

**STATE OF VERMONT
BOARD OF NURSING**

In re: John Francis Brennan
License No. 026-19618

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Docket No. 2009-194

Disposition Order

Participating Board Members:

Ellen W. Leff, RN, Chair
Alan Weiss
Sandra Norton, LNA
Donarae Metcalf, LPN
De-Ann Welch, LPN
William G. White Jr.
Deborah Robinson, RN
John Todd, ARPN

Appearances:

for Petitioner, State of Vermont: Betsy Ann Wrask
for Respondent: Pro se

Presiding Officer: Larry S. Novins

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

The Vermont Board of Nursing held a hearing in the above matter on April 12, 2010 at the National Life Building in Montpelier, Vermont. The parties submitted a Stipulation and Consent Order which the Board accepts. The Order leaves to the Board's determination whether there should be any limitations on Mr. Brennan's employment during the period his license is conditioned.

Findings of Fact

Based on the evidence presented, the Board finds as follows:

1. Mr. Brennan's conduct as stipulated to by the parties shows that Mr. Brennan needs consistent direct and accountable supervision to protect the public.

Conclusions of Law

Based on the evidence presented and Facts found above we conclude that public safety requires a limitation of Mr. Brennan employment.

Order

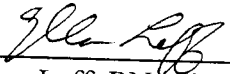
For the violations above, to protect the public, health, safety and welfare, the following condition is necessary.

1. Mr. Brennan shall not work in a supervisory role. He shall not work for a nurse registry, traveling nurse agency, temporary nursing employment 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 his supervision.

APPEAL RIGHTS

The parties have agreed that they will be bound by the Board's decision on this condition and waive any appeal rights they would have had this decision come after a contested hearing.

Vermont Board of Nursing

By: 
Ellen Leff, RN, Chair

Date April 12, 2010

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 4/14/10

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

IN RE:

JOHN FRANCIS BRENNAN

License No. 026.0019618

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Docket No. 2009-194

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COME the State of Vermont, by and through State Prosecuting Attorney BetsyAnn Wrask, and the Respondent, John Francis Brennan, RN, 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. John Francis Brennan (the "Respondent") of Lebanon, New Hampshire is licensed by the State of Vermont as a Registered Nurse under license number 026.0019618. This license was originally issued on or about August 29, 1990 and is currently set to expire on or about March 31, 2011.
3. At all times relevant, Respondent was employed as a Registered Nurse at Gifford Medical Center (the "Facility"), located in Randolph, Vermont.
4. On or about March 4, 2009 in a Mandatory Report of Unprofessional Conduct, Vice President of Patient Care Services L.M. reported that Respondent was suspended on or about March 3, 2009 and terminated from the Facility on or about March 4, 2009. L.M. advised that Respondent had been counseled twice in or around the Fall of 2008 regarding inappropriate conversations with peers and healthcare providers; that Respondent had been offered resources; and that Respondent did review the Facility sexual harassment policy. However, L.M. advised that on or about February 27, 2009 when Respondent was assisting with an ambulance transfer to the Facility's emergency room, Respondent made an inappropriate comment to an ambulance staff

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member. L.M. stated that the comment was documented by the ambulance staff member and confirmed by Respondent in an email he sent to that staff member.

5. On or about February 27, 2009, Respondent made an inappropriate sexual comment to EMT S.E. by putting his arm around her and asking whether S.E. wanted to have a threesome with a patient. Thereafter, on or about February 28, 2009, Respondent sent S.E. an email stating, "Hope I didn't annoy you too much with the 3-way comment. You know me[,] completely unprofessional & totally inap[p]ropriate :)"
6. On multiple occasions, Respondent made similar inappropriate sexually-related comments to S.E.
7. On multiple occasions, Respondent inappropriately touched S.E. by rubbing her back and/or shoulders without solicitation.
8. In or around 2007, Respondent emailed RN K.B. a sexually explicit joke regarding oral sex.
9. On multiple occasions, Respondent inappropriately touched coworker K.R. by rubbing her back, shoulders, and pregnant stomach without solicitation.
10. On multiple occasions, Respondent made inappropriate sexual comments to coworker S.R. These included Respondent stating that S.R. and her coworker K.M. should try a sexual "banana trick"; and Respondent's multiple statements that he, S.R., and K.M. should have a threesome.
11. On multiple occasions, Respondent inappropriately touched coworker S.R. by rubbing and massaging her shoulders, even after S.R. told Respondent she was not comfortable with him doing so.
12. On multiple occasions, Respondent invaded the personal space of Pharmacist H.K. and would get "touchy" with her. On one occasion, Respondent made a sexual comment to H.K. by suggesting that for H.K.'s husband's birthday, H.K. should put a bow on herself and wear nothing else. Thereafter, on multiple occasions, Respondent would ask H.K., "How was your birthday gift?"
13. Respondent's actions described above are in violation of the Facility's sexual harassment policy and the Professional Practice Standards outlined in the American Nurses Association Code of Ethics.
14. Despite State Investigator Jeffrey Jones' attempts to interview Respondent regarding whether Respondent ever made sexually explicit statements to coworkers or whether Respondent ever touched coworkers without solicitation, Respondent would not address the content of the questions asked of him.

