

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

IN RE:	)	
Barbara Merritt Cilwik	)	Docket Nos: NU18-0902;
License No.: 026-0020398	)	NU52-0103

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, through State Prosecuting Attorney, Edward G. Adrian, and Respondent Barbara Merritt Cilwik, R.N., who stipulate and agree as follows:

Board Authority

- 1) The Vermont State Board of Nursing ("Board") has authority to approve consent orders, 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); the Administrative Rules of the Board of Nursing ("ARBN"); and the Rules of the Office of Professional Regulation.
- 2) Being unable to practice nursing competently by reason of any cause is unprofessional conduct and is a basis upon which the Board may impose disciplinary action. 26 V.S.A. §1582(a)(3).
- 3) Having a mental, emotional or physical disability, the nature of which interferes with ability to practice nursing competently is unprofessional conduct and is a basis upon which the Board may impose disciplinary action. 26 V.S.A. §1582(a)(6).
- 4) Performance of unsafe or unacceptable patient care is unprofessional conduct and is a basis upon which the Board may impose disciplinary action. Administrative Rules of Nursing, Chapter 4, Rule IV(II)(B)(1).
- 5) Failure to conform to the essential standards of acceptable and prevailing practice is unprofessional conduct and is a basis upon which the Board may impose disciplinary action. Administrative Rules of Nursing, Chapter 4, Rule IV(II)(B)(2); 3 V.S.A. §129a(b)(2).

Statement of Facts

STATE OF VERMONT



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Office of
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Montpelier, VT 05602

- 6) Barbara Merritt Cilwik ("Respondent") of Derby, Vermont is a registered nurse holding license number 026-0020398 issued by the State of Vermont. Respondent's license was issued on March 10, 1992 and is currently set to expire on March 31, 2005.
- 7) Between February 2000 through August 29, 2002, the Respondent was practicing as a registered nurse employed by Correctional Medical Services ("CMS") in the Northern State Correctional Facility in Newport, Vermont.
- 8) Between September 2002 through January 16, 2003, Respondent was practicing as a registered nurse employed by Green Mountain Adult Day Service of Orleans County in Newport, Vermont.

Count I
Failure to Conform to the Essential Standards of
Acceptable and Prevailing Practice

- 9) On or about August 28, 2002, Respondent was caught by Correctional Facility Guards attempting to give \$50 to inmate D.J. by placing the \$50 between two sandwiches.
- 10) Respondent admitted giving inmate D.J. \$50 and also giving him cigarettes and lighters.
- 11) Respondent admitted that she "got involved with an inmate, not physically, just romantically."
- 12) D.H., a Department of Corrections Security Officer, stated that inmate D.J. knew the Respondent's schedule and would only need medical attention when Respondent was working at the facility.
- 13) D.H. stated the Respondent would take inmate D.J. into the back room for about one hour and if the Respondent was not at the facility, inmate D.J. would only stay with the nurse at the facility for a few minutes and then leave.
- 14) Respondent was given a written warning on August 28, 2002 for an incident with inmate D.J. that occurred on the night shift of August 14, 2002 through August 15, 2002 in which the Respondent was alone in the infirmary for about one hour with D.J. Respondent did not record this meeting with inmate D.J. in his medical chart.
- 15) As a result of the written warning, Respondent was told that she would not see inmate D.J. again without a security officer present.
- 16) Later that day, Respondent was caught giving inmate D.J. \$50 after being in a room alone with D.J.
- 17) By way of history, on August 29, 2002, Respondent was no longer allowed into Northern State Correctional Facility due to the incident on August 28, 2002

STATE OF VERMONT



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regarding the \$50.

Count II

Having a Mental, Emotional or Physical Disability, which Interferes with the Ability to Practice Nursing Competently and Being Unable to Practice Nursing Competently

- 18) Respondent admits that she has a history of depression and that by March 2002 she was extremely depressed.
- 19) The Respondent's depression has fluctuated at various levels since 1990.
- 20) Between February 2000 and January 2003, the Respondent was not able to adequately manage her depression therefore, the Respondent's depression interfered with her ability to practice nursing competently.

