

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

IN RE:

RICHARD J. BRAUN

License No. 025.0008391

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Docket No. 2011-711

STIPULATION AND CONSENT ORDER

NOW COME the State of Vermont, by and through State Prosecuting Attorney Gabriel M. Gilman, and the Respondent, Richard J. Braun, 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.

Statement of Facts

2. Richard Braun (the "Respondent") of Randolph, Vermont is licensed by the State of Vermont as a Licensed Practical Nurse under license number 025.0008391. This license was originally issued on or about August 14, 2003 and expires on January 31, 2014.
3. At all times relevant, Respondent was employed as a Licensed Practical Nurse at Woodridge Rehabilitation and Nursing Home (the "Facility") which is located in Berlin, Vermont.
4. On or about October 13, 2011, the Office of Professional Regulation (OPR) received a Mandatory Report of Unprofessional Conduct from the Facility alleging that on or about October 5, 2011 Respondent reported to work under the influence of alcohol. Upon investigation it was revealed that Respondent reported to work under the influence of alcohol on or about August 11, 2010.

Statement of Facts re: August 11, 2010 Incident

5. In a handwritten statement by registered nurse J.K., dated August 11, 2010, she stated that on that date she observed Respondent with slurred speech and what smelled like alcohol on his breath.

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6. In a handwritten statement by registered nurse N.C., dated August 11, 2010, she stated that on that date she observed Respondent as having slurred speech.
7. In a handwritten statement by registered nurse A.P., dated August 11, 2010, she stated on that date she observed Respondent looking tired and while speaking with him she smelled a very strong odor of alcohol.
8. On or about August 11, 2010, Respondent initially denied being under the influence but then admitted to T.S. that he had a beer in the morning before work. Respondent was given an EAP card to call and was sent home. Respondent then began following a treatment plan and was allowed to return to work on September 2, 2010.

Statement of Facts re: October 5, 2011 Incident

9. On or about October 5, 2011 registered nurse B.B. observed Respondent as having a strong odor of alcohol on his breath, fixed pupils, and slurred speech.
10. In a handwritten statement by registered nurse J.K., dated October 5, 2011, she stated that Respondent came to work that night with a strong odor of alcohol on his breath and that he repeatedly slurred his words
11. A handwritten statement by A.L. she stated that on October 5, 2011 she observed Respondent arrived to work smelling of alcohol and slurring his words.
12. On or about November 2, 2011, in an interview with Investigator Lewis, Respondent stated that on August 11, 2010 he had a couple beers before work, he was given a warning, and has adhered to that warning ever since. Additionally, with regard to the October 5, 2011 incident, Respondent originally stated he may have had one beer around lunch time, 8 hours before he reported to work. He subsequently stated that he may have split the beer into two cups and drank half around lunchtime and the remaining 6 ounces around 3:00, approximately 4 hours before reporting to work. Furthermore, Respondent said he made a poor judgment decision that particular day by drinking anything.
13. Prior to entering into this Stipulation and Consent Order Respondent submitted to three (3) random drug and alcohol screens all of which were negative.

Violations

14. 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:
15. 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, Subchapter 4, Rule II(B)(1); and failing to conform to the essential standards of acceptable and prevailing nursing practice pursuant to ARBN Chapter 4, Subchapter 4, Rule II(B)(2);



16. 26 V.S.A. § 1582(a)(7) (Engages in conduct of a character likely to deceive, defraud or harm the public);
17. 3 V.S.A. § 129a(a)(5) (Practicing the profession when medically or psychologically unfit to do);
18. 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); and
19. 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).

Understandings

20. 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.
21. 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.
22. Respondent specifically waives any claims that any disclosures made to the full Board during its review of this agreement have prejudiced his rights to a fair and impartial hearing in future hearings if this agreement is not accepted by the Board.
23. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
24. Respondent is not under the influence of any drugs or alcohol at the time he signs this Stipulation and Consent Order.
25. 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.
26. Respondent voluntarily waives his right to a contested hearing before the Board of Nursing and waives any right to appeal from this Stipulation and Consent Order.
27. Respondent agrees that the Order set forth below may be entered by the Board.

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ORDER

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

- A. The Board of Nursing hereby **INDEFINITELY SUSPENDS** the Respondent's license to practice nursing. Within forty-five (45) days of requesting reinstatement, Respondent must obtain an independent evaluation report by a licensed professional specializing in drug and alcohol abuse pre-approved by the Board and who has verified receipt of this Order, the results of which must indicate to the Board's satisfaction that the Respondent does not present a risk to the safety, health or welfare of his potential patients.

The Respondent's license shall not be reinstated until this prerequisite is met. The Respondent has previously provided urinalysis samples. If the Respondent petitions for reinstatement later than February 1, 2013, the Board may require that Respondent provide new samples as an additional condition precedent to reinstatement.

Once reinstated, Respondent's license will be **CONDITIONED FOR A MINIMUM OF THREE (3) YEARS** commencing with the date of reinstatement. The conditions will be as follows:

(1) Re-issue of License.

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

(2) Length of Time 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 in which he 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. Respondent shall be prohibited from working more than forty (40) hours per week.

(3) Completion of Substance Abuse Counseling and Treatment Plan.

If recommended by the Independent Evaluator, Respondent shall enter into and continue substance abuse counseling with the treating professional pre-approved by the Board until the treating professional shall certify in writing to the Board that such counseling is no longer necessary. Respondent shall comply with the substance abuse treatment plan approved by the Board and the treating professional.

