

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

IN RE:
ARNOLD BURKE
License No. 026-0023051

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Docket No: NU 69 - 0698

STIPULATION AND CONSENT ORDER

NOW COME the State of Vermont, through its Attorney General William H. Sorrell, and Respondent Arnold Burke, and 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 or prevent the renewal of current or lapsed licenses if, after disciplinary hearing, the Board finds that the Respondent has engaged in unprofessional conduct. 3 V.S.A. §129(a)(5); 3 V.S.A. §814(d); 26 V.S.A. §1582(a).
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. Engaging in conduct of a character likely to harm the public is unprofessional conduct upon which the Board can base disciplinary action. 26 V.S.A. §1582(a)(7).
4. Inability to practice nursing competently by reason of any cause is unprofessional conduct upon which the Board can base disciplinary action. 26V.S.A. §1582(a)(3).
5. 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. Administrative Rules of the Board of Nursing ("ARBN") Chapter 4, Rule IV(B).
6. Inability to practice nursing competently includes the use of drugs and/or narcotics. ARBN, Chapter 4, Rule IV(B)(3).

Facts

7. The Respondent is licensed as a Registered Nurse under License Number 026 – 0023051.

8. Respondent's license was originally issued on August 13, 1996 and his license lapsed on March 31, 1999.

9. Respondent has not practiced as a Registered Nurse since his license has lapsed in 1999.

10. On or about July 10, 2000, Respondent's license was revoked due to a default order entered as a result of Respondent's failure to respond to the charges filed on March 30, 2000.

11. Upon information and belief, around 1998 Respondent's use of lawfully prescribed medication(s) resulted in his practicing incompetently due to his use.

12. Since November 2001, Respondent has been in counseling with a Licensed Alcohol and Drug Counselor. Upon information and belief, Respondent has complied with all aspects of treatment as ordered by his counselor.

13. Upon information and belief, Respondent is no longer taking any lawfully prescribed medications.

14. Respondent's counselor has provided an opinion concerning Respondent's prognosis and the counselor's opinion is that Respondent is currently able to return to the practice of the profession and can safely perform those duties and responsibilities of a Registered Nurse.

Understanding

15. Respondent admits the "facts" as set forth above.

16. Respondent admits the conclusions of unprofessional conduct as set forth below in the Board's Order.

17. 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.

18. 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.

19. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.

20. Respondent is not under the influence of any drugs or alcohol at the time he signs this Stipulation and Order.
21. Respondent Voluntarily enters this agreement after the opportunity to consult with legal counsel and is not being coerced by anyone into signing this Stipulation and Consent Order.
22. Respondent voluntarily waives his right to charges and a contested hearing before the Board of Nursing.
23. 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. By engaging in the conduct described above, Respondent violated 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) and as such engaged in unprofessional conduct pursuant to 26 V.S.A. §1582(a)(7) (engaging in conduct of a character likely to harm the public is unprofessional conduct upon which the Board can base disciplinary action) and 26V.S.A. §1582(a)(3)(inability to practice nursing competently by reason of any cause is unprofessional conduct upon which the Board can base disciplinary action) and Administrative Rules of the Board of Nursing ("ARBN") Chapter 4, Rule IV(B)(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) and ARBN, Chapter 4, Rule IV(B)(3)(inability to practice nursing competently includes the use of drugs and/or narcotics).

B. Based on the above stipulation and on the above Findings and Conclusions of this Board, it is **ORDERED** follows:

Based on the above, it is **ORDERED** that **CONDITIONS** shall be imposed on any license to practice nursing issued to Respondent. The conditions are as follows:

(1) Length of Time 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 three (3) years of supervised nursing practice in which Respondent 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-eight (48) hours per week. Respondent's license is additionally conditioned as follows.

(2) Completion of Counseling and Treatment Plan.

Respondent shall enter into and continue counseling with the treating professional approved by the Board until the treating professional shall certify, in writing, to the Nursing Board that such counseling is no longer necessary.

Respondent shall enter into and comply with the treatment plan approved by the Board and/or the Board's designee and the treating professional.

(3) Substance Abuse Therapy and Notification to Treating Professional.

Respondent shall provide a copy of this Stipulation and Consent Order to Respondent's treating professional and cause Respondent's 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.

(4) Reports from Treating Professional.