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15. On or about July 24, 2009 in an email responding to Investigator Jones' advisement that the investigation was nearing completion without a specific response from Respondent, Respondent stated that since he began working at the Facility, he has been diagnosed with two (2) different psychological disorders; has some components of a third such disorder; and has a cognitive deficit that may be related to one of the psychological disorders.
16. A review of Respondent's personnel file reveals in part the following:
- a. On or about August 27, 2008, Respondent received a 1st Warning regarding the following issues that "continue to be of concern as we have not seen any improvement":
 - i. Timely attention and through put [sic] of patients;
 - ii. Triage of patients and interviewing/prepping patients in a reasonable time frame;
 - iii. Following standard operating procedures and standards of practices for the ER Department; and
 - iv. Clear and good "bedside manner" communication with patients and staff.
 - b. On or about October 16, 2008, Respondent received a 2nd Warning after the Facility received a complaint that Respondent asked a female employee if she would like a back rub, and during the course of the investigation, the Facility learned Respondent had a history of over-stepping personal space via emails; asking to provide messages; and asking to help others at home, in regard to female employees. Moreover, Respondent had again been coached since the 1st Warning for the same concerns contained therein. Furthermore, the Respondent was noted to have been counseled regarding patient flow, and unacceptable patient and family communications.

Charges

17. 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)(3) (Is unable to practice nursing competently by reason of any cause);
 - b. ARBN Chapter 4, Subchapter 4, Rule II(B)(1) and (2) ("Inability to practice nursing competently" includes performance of unsafe or unacceptable patient care; and failure to conform to the essential standards of acceptable and prevailing nursing practice);

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- c. ARBN Chapter 4, Subchapter 4, Rule II(C) ("Any cause" includes, but is not limited to, reasons of physical or mental disability or use of drugs, narcotics, or chemicals or any other type of materials);
- d. 26 V.S.A. § 1582(a)(6) (Has a mental or physical disability, that nature of which interferes with ability to practice nursing competently);
- e. 3 V.S.A. § 129a(a)(5) (Practicing the profession when medically or psychologically unfit to do so);
- f. 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
- g. 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

- 18. 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.
- 19. 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.
- 20. 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.
- 21. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
- 22. Respondent is not under the influence of any drugs or alcohol at the time he signs this Stipulation and Consent Order.
- 23. 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.

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24. 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.
25. Respondent agrees that the Order set forth below may be entered by the Board.

ORDER

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

- A. The Board of Nursing hereby **INDEFINITELY SUSPENDS** the Respondent's license to practice nursing **from the date of entry below**. Within forty-five (45) days of requesting reinstatement, Respondent must obtain an independent evaluation report by a licensed physician or APRN pre-approved by the Board regarding Respondent's medical and psychological condition. The results of the report with the independent evaluator must either: 1) indicate that the Respondent does not present a risk to the safety, health or welfare of his potential patients; or 2) recommend a treatment plan designed to ensure 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 these prerequisites are met. Once reinstated, Respondent's license will be **CONDITIONED FOR A MINIMUM OF NINE (9) MONTHS** 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 nine (9) months** 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 being scheduled for more than forty (40) hours per week, and shall be prohibited from working more than forty-five (45) hours per week.

(3) Completion of Treatment Plan (if applicable).

