documentation course, with prior approval by the Board or its designee, and submit written documentation of completion to verify the same to the satisfaction of the Board or its designee. Pursuant to this Stipulation and since the Respondent has successfully completed this course work, her license shall now be **CONDITIONED FOR A MINIMUM OF ONE (1) YEAR**. The conditions will be as follows:

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Jan / 2009 02:26am 004/006

05/27/2009 12:03 FAX 802 775 9774

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(1) Re-issue 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 one (1) year of supervised nursing practice in which she works at least forty (40) hours every two (2) weeks as a registered nurse. Part time hours of less than forty (40) hours every two (2) weeks shall be credited on a pro-rated basis. Respondent shall be prohibited from working more than forty (40) hours per week.

(3) Notification to Employers/Program Director.

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 registered 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 registered 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 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 write to the Board, on school letterhead, 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.

(4) Reports from Employers/Program Director.

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 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. All employer reports shall indicate satisfactory performance 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. This report shall be submitted in writing on forms issued by the Board and accompanied by a cover letter on the school's letterhead. All Program Director reports shall indicate satisfactory performance and attendance.

(5) Practice Under Supervision.

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

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(6) 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 during the effective period of this Consent Order.

(7) 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.

(8) Notification of Place of Employment/Personal Address/Telephone Number

Within five (5) days of the date of entry of this Consent 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.

(9) 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 registered nursing license within thirty (30) days of the date of entry of this Order. If the Respondent fails to provide such notification, it will be considered a violation of this Order.

(10) 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 registered 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.

(11) Costs

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

(12) 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.

(13) Completion of Conditional License Period

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After the minimum 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:

Dated: 6/1/09

STATE OF VERMONT
SECRETARY OF STATE

By: [Signature]
Edward G. Adrian
State Prosecuting Attorney

PATRICIA F. BERGERON
RESPONDENT

Dated: 5-29-09

By: Patricia F. Bergeron
Patricia F. Bergeron

APPROVED AS TO FORM:

Dated: 5-29-09

ATTORNEY FOR RESPONDENT

By: [Signature]
Judy Barone, Esq.

APPROVED AND SO ORDERED:

Dated: 8-10-09

VERMONT BOARD OF NURSING

By: [Signature]
Chairperson

Date of Entry: 8/12/09
nil.bergeron.sfp

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