

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

In RE: Douglas Clark }
License No. 026-0029838 } Docket File No. NU68-0505

**FINDINGS OF FACT
CONCLUSIONS OF LAW & ORDER**

Introduction:

This matter came before the Vermont State Board of Nursing as a proposed stipulation and consent Order for the Board's consideration. The hearing took place at Central Vermont Hospital, 130 Fisher Road Berlin, Vermont on 8 May 2006. Board members Kenneth W. Bush, Susan O. Farrell, Chairperson, Ellen Leff, Donarae Metcalf, Sandra Norton, Laurey M. Tyo, DeAnn Welch and Alan Weiss participated. Board member Linda Rice recused herself. The Respondent appeared with counsel, David Putter. Representing the state of Vermont was prosecuting attorney Edward G. Adrian. Board counsel Kevin F. Leahy presided.

The Board first heard the party's presentation of the stipulation, which had been jointly executed by the state of Vermont and the Respondent. The proposed stipulation and consent order (Board Exhibit 1) called for the Respondent's license to be conditioned for a period of three years. After further review of the conditions and deliberation over the proposed discipline, the Board voted to reject the stipulation in deliberative session.

The parties were then notified of the Board's decision in open session. Because the parties had not intended to conduct an evidentiary hearing or present a case in support of disposition, the Board gave the parties the option of a continuance. The parties mutually agreed to go forward at that time.

Both the prosecution and the Respondent agreed to stipulate to the facts recited in the proposed consent order. *See*, Exhibit. 1 at ¶¶s 2-4. The Board then heard the Respondent's testimony, the arguments of the parties and deliberated at the close of evidence.

**Findings of Fact &
Conclusions of Law:**

1. Douglas S. Clark is a Vermont licensed registered nurse.
2. On 18 May 2005, he pleaded guilty to two misdemeanor counts of prohibited acts in violation of 13 V.S.A. § 2632 related to conduct with a minor girl.
3. As a result of his conviction, the Respondent received a sentence of nine to twelve months to serve, all suspended, and is required to complete a sex offender counseling and treatment program.

4. Respondent is on probation until 18 May 2007.
5. On 7 December 2005, the state of Vermont charged the Respondent with unprofessional conduct due to his criminal convictions. The specification of charges contained five charges:
 - (i) 26 V.S.A. § 1582(a)(2) (criminal conviction related to the practice of nursing);
 - (ii) 3 V.S.A. § 129a(a)(10) (conviction related to professional practice);
 - (iii) 3 V.S.A. § 1582(a)(3) (unable to practice competently by any cause);
 - (iv) 3 V.S.A. § 129a(a)(3) (failing to comply with practice statutes or rules); and
 - (v) 3 V.S.A. § 19a(a)(b) (failure to practice competently by any cause).
6. In a colloquy with his counsel at the beginning of the evidentiary portion of the hearing, the Respondent accepted responsibility for the facts set forth in Board Exhibit 1.
7. The Respondent further acknowledged the charges, and he acknowledged engaging in unprofessional conduct.
8. In addition to the stipulated facts, the Board heard the Respondent's testimony and reviewed an expert report showing that the Respondent is of little or no risk to re-offend.
9. The Board accepts the party's stipulation that the Respondent's conviction, as set forth in Exhibit 1 and as adopted by this Board as its own finding, is a basis for a finding of unprofessional conduct.
10. Relative to disposition, the State asked the Board to make findings that would mirror the stipulation the parties previously submitted. The State also asked for a provision requiring that the Respondent work at least 40 hours every two weeks in order to accumulate credit toward the proposed three year conditioned period.
11. The Respondent also advocated accepting the proposed stipulated consent Order but without the "40 hours every two weeks" minimum work requirement. The Respondent argued that requiring accumulation of specific "time worked," to received credit toward fulfilling his conditional period, was non-germane to his conduct and would unnecessarily hinder his ability to comply successfully and timely with the conditions on his license. Although the Board finds the State's argument persuasive that a demonstration of performed work is needed, it will leave this decision to a later disposition in light of its ultimate findings.
12. The Board, having read the Respondent's psychological report, heard the parties' arguments and considered the parties' proposed stipulations of fact, decides instead that it will not adopt the disposition advocated by the parties. While it accepts the parties' stipulated facts, the Board chooses to adopt its own "conclusions of law and order."
13. Rather than the conditional disposition proposed by the State and the Respondent, it is the view of the Board that the facts established at the hearing are representative of conduct warranting a revocation of Respondent's nursing license for the duration of his probationary period ending on 18 May 2007.