Pursuant to Order A., if Respondent's independent evaluator recommends a treatment plan designed to ensure that the Respondent does not present a risk to the safety, health or welfare of his potential patients, Respondent shall enter into and continue a treatment plan with a treating professional pre-approved by the Board until the treating professional shall certify in writing to the Board that the treatment plan is no longer necessary. Respondent shall enter into and comply with the treatment plan approved by the Board and the treating professional.

(4) Notification to Treating Professional (if applicable).

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Pursuant to Order A., if Respondent's independent evaluator recommends a treatment plan designed to ensure that the Respondent does not present a risk to the safety, health or welfare of his potential patients, Respondent shall provide a copy of this Stipulation and Consent Order to his treating professional and cause his treating professional to inform the Board, in writing and on professional letterhead, of receipt of the Stipulation and Consent Order and the treating professional's ability to comply with the conditions related to treatment and with all other terms of this Consent Order.

(5) Reports from Treating Professional (if applicable).

Pursuant to Order A., if Respondent's independent evaluator recommends a treatment plan designed to ensure that the Respondent does not present a risk to the safety, health or welfare of his potential patients, 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 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.

(6) Participation in Recovery Group(s) (if applicable).

Pursuant to Order A., if Respondent's independent evaluator recommends a treatment plan designed to ensure that the Respondent does not present a risk to the safety, health or welfare of his potential patients, Respondent shall participate as recommended by his treating professional in recovery group(s), and shall submit **quarterly** reports documenting such attendance on forms issued by the Board.

(7) 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 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.

(8) 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

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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 his 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 nursing program reports shall indicate satisfactory performance and attendance.

(9) Sexual Harassment Course(s).

Respondent must successfully complete (i.e., receive a passing grade, if applicable) a sexual harassment course(s) focusing on sexual harassment with prior approval by the Board or its designee, and then submit written documentation of completion (certificate of completion, etc.) to verify the same to the satisfaction of the Board or its designee. This course must be completed within ninety (90) days of the date of entry of this Stipulation and Consent Order.

(10) Communication Course(s).

Respondent must successfully complete (i.e., receive a passing grade, if applicable) a communication course(s) focusing on communication with prior approval by the Board or its designee, and then submit written documentation of completion (certificate of completion, etc.) to verify the same to the satisfaction of the Board or its designee. This course must be completed within ninety (90) days of the date of entry of this Stipulation and Consent Order.

(11) Practice Under Supervision.

For the first three (3) months of this conditioned period, Respondent shall practice as a registered nurse 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.

If Respondent's employers and/or Program Directors submit satisfactory monthly reports regarding Respondent's performance and attendance during those first three (3) months, thereafter Respondent shall practice as a registered nurse only in a setting where, at a minimum, Respondent has on-site supervision for the entire shift by a registered nurse that is licensed and in good standing with the Board.

(12) Types of Employment Prohibited.

The parties have not reached agreement as to whether the Respondent shall be prohibited from working in certain types of employment during the conditioned period.

The State's position is as follows: 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.

At the time of the disposition hearing, the Respondent may argue for a different limitation.

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(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.

(15) 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 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, 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 (if applicable).

Pursuant to Order A., if Respondent's independent evaluator recommends a treatment plan designed to ensure that the Respondent does not present a risk to the safety, health or welfare of his potential patients, the conditions of this Order require the Respondent to authorize 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 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 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.

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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 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.

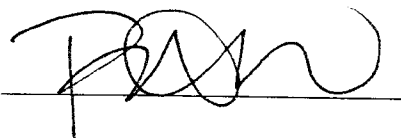
Pursuant to Order A., if Respondent's independent evaluator recommends a treatment plan designed to ensure that the Respondent does not present a risk to the safety, health or welfare of his potential patients, the Respondent must also present proof of successful medication and/or psychological rehabilitation 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:

STATE OF VERMONT
SECRETARY OF STATE

Dated: 3.25.10

By: 

STATE OF VERMONT

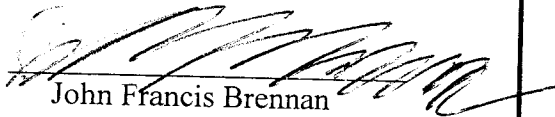


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BetsyAnn Wrask
State Prosecuting Attorney

JOHN FRANCIS BRENNAN
RESPONDENT

Dated: _____

By: 
John Francis Brennan

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: _____

By: _____
Chairperson

Date of Entry: _____
nu.brennanjf.stip

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