Respondent shall authorize and cause Respondent's 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 and shall be accompanied by a cover letter on the treating professional's letterhead. The first report is due commencing the month after the date of entry of this Consent Order and subsequent reports are due every month thereafter. The first report shall be accompanied by a comprehensive evaluation, acceptable to the Board or its designee, submitted, in writing, on forms issued by the Board and based on the criteria to be developed by the Board or its designee.

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

(5) Participation in Support Group.

Respondent shall participate, at least weekly or as recommended by Respondent's treating professional, in Alcoholics Anonymous and/or Narcotics Anonymous or a similar support group.

(6) Random Alcohol/Drug Testing.

Respondent shall submit to random alcohol and drug screening at the request of the Board. Respondent shall ensure that Respondent's treating professional or employer or both shall administer random alcohol or drug tests as required by the Board or its designee. All testing shall be done on a random, unannounced basis, and analyzed by a lab qualified to analyze samples for forensic purposes. All screens shall be negative except for drugs prescribed for

Respondent under the care of a physician, dentist, or nurse practitioner, subject to the limitations below. (See paragraph 8, Drug Use Exception.)

(7) Abstain from Alcohol or Drug Use.

Respondent shall abstain completely from the consumption of alcohol or the use or possession of any drugs with the exception of prescribed medications as outlined below in paragraph 8 for the period of time described above in paragraph 1.

(8) Drug Use Exception.

Respondent shall not take any scheduled substances unless necessary. Respondent may take scheduled 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 establishment of the practitioner/patient relationship.

Respondent shall ensure that the physician, dentist, or nurse practitioner informs the Board, in writing and on appropriate letterhead, of knowledge of Respondent's substance abuse issue(s) within one (1) week of entering into the practitioner/patient relationship. Respondent shall inform the Board, in writing, of all medications prescribed, including the name of the prescribing practitioner, within forty-eight (48) hours of receiving the prescription.

The Board or its designee may request at any time that the practitioner document the continued necessity for the prescribed medications if the term potentially exceeds 14 days. This includes medications to be administered as

necessary or *PRN*. It is not anticipated that Respondent would be prescribed scheduled medication, during the term of this Consent Order, for an extended period of time, which includes any period greater than 14 days. If Respondent is prescribed medications for an extended period of time, then such conduct creates a prima facie case that the Respondent has violated these conditions, as listed, and Respondent shall have the burden of showing Respondent is currently fit and safe to practice under the medications as prescribed.

Respondent shall keep a written record of medications taken, including over-the-counter drugs, and produce such record upon the request of the Board or its designee.

(9) Interview with the Board or its Designee.

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

(10) Re-issue of License.

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

(11) Out-of-State Practice/Residence.

Before any out-of-state practice or residence can be credited toward fulfillment of these terms and conditions, Respondent shall first obtain approval from the Board prior to Respondent leaving the State of Vermont. If Respondent fails to receive such approval before leaving the State, none of the time spent 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 practice so long as the Respondent can still comply with the provisions of this Consent Order.

(12) 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 Respondent's current place of nursing employment, personal address, and telephone number. Respondent shall further notify the Board, in writing, within forty-eight (48) hours of any change in nursing employment, personal address, or telephone number. Respondent shall provide a copy of this Consent Order to all employers, current and future, and shall inform them of the conditional status of Respondent's license.

(13) Notification to Employers.

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 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.

(14) Reports from Employers.

Within one (1) month of the date of entry of this Consent Order and every month thereafter, Respondent shall cause every employer Respondent has worked for during the month to submit to the Board an evaluation of Respondent's performance and attendance during that month. This report shall be submitted in writing on forms issued by the Board. In the event Respondent is not employed in nursing during any month or portion thereof, Respondent shall submit to the Board, in writing, a self-report describing other employment or activities. In the event the Respondent is attending a nursing program, Respondent shall provide a copy of the Consent Order to the Program Director. Respondent shall cause the Program Director to write to the Board, on school letterhead, acknowledging receipt of the Consent Order and ability of the program to comply with the conditions in the Consent Order during clinical experience.

Respondent shall sign a consent, upon request of the Board, to authorize Respondent's employer to provide all information requested by the Nursing Board, or its designee, either orally or in writing, at any time during the period the Consent Order is in effect.

(15) Practice Under Supervision.