ORDER

The Board of Nursing REVOKES the Respondent's license until 18 May 2007;
and

ORDERS that the Respondent may not seek reinstatement of his license until 18
May 2007; and the Board further

Recommends that any future reinstatement follow the proposed conditions as set
forth in Board Exhibit 1 and as originally executed by the Respondent and the State of
Vermont.

Vermont Board of Nursing:

By: Susan O. Farrell
Susan O. Farrell, RN, Chairperson

Date: July 21, 2006

OFFICE OF PROFESSIONAL REGULATION
DATE OF ENTRY: 8/1/06

APPEAL RIGHTS

This is a final administrative determination by the Vermont Board of Nursing.

A party aggrieved by a final decision of a board may appeal this decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Vermont Secretary of State, 26 Terrace Street, Montpelier, Vermont 05609-1101 within 30 days of the entry of this order.

If an appeal is filed, the Director of the Office of Professional Regulation shall assign the case to an appellate officer. The review shall be conducted on the basis of the record created before the board. In cases of alleged irregularities in procedure before the board, not shown in the record, proof on that issue may be taken by the appellate officer. 3 V.S.A. §§ 129(d) and 130a.

To request a stay of the Board's decision, please refer to the attached stay instructions.

MAY 04 2006

PUTTER 3:00 PM

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

IN RE:

DOUGLAS S. CLARK
License No. 026-0029838

DOCKET No. NU68-0505

STIPULATION AND CONSENT ORDER

STIPULATION

NC W COMES the State of Vermont, through State Prosecuting Attorney, Edward G. Adrian, and the Respondent, Douglas S. Clark, who stipulate and agree as follows:

Board Authority

1. The Vermont State Board of Nursing ("the Board") has authority to issue warnings or reprimands, suspend, revoke, limit, condition current licenses, or prevent the renewal of lapsed licenses if, after disciplinary hearing, the Board finds that the Respondent has engaged in unprofessional conduct pursuant to 3 V.S.A. §§129, 129a, and 814; 26 V.S.A. §1582, the Administrative Rules of the Board of Nursing; and the Rules of the Office of Professional Regulation.

Statement of Facts

2. Douglas S. Clark (the "Respondent") of Randolph, Vermont is a licensed registered nurse holding license number 026-0029838, issued by the State of Vermont. This license was originally issued on or about July 16, 2004 and is set to expire on March 31, 2007.
3. On or about May 18, 2005 Respondent pled guilty to and was convicted of two counts of Prohibited Acts (misdemeanor) for inappropriate sexual contact with an eleven year old girl.
4. Respondent received a sentence of nine to twelve months to serve, all suspended, and must complete a sex offender counseling and treatment program. Respondent was placed on probation until May 18, 2007.

Charges

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

- (i) 26 V.S.A. § 1582(a)(2) (whether or not committed in this state, has been convicted of a crime related to the practice of nursing or a felony which evinces an unfitness to practice nursing);

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Office of
Professional Regulation
9 Baldwin Street
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05609-1107

(ii) 3 V.S.A. § 129a(a)(10) (conviction of a crime related to the practice of the profession or conviction of a felony, whether or not related to the practice of the profession);

(iii) 26 V.S.A. § 1582(a)(3) (is unable to practice nursing competently by reason of any cause) which includes, but is not limited to, failing to conform to the essential standards of acceptable and prevailing nursing practice pursuant to ARBN Chapter 4, Rule IV(II)(B)(2);

(iv) 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

(v) 3 V.S.A. § 129a(b) (failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct. Failure to practice competently includes: (1) performance of unsafe or unacceptable patient care; or (2) failure to conform to the essential standards of acceptable and prevailing practice.

