

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

IN RE:	)	
STEPHEN W. DAVIS	)	Docket No. 2008-404 (NU46-1008)
License No. 025.0007744	)	

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COME the State of Vermont, by and through State Prosecuting Attorney Edward G. Adrian, and the Respondent, Stephen W. Davis, LPN, who stipulate and agree as follows:

Board Authority

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

Statement of Facts

2. Stephen W. Davis (the "Respondent") of Peru, New York is licensed by the State of Vermont as a Licensed Practical Nurse under license number 025.0007744. This license was originally issued on or about January 13, 1999 and is currently set to expire on or about January 31, 2010.
3. At all times relevant, Respondent was employed as a Licensed Practical Nurse at Birchwood Terrace Healthcare (the "Facility"), located in Burlington, Vermont.
4. On or about September 8, 2008, the Board received an anonymous complaint regarding Respondent's professional conduct at the Facility. During an investigation of this complaint, the Facility supplied State Investigator Gregory D. Kelly with Respondent's personnel file, which reveals in part the following:
 - a. On or about July 20, 2005, Respondent received a written warning for signing out Vicodin on the Medication Administration Record (the "MAR") for Patient R.R. but not administering it; the medication was found in the medication cart drawer.

- b. On or about February 14, 2006, Respondent received verbal counseling for his failure to complete paperwork.
- c. On or about August 7, 2006, Respondent received a final written warning and a suspension for his unprofessional behavior toward another employee.
- d. On or about August 28, 2006, Respondent received counseling regarding his failure to document and failure to complete paperwork.
- e. On or about September 25, 2006, Respondent received a written warning for his failure to document critical information and follow-up treatments for a patient. Respondent's supervisor noted that these areas had already been discussed with Respondent.
- f. On or about September 26, 2006, Respondent received a final written warning for failure to complete paperwork. Respondent's supervisor noted that completion of paperwork has been an ongoing issue.
- g. On or about December 21, 2006, Respondent received verbal counseling for his failure to document that a medication had been decreased by a physician; and for failure to renew physician orders.
- h. On or about December 29, 2006, Respondent received a written warning for failure to document physicians' orders on the MAR, resulting in two patients not receiving their medications; and for failure to accurately document.
- i. On or about January 5, 2007, Respondent was placed on 30-60-90 day Probation where Respondent's supervisor would evaluate Respondent's performance as charge nurse. Respondent was required to show sustained improvement in the following areas:
 - i. No MD order transcription/noting errors;
 - ii. All paperwork completed and accurate;
 - iii. Follow direction of nurse manager and supervisor/relief supervisor(s); and
 - iv. Organization system/skills developed and maintained.
- j. On or about March 16, 2007 in his 60-day follow up, Respondent's supervisor noted that Respondent failed to document a physician's order; and failed to remove a discontinued medication from the MAR.
- k. On or about March 22, 2007, Respondent received a final written warning for failure to accurately document a physician's telephone order. Respondent's supervisor noted that Respondent had already received counseling for similar issues.
- l. On or about April 14, 2007 in his 90-day follow up, Respondent's supervisor noted that Respondent still had an issue with completing paperwork accurately.

- m. On or about May 4, 2007, Respondent received verbal counseling for failure to follow up with family.
- n. On or about November 21, 2007, Respondent received a final written warning for failure to document a doctor's order on the MAR or in nurse's notes. Respondent's supervisor noted that Respondent has had many discussions and formal counseling regarding taking doctor's orders and noting them completely.
- o. On or about February 8, 2008, Respondent received a final written warning for failure to document notifying a family of a patient fall. Respondent's supervisor noted that the event paperwork was incomplete, and that the need to complete paperwork had recently been discussed with Respondent.
- p. On or about June 9, 2008, Respondent received counseling for failure to document orders.
- q. On or about June 20, 2008, Respondent received counseling for not taking off comfort care orders and discontinued medications.