Count III

Unsafe or Unacceptable Patient Care

- 21) On or about January 10, 2003, a staff member at Green Mountain Adult Day Care witnessed the Respondent taking blood pressure without using a stethoscope.
- 22) Staff members also stated that Respondent would perform her duties until J.M., supervisor of Green Mountain Adult Day Care, left the facility, then Respondent would sit for hours at a time without performing her duties.
- 23) During the time the Respondent was employed by Green Mountain Adult Day Care, Respondent and J.M. were the only two people who had keys to the medication cabinet.
- 24) Family members of a client at Green Mountain Adult Day Care reported there were too many pills left in a bottle at the end of the week.
- 25) J.M., with the assistance of M.R., another employee of Green Mountain Adult Day Care, conducted an investigation in which they counted pills for clients M.L. and A.M.
- 26) During the time period between January 10 through January 15, 2003 J.M. requested that M.R. monitor the Respondent while J.M. was away from the facility.
- 27) On January 8, 2003, J.M. and M.R. performed a medication count for client M.L. which revealed ten pills in her bottle.
- 28) Client M.L. was prescribed one-half pill per day at noon each day.
- 29) Client M.L. was present at the facility four days between the relevant time period of January 8 through January 16, 2003.
- 30) Respondent initialed the Medication/Treatment Record for January 8, January 9,

STATE OF VERMONT



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January 10 and January 16, 2003 for administering medication to client M.L.

- 31) On January 16, 2003 another medication count was performed for client M.L. which revealed in nine pills in her bottle. If medication was administered according to physician orders, the count should have been eight pills. Client M.L. did not receive two doses of her prescribed medication.
- 32) Staff members reported not seeing Respondent administer any medications to client M.L.
- 33) On January 10, 2003, two staff members and the client's wife performed a medication count for client A.M. which revealed nine pills in his bottle.
- 34) Client A.M. was prescribed one pill per day at noon.
- 35) Client A.M. was present at the facility four days between the relevant time period of January 10 through January 15, 2003.
- 36) Respondent initialed the Medication/Treatment Record on January 10, January 13, January 14 and January 15, 2003 for administering medication to client A.M.
- 37) On January 15, 2003 another medication count was performed for client A.M. which revealed eight pills in his bottle. If the medication was administered according to physician orders, the count should have been five pills. Client A.M. did not receive three doses of her prescribed medication.
- 38) Staff members reported not seeing Respondent administer any medication to client A.M.
- 39) Although the Respondent does not admit to the truth of the facts above, the Respondent does not contest that the State would be able to prove these facts by a preponderance of the evidence at a hearing.

Charges

- 40) By committing the above act(s), circumstance(s) and/or omission(s), the Respondent has:
 - (i) Committed unprofessional conduct by being unable to practice nursing competently by reason of any cause in violation of 26 V.S.A. §1582(a)(3);
 - (ii) Committed unprofessional conduct by having a mental, emotional or physical disability, the nature of which interferes with ability to practice nursing competently in violation of 26 V.S.A. §1582(a)(6);
 - (iii) Committed unprofessional conduct by the performance of unsafe or unacceptable patient care in violation of Administrative Rules of

STATE OF VERMONT



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Nursing, Chapter 4. Rule IV(II)(B)(1);

- (iv) Committed unprofessional conduct by failing to conform to the essential standards of acceptable and prevailing practice in violation of Administrative Rules of Nursing, Chapter 4. Rule IV(II)(B)(2) and 3 V.S.A. §129a(b)(2);

Understandings

- 41) 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.
- 42) Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
- 43) 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.
- 44) Respondent voluntarily waives her right to charges and a contested hearing before the Board of Nursing.
- 45) Respondent agrees that the State has sufficient evidence for the Board to find that Respondent has engaged in unprofessional conduct and that the Order set forth below may be entered by the Board.