Respondent shall practice only in a setting where Respondent has on-site supervision for the entire shift by a registered nurse in good standing with the Vermont Board of Nursing.

(16) Administration of Medications.

The Respondent is prohibited from administering any controlled substance for a minimum period of three (3) months from the entry of this order. Thereafter, Respondent may petition the Board for gradual reinstatement as follows:

- a. This condition may be modified or removed only by the Respondent filing a petition with the Board after Respondent has worked as a nurse for three (3) months at a minimum of 40 hours work every two weeks (or the part-time equivalent) after the entry date of this Order; and,
- b. The Board does not receive any complaints concerning Respondent while the prohibition is in effect.

If Respondent presents satisfactory evidence of the above, then Respondent, subject to approval by the Board, shall be allowed to administer controlled substances under direct supervision for a period of three (3) months.

Thereafter, Respondent may petition the Board for on-site supervision based on the same criteria above. Thereafter, Respondent may apply for full reinstatement based on the above criteria.

(17) Types of Employment Prohibited.

Respondent shall not work for a nurse registry, traveling nurse agency, float-pool, home health care agency, temporary nursing employment agency, or as a personal care provider during the effective period of this Consent Order.

(18) License Renewal.

In the event Respondent's license is scheduled to expire during the period this Consent Order is in effect, Respondent shall apply for renewal of the license, pay the applicable fee, and otherwise maintain qualifications to practice nursing in the State of Vermont.

(19) Release of Information Forms.

Upon the establishment of all practitioner/patient relationships with (1) treating professionals for substance abuse treatment, and with (2) treating professionals who prescribe any medication to Respondent, Respondent shall execute all release of information forms which are necessary to authorize those practitioners to release information described in this Consent Order to the Board of Nursing, its investigators, and the Attorney General's Office. All information disclosed to the Board shall be made available to its investigators and the Attorney General's Office. Respondent shall specifically execute a consent to disclosure form which meets the requirements of 42 C.F.R. §2.31 to permit disclosure of all information regarding Respondent's substance abuse treatment to the Nursing Board, its investigators, and the Attorney General's Office. Any revocation by Respondent of such a consent to disclosure during the term of this Consent Order shall be considered a violation of this Consent Order.

(20) Costs.

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

(21) Violation of the Consent Order.

If Respondent violates the terms of this Consent Order in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke the terms of the conditional license and take further disciplinary action. If a complaint or charges are filed against Respondent during the term of this Consent Order, the conditional license period shall be extended until the matter is final.

(22) Completion of Conditional License Period.

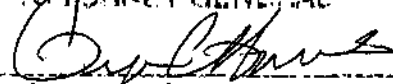
Upon completion of the conditional license period, Respondent may petition the Board to remove any and all conditions on Respondent's license and after formal review by the Board, Respondent's nursing license may be fully restored by appropriate Board action. Respondent, however, must present proof of successful substance abuse rehabilitation and demonstrate, to the satisfaction of the Nursing Board, that Respondent poses no danger to the practice of nursing and that Respondent can safely and competently perform the duties of a nurse. Such proof shall include appropriate support from Respondent's treating professional, employer, and/or nursing school administrator. Furthermore, Respondent shall demonstrate, to the Board's satisfaction, that Respondent fully complied with all the terms of this Consent Order.

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)(8).

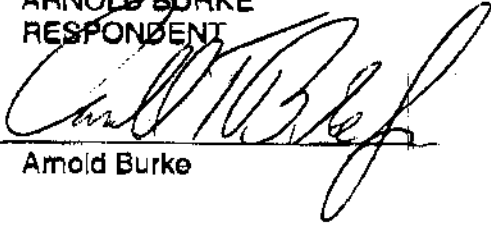
D. This Stipulation and Consent Order will remain part of Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

AGREED:

Dated: 9/5/02

STATE OF VERMONT
WILLIAM H. SORRELL
ATTORNEY GENERAL
By: 
George C. Haegeler IV
Assistant Attorney General

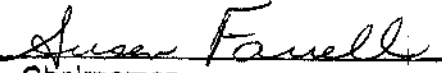
Dated: 9/04/02

ARNOLD BURKE
RESPONDENT
By: 
Arnold Burke

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 9.9.02

By: 
Chairperson

Date of Entry: 9/10/02