(4) Reports from Treating Professional.

If recommended by the Independent Evaluator, Respondent shall authorize and cause his treating professional to submit to the Board evidence of satisfactory progress with the treatment plan during the effective period of this Consent Order. These reports shall be submitted in writing on forms issued by the Board. The first report is due commencing

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the month after the date of the commencement of the conditions and subsequent reports are due **monthly** thereafter.

Respondent shall authorize his treating professional to provide all information requested by the Nursing Board, either orally or in writing, at any time during the period this Consent Order is in effect.

(5) Participation in Recovery Group(s).

If recommended by the Independent Evaluator, Respondent shall participate as recommended by his treating professional in substance abuse recovery group(s), and shall submit **quarterly** reports documenting such attendance on forms issued by the Board.

(6) Random Drug and Alcohol Testing.

Respondent shall submit to random drug and alcohol screenings at the request of the Board or its designee. Respondent shall designate a person or entity that has been pre-approved by the Board or its designee to administer random drug and alcohol screens. All testing shall be done on a random, unannounced basis and analyzed by a lab qualified to analyze samples for forensic purposes and approved by the Board. All urine specimens collected for tests shall be collected in an observed setting. All screens shall be negative.

Failure to appear for, refusal to provide, adulteration of, dilution of, or tampering with a sample for any urine screen shall cause that screen to be presumed positive. Any positive screen shall act as a violation of this Order.

(7) Abstain from Drug and Alcohol Use.

Respondent shall abstain completely from the consumption or possession of alcohol and drugs with the exception of medications as outlined in paragraph A.(8) for the period of time described in A.(2).

(8) Drug Use Exception.

Respondent shall not take controlled substances unless medically necessary. Respondent may take scheduled/controlled medications lawfully prescribed for a bona fide illness or condition by a physician, dentist, or nurse practitioner whose identity shall be made known to the Board in writing by Respondent within forty-eight (48) hours of the prescription. Respondent shall cause the physician, dentist or nurse practitioner to inform the Board, in writing and on appropriate letterhead, of knowledge of Respondent's substance abuse issue(s) within seven (7) days of entering into the practitioner/patient relationship. Moreover, the Respondent shall cause this prescribing practitioner to inform the Board, in writing and on appropriate letterhead, 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 Board or its designee may request at any time that the practitioner document the necessity for the prescribed scheduled/controlled medications or other medications known to have abuse potential. This includes medications to be administered as necessary. It is not anticipated that Respondent would be prescribed scheduled/controlled medication during the term of this Consent Order for a period greater than fourteen (14) days, but if so, then the conditions herein may be revoked by the Board.

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Respondent shall provide the Board with a current medication list of any medications taken on a scheduled or as-needed basis on forms issued by the Board 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.

(9) Notification to Employers/Nursing School.

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 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.

(10) 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 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. Moreover, on a **quarterly** basis, these reports shall include the results of the employer's medication audits of Respondent's medication administration and practices. 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 his 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.

(11) Practice Under Supervision.

Respondent shall practice as a 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.

(12) 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

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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.

(13) Interview with the Board or its Designee.

Respondent shall appear in person for interviews with the Board or its designee upon request.

(14) 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.

(15) 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 Board, in writing, of his 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.

(16) Notification to Other States.

In the event that the Respondent is licensed in nursing in any other state(s), he must inform the nursing licensing board of the state(s) in which the Respondent is licensed of the conditional status of his Vermont 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.

(17) 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 he has otherwise complied with the requirements for license renewal.

(18) Release of Information Forms.

The conditions of this Order require the Respondent to authorize drug and/or alcohol treatment providers to report information in verbal and/or written format and/or to discuss the Respondent and any and all treatment rendered to the Respondent for drugs and/or alcohol with the Board or its designee. The conditions of this Order must allow any and all information from the Respondent's treatment providers to also be provided to the

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Office of Professional Regulation investigators 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.

The Respondent is entitled to revoke this consent at any time. However, any revocation by the Respondent of such consent to disclosure during the term of this Order shall be considered a violation of this Order.

This consent expires when the conditions are removed from the Respondent's nursing license.

This Stipulation and Consent Order shall constitute a valid written consent pursuant to the requirements of 42 C.F.R. § 2.31.

The Respondent understands that his treatment provider may require him to sign a separate and distinct consent meeting the requirements of 42 C.F.R. § 2.31.

(19) Costs.

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

(20) 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.

(21) Completion of Conditional License Period.

After the conditional license period, the Respondent may petition the Board, or it's designee to remove any and all conditions on his license. The Respondent must present proof that he has fully complied with the terms of this Order. The Respondent must also present proof of successful substance abuse rehabilitation and he must demonstrate, to the satisfaction of the Board, that he poses no danger to the public or the practice of nursing and that he can safely and competently perform the duties of a licensed nurse.

- 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:

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Dated: 10/8/12

SECRETARY OF STATE

By: [Signature]

Gabriel M. Gilman
State Prosecuting Attorney

Dated: Oct 8, 2012

RICHARD J. BRAUN
RESPONDENT

By: Richard J. Braun

Richard J. Braun

APPROVED AS TO FORM:

Dated: Oct 8, 2012

ATTORNEY FOR RESPONDENT

By: [Signature]

David Putter, Esq.

APPROVED AND SO ORDERED:

Dated: 10/8/12

VERMONT BOARD OF NURSING

By: [Signature]

Chairperson

Date of Entry: 10/10/12