Understandings

6. 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.

7. 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.

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

9. Respondent is not under the influence of any drugs or alcohol at the time he signs this Stipulation and Consent Order.

10. 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.

11. 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.

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

ORDER

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

A. The Board of Nursing hereby **CONDITIONS** the Respondent's license to practice as a registered nurse 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.

(3) Completion of Sex Offender Treatment Program.

Respondent shall continue participation in a sex offender treatment program with Caroline Swaney at the Clara Martin Center in Randolph, Vermont or a treating professional approved by the Board until the treating professional shall certify in writing to the Nursing Board that such treatment is no longer necessary.

(4) Notification to Treating Professional.

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.

Respondent shall authorize and cause his treating professional to submit to the Board evidence of satisfactory progress with the treatment program 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 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) 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 registered nurse and inform them of Respondent's conditional license status. Furthermore, Respondent shall cause his employer to be fully informed of his Sex Offender Status.

Within ten (10) days of the date of entry of this Consent Order or of any subsequent registered nursing employment, Respondent shall cause Respondent's immediate supervisor to write to the Board, on the employer's letterhead, acknowledging receipt of the Stipulation

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and Consent Order; the ability to comply with the conditions in the Consent Order; and full knowledge of Respondent's Sex Offender Status.

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 Stipulation and Consent Order; the ability of the program to comply with the conditions in the Consent Order during clinical experience; and full knowledge of Respondent's Sex Offender Status.

(7) Reports from Employers.

Within one (1) month of the date of entry of this Order or within one (1) month of the commencement of registered nursing employment and monthly thereafter, Respondent shall cause every registered nursing employer the Respondent has worked for during the month to submit to the Board an evaluation of Respondent's work performance and attendance during that month. This report shall be submitted in writing on forms issued by the Board.

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.

(8) Practice Under Supervision.

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

(9) Interview with the Board or its Designee.

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

(10) Types of Employment Prohibited.

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

(11) Types of Care Prohibited.

Respondent shall not provide care to any patient under the age of eighteen (18), unless there is a clear and present emergency that requires his intervention.

(12) 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.

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(13) 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.

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

(15) License Renewal.

If the Respondent's license expires while this Order is still in effect, this Order does not automatically extend the license. In that situation, in order to continue to practice as a registered nurse, the Respondent must timely apply for renewal, pay the applicable fee and demonstrate that he has otherwise complied with the requirements for license renewal.

(16) Release of Information Forms.

The conditions of this Order require the Respondent to authorize sex offender 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.

(17) Costs.

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

(18) 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.

(19) 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. The Respondent must also present proof of successful sex offender rehabilitation and he must demonstrate, to the satisfaction of the Nursing 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 registered nurse.

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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: 5/8/06

By: [Signature]

Edward G. Adrian
State Prosecuting Attorney

DOUGLAS S. CLARK
RESPONDENT

Dated: 5/8/06

By: [Signature]

Douglas S. Clark

APPROVED AS TO FORM:

ATTORNEY FOR RESPONDENT

Dated: May 8, 2006

By: [Signature]

David Putter, Esq.

APPROVED AND SO ORDERED:
VERMONT BOARD OF NURSING

Dated: _____

By: _____

Chairperson

Date of Entry: _____

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Relief Requested

WHEREFORE, the license of Douglas S. Clark should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

DATED at Montpelier, Vermont this 7th day of December, 2005.

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SECRETARY OF STATE

By:

Edward G. Adrian
State Prosecuting Attorney

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