ORDER

Based upon the stipulation above, it is **ORDERED AND ADJUDGED** as follows:

A. Respondent's actions described above demonstrate grounds for discipline because Respondent has:

- (i) Committed unprofessional conduct by willfully making or filing false reports or records in the practice of the profession; willfully impeding or obstructing the proper making or filing of reports or records or willfully failing to file the proper reports or records in violation of 3V.S.A. §129a(a)(7);
- (ii) Committed unprofessional conduct by being unable to practice nursing competently by reason of any cause in violation of 26 V.S.A. §1582(a)(3);
- (iii) Committed unprofessional conduct by having a mental, emotional or physical disability, the nature of which interferes with ability to practice nursing competently in violation of 26 V.S.A. §1582(a)(6);

STATE OF VERMONT



Prosecuting Attorney
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- (iv) Committed unprofessional conduct by the performance of unsafe or unacceptable patient care in violation of Administrative Rules of Nursing, Chapter 4. Rule IV(II)(B)(1);
- (v) Committed unprofessional conduct by failing to conform to the essential standards of acceptable and prevailing practice in violation of Administrative Rules of Nursing, Chapter 4. Rule IV(II)(B)(2) and 3

B. The Board of Nursing hereby **CONDITIONS** the Respondent's license to practice nursing for a minimum period of **THREE (3) YEARS** commencing with the date of entry of this Stipulation and Consent Order. The conditions are 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 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 she works 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. Respondent's license is additionally conditioned as follows.

(3) Completion of Mental Health Counseling and Treatment Plan.

Respondent shall enter into and continue mental health counseling with a 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.

The treating professional shall be a doctoral level psychologist or psychiatrist trained in health psychology and cognitive behavioral treatments. The primary focus of such contact shall be observing overall level of functioning, active coping training, self-monitoring and early response to symptom change as part of teaching stress resilience. The treating professional shall work in consultation with the Respondent's primary care physician to evaluate overall pharmacology and to make recommendations as appropriate.

Respondent shall enter into and comply with the mental health treatment plan approved by the Board and the treating professional.

(4) Notification to Treating Professional.

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

STATE OF VERMONT



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Respondent shall authorize and cause her 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 every month thereafter.

Respondent shall authorize her 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) Notification to Employers/Nursing School.

During the conditioned period, 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 commencement of these conditions 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.

In the event Respondent is attending a nursing program which has a clinical portion which involves actual patient care, she 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 ability of the program to comply with its conditions during clinical experience.

(7) Reports from Employers.

Within one (1) month of the date of the commencement of the conditions and **monthly** thereafter, Respondent shall cause every employer Respondent has worked for during the relevant time period to submit to the Board an evaluation of Respondent's work performance and attendance during that time period. This report shall be submitted in writing on forms issued by the Board.

In the event the Respondent is attending a nursing program, 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.

(8) Practice Under Supervision.

Respondent shall practice only in a setting where Respondent has daily supervision by a Registered Nurse that is licensed and in good standing with the Board. The Registered Nurse is not required to be on-site during Respondent's shift, but is required to be in a position to monitor, at least once per day, that Respondent has fulfilled her duties and administered medications appropriately.

(9) Types of Employment Prohibited.

Respondent shall not work as a supervising nurse. Respondent shall not work for a nurse registry, traveling nurse agency, float-pool, home health care agency, temporary

STATE OF VERMONT



Prosecuting Attorney
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Montpelier, VT 05602

nursing employment agency or as a personal care provider during the effective period of this Consent Order.

(10) 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.

(11) Notification of Place of Employment/Personal Address/Telephone Number.

Within five (5) days of the date of the commencement of the conditions, 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. Respondent shall provide a copy of this Consent Order to all nursing employers, current and future, and shall inform them of the conditional status of her license.

(12) 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 nursing, the Respondent must timely apply for renewal, pay the applicable fee and demonstrate that she has otherwise complied with the requirements for license renewal.

(13) Costs.

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

(14) 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.

(15) Completion of Conditional License Period.

After the 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. The Respondent must also present proof of successful mental health rehabilitation and she must demonstrate, to the satisfaction of the Nursing Board, that she poses no danger to the public or the practice of nursing and that she can safely and competently perform the duties of a Registered Nurse.

STATE OF VERMONT



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C. Notwithstanding any provision above, the Respondent must continue to meet all Nursing Board requirements for maintaining a license, license renewal and license reinstatement.