Charges

- 5. 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) which includes performance of unsafe or unacceptable patient or client care pursuant to ARBN Chapter 4, Subchapter 4, Rule II(B)(1); and failure to conform to the essential standards of acceptable and prevailing nursing practice pursuant to ARBN Chapter 4, Subchapter 4, Rule II(B)(2);
 - b. 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
 - c. 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

6. Respondent admits the facts above are true. With respect to Paragraphs 4. a. – q., Respondent admits only that these items are contained in his personnel file.
7. 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.
8. 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.
9. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
10. Respondent is not under the influence of any drugs or alcohol at the time he signs this Stipulation and Consent Order.
11. 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.
12. 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.
13. 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. The Board of Nursing hereby **CONDITIONS** Respondent's license to practice nursing **FOR A MINIMUM OF ONE (1) YEAR from the date of entry below**. The conditions are as follows:

(1) Re-issue of License.

Upon the imposition 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 **one (1) year** of supervised nursing practice 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.

THE FOLLOWING IS SUBJECT TO DETERMINATION AT A DISPOSITION HEARING.

Bd. accepts
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It is the State's position that the Respondent shall be prohibited from working more than forty-five (45) hours per week during the conditioned period.

~~It is the Respondent's position that he should be allowed to work up to fifty (50) hours per week during the conditioned period.~~

(3) Medication Administration Course.

Respondent must successfully complete (i.e., receive a passing grade, if applicable) a medication administration course 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 sixty (60) days of the date of entry of this Stipulation and Consent Order

(4) 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.

(5) Reports from Employers.

Within one (1) month of the date of entry of this Order or within one (1) month of the commencement of nursing employment and **monthly** thereafter, Respondent shall cause every nursing employer the Respondent has worked for during the month to submit to the Board an evaluation of Respondent's work performance and attendance during that month; such reports shall include the results of **quarterly medication administration audits**. These reports 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.

(6) Practice Under Supervision.

Respondent shall practice as a nurse only in a setting where Respondent has direct supervision for the entire shift by a licensed registered nurse (RN) or license practical nurse (LPN) that is in good standing with the Board.

(7) 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 private duty nurse or personal care provider during the effective period of this Consent Order.

(8) 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.

(9) 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.

(10) 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.

(11) 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.

(12) Costs.

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

(13) 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.

(14) 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.

- D. 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:

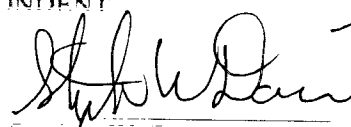
STATE OF VERMONT
SECRETARY OF STATE

Dated: _____

By: _____
Edward G. Adrian
State Prosecuting Attorney

STEPHEN W. DAVIS
RESPONDENT

Dated: 10/23/09

By: 
Stephen W. Davis

APPROVED AS TO FORM:

ATTORNEY FOR RESPONDENT

Dated: _____

By: _____
Ellen Mercer Fallon, Esq.

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: _____

By: _____

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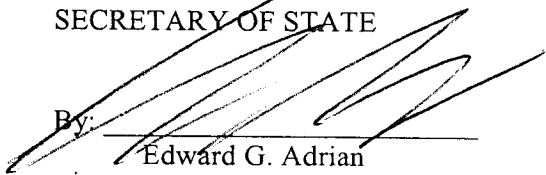
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STATE OF VERMONT
SECRETARY OF STATE

Dated: 11/6/09

By: 

Edward G. Adrian
State Prosecuting Attorney

STEPHEN W. DAVIS
RESPONDENT

Dated: _____

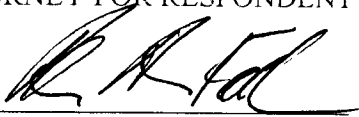
By: _____

Stephen W. Davis

APPROVED AS TO FORM:

ATTORNEY FOR RESPONDENT

Dated: 10/22/09

By: 

Ellen Mercer Fallon, Esq.

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 11-9-09

By: 

Chairperson

Date of Entry: 11/10/09
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