D. 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).

E. 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: March 25, 2004

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

BARBARA MERRITT CILWIK
RESPONDENT

Dated: March 24, 2004

By: [Signature]
Barbara Merritt Cilwik

APPROVED AS TO FORM:

RESPONDENT'S ATTORNEY

Dated: March 24, 2004

By: [Signature]
Philip H. White, Esq.

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 4-26-04

By: [Signature]
Chairperson

Date of Entry: 5/3/04

nu.cilwik.stip

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IN RE: Barbara Merritt Cilwik) Docket Nos.: NU18-0902;
License No.: 026-0020398) NU52-0103

Board Authority

1. The Vermont Board of Nursing (the "Board") has the jurisdiction to investigate and adjudicate allegations of unprofessional conduct committed by Nurses pursuant to 3 V.S.A. §§ 129 and 129a; 26 V.S.A. Chapter 28 and; the rules of the Board and the Vermont Office of Professional Regulation.
2. Willfully making or filing false reports or records in the practice of the profession; willfully impeding or obstructing the proper making or filing of reports or records or willfully failing to file the proper reports or records is unprofessional conduct and is a basis upon which the Board may impose disciplinary action. 3 V.S.A. §129a(a)(7).
3. Being unable to practice nursing competently by reason of any cause is unprofessional conduct and is a basis upon which the Board may impose disciplinary action. 26 V.S.A. §1582(a)(3).
4. Having a mental, emotional or physical disability, the nature of which interferes with ability to practice nursing competently is unprofessional conduct and is a basis upon which the Board may impose disciplinary action. 26 V.S.A. §1582(a)(6).
5. Performance of unsafe or unacceptable patient care is unprofessional conduct and is a basis upon which the Board may impose disciplinary action. Administrative Rules of Nursing, Chapter 4. Rule IV(II)(B)(1).
6. Failure to conform to the essential standards of acceptable and prevailing practice is unprofessional conduct and is a basis upon which the Board may impose disciplinary action. Administrative Rules of Nursing, Chapter 4. Rule IV(II)(B)(2); 3 V.S.A. §129a(b)(2).

7. Barbara Merritt Cilwik ("Respondent") of Derby, Vermont is a registered nurse holding license number 026-0020398 issued by the State of

Vermont. Respondent's license was issued on March 10, 1992 and is currently set to expire on March 31, 2005.

8. Between February 2000 through August 29, 2002, the Respondent was practicing as a registered nurse employed by Correctional Medical Services ("CMS") in the Northern State Correctional Facility in Newport, Vermont.
9. Between September 2002 through January 16, 2003, Respondent was practicing as a registered nurse employed by Green Mountain Adult Day Service of Orleans County in Newport, Vermont.

Count I
Failure to Conform to the Essential Standards of
Acceptable and Prevailing Practice

10. On or about August 28, 2002, Respondent was caught by Correctional Facility Guards attempting to give \$50 to inmate D.J. by placing the \$50 between to sandwiches.
11. Respondent admitted giving inmate D.J. \$50 and also giving him cigarettes and lighters.
12. Respondent admitted that she "got involved with an inmate, not physically, just romantically."
13. D.H., a Department of Corrections Security Officer, stated that inmate D.J. knew the Respondent's schedule and would only need medical attention when Respondent was working at the facility.
14. D.H. stated the Respondent would take inmate D.J. into the back room for about one hour and if the Respondent was not at the facility, inmate D.J. would only stay with the nurse at the facility for a few minutes and then leave.
15. Respondent was given a written warning on August 28, 2002 for an incident with inmate D.J. that occurred on the night shift of August 14, 2002 through August 15, 2002 in which the Respondent was alone in the infirmary for about one hour with D.J. Respondent did not record this meeting with inmate D.J. in his medical chart.
16. As a result of the written warning, Respondent was told that she would not see inmate D.J. again without a security officer present.

STATE OF VERMONT



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17. Later that day, Respondent was caught giving inmate D.J. \$50 after being in a room alone with D.J.
18. By way of history, On August 29, 2002, Respondent was no longer allowed into Northern State Correctional Facility due to the incident on August 28, 2002 regarding the \$50.

Count II

Having a Mental, Emotional or Physical Disability, which Interferes with the Ability to Practice Nursing Competently and Being Unable to Practice Nursing Competently

19. Respondent admits that she has a history of depression and that by March 2002 she was extremely depressed.
20. The Respondent's depression has fluctuated at various levels since 1990.
21. Between February 2000 and January 2003, the Respondent was not able to adequately manage her depression therefore, the Respondent's depression interfered with her ability to practice nursing competently.

Count III

Unsafe or Unacceptable Patient Care and Willfully Making or Filing False Reports or Records

22. On or about January 10, 2003, a staff member at Green Mountain Adult Day Care witnessed the Respondent taking blood pressure without using a stethoscope.
23. Staff members also stated that Respondent would perform her duties until J.M., supervisor of Green Mountain Adult Day Care, left the facility, then Respondent would sit for hours at a time without performing her duties.
24. During the time the Respondent was employed by Green Mountain Adult Day Care, Respondent and J.M. were the only two people who had keys to the medication cabinet.
25. Family members of a client at Green Mountain Adult Day Care reported there were too many pills left in a bottle at the end of the week.
26. J.M., with the assistance of M.R., another employee of Green Mountain Adult Day Care, conducted an investigation in which they counted pills for clients M.L. and A.M.

STATE OF VERMONT



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27. During the time period between January 10 through January 15, 2003 J.M. requested that M.R. monitor the Respondent while J.M. was away from the facility.
28. On January 8, 2003, J.M. and M.R. performed a medication count for client M.L. which revealed ten pills in her bottle.
29. Client M.L. was prescribed one-half pill per day at noon each day.
30. Client M.L. was present at the facility four days between the relevant time period of January 8 through January 16, 2003.
31. Respondent initialed the Medication/Treatment Record for January 8, January 9, January 10 and January 16, 2003 for administering medication to client M.L.
32. On January 16, 2003 another medication count was performed for client M.L. which revealed in nine pills in her bottle. If medication was administered according to physician orders, the count should have been eight pills. Client M.L. did not receive two doses of her prescribed medication.
33. Staff members reported not seeing Respondent administer any medications to client M.L.
34. On January 10, 2003, two staff members and the client's wife performed a medication count for client A.M. which revealed nine pills in his bottle.
35. Client A.M. was prescribed one pill per day at noon.
36. Client A.M. was present at the facility four days between the relevant time period of January 10 through January 15, 2003.
37. Respondent initialed the Medication/Treatment Record on January 10, January 13, January 14 and January 15, 2003 for administering medication to client A.M.
38. On January 15, 2003 another medication count was performed for client A.M. which revealed eight pills in his bottle. If the medication was administered according to physician orders, the count should have been five pills. Client A.M. did not receive three doses of her prescribed medication.
39. Staff members reported not seeing Respondent administer any medication to client A.M.

STATE OF VERMONT



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Charges

By committing the above act(s), circumstance(s) and/or omission(s), the Respondent has:

- a. Committed unprofessional conduct by willfully making or filing false reports or records in the practice of the profession; willfully impeding or obstructing the proper making or filing of reports or records or willfully failing to file the proper reports or records in violation of 3V.S.A. §129a(a)(7);
- b. Committed unprofessional conduct by being unable to practice nursing competently by reason of any cause in violation of 26 V.S.A. §1582(a)(3);
- c. Committed unprofessional conduct by having a mental, emotional or physical disability, the nature of which interferes with ability to practice nursing competently in violation of 26 V.S.A. §1582(a)(6);
- d. Committed unprofessional conduct by the performance of unsafe or unacceptable patient care in violation of Administrative Rules of Nursing, Chapter 4. Rule IV(II)(B)(1);
- e. Committed unprofessional conduct by failing to conform to the essential standards of acceptable and prevailing practice in violation of Administrative Rules of Nursing, Chapter 4. Rule IV(II)(B)(2) and 3 V.S.A. §129a(b)(2);

Relief Requested

WHEREFORE, the nursing license of Barbara Merritt Cilwik should be revoked suspended or otherwise disciplined.

Dated at Montpelier, Vermont this 27th day of October 2003.

State of Vermont
Secretary of State

By:

Edward Adrian
State Prosecuting Attorney

m.cilwik.soc

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