

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

IN RE:)
DENNISE DEMERS)
License No. 026.0050648)

Docket No. 2011-789
M2013-33

DECISION ON STIPULATED MOTION TO MODIFY CONSENT ORDER

The State of Vermont, by and through State Prosecuting Attorney Gabriel M. Gilman, and the respondent, Dennise Demers, by and through Attorney Brooks G. McArthur, have moved the Board to modify its Order of June 10, 2013, and as the basis for such modification, have stipulated as follows:

1. Pursuant to a Stipulation and Consent Order entered June 10, 2013, and attached hereto as Exhibit A, the Board reprimanded Respondent's license and imposed conditions requiring employer reports and on-site supervision.
2. The underlying conduct in the case involved an unfortunate choice to double-scan a medication wrapper and to make false MAR entry to conceal the loss of a medication dose. This occurred at a time when Respondent's charting was under scrutiny. When confronted, Respondent admitted her misconduct in a forthright manner, before any complaint was made to the Board. The conduct occurred on November 16, 2011. In the intervening year-and-a-half Respondent worked as a nurse without difficulty or further complaint to the Board and in fact was promoted within her new employment.
3. Respondent was terminated from her employment following the entry of the Consent Order of June 10, 2013, because her employer was unable to accommodate the conditions the Order imposed. Respondent has found it impossible to locate a nursing employer in her region able to accommodate the conditions.
4. Respondent has conscientiously completed those remedial requirements of the Consent Order of June 10, 2013 that do not require employment, including completion of remedial education coursework in charting and nursing ethics; however, Respondent cannot earn credit toward her twelve-month conditional licensing period without employment.
5. At this juncture, a less restrictive set of conditions would protect the public and the integrity of the nursing professions while reducing the risk of unintended collateral consequences.

The parties have asked that the Board modify the Order in this matter to strike those conditions listed at Order ¶¶ B(4) and (5).

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MODIFICATION ORDER

Based on the facts established in the Stipulation and Consent Order entered June 10, 2013, the facts stipulated in the parties' Motion to Modify, and the presentation of the parties at the Board's meeting of September 9, 2013, the Motion to Modify is

GRANTED IN PART AND DENIED IN PART, as follows:

Those conditions listed at Order ¶B(5) are **STRICKEN**; all other conditions are unaffected.

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 9/9/13

By: *Janine Carr*
Chairperson

Date of Entry: 9/9/13

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Ex. A

STATE OF VERMONT
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BOARD OF NURSING

IN RE:)
DENNISE DEMERS)
License No. 026.0050648)

Docket No. 2011-789

STIPULATION AND CONSENT ORDER

NOW COME the State of Vermont, by and through State Prosecuting Attorney Gabriel M. Gilman, and the respondent, Dennise Demers, by and through Attorney Brooks G. McArthur, 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. Dennise Demers (the "Respondent") of Hardwick, Vermont is licensed by the State of Vermont as a Registered Nurse under license number 026.0050648. This license was originally issued on or about October 22, 2009 and expires on March 31, 2015.
3. At all times relevant, Respondent was employed as a Registered Nurse at Fletcher Allen Health Care (the "Facility") in Burlington, Vermont.
4. On or about November 16, 2011, Respondent was caring for patient C.W. and documented that she gave C.W. 20mg of Oxycodone. When A.P., RN, the nurse who relieved Respondent, offered C.W. the same 20mg dose, C.W. stated that he had only received 15mg of Oxycodone.
5. On or about November 16, 2011, Respondent also was caring for patient P.B. and documented that she gave P.B. two 10mg doses of Oxycodone. A.P. also took over care of this patient, and when she confirmed with P.B. that she had received two 10mg doses of Oxycodone, P.B. insisted she had only received one 10mg dose.
6. During an internal investigation of the above mentioned discrepancies, Respondent was interviewed by R.C., RN on November 22 and 23, 2012. Respondent insisted she gave C.W. 20mg of Oxycodone. Respondent admitted that she only gave P.B. 10 mg of Oxycodone. Respondent admitted to falsifying her documentation and said she did this

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to conceal the fact that she had lost the first 10mg dose she had pulled for P.B. Respondent admitted to scanning a wrapper from a different patient to document the second dose. Respondent said, "I used the wrapper from another patient. I know it was wrong. I was just trying to cover up."

7. During the interview with R.C., Respondent explained why she attempted to conceal the fact she had lost medication, stating "I knew I was being watched. I knew my charting was... I knew it was a problem."
8. On or about March 30, 2012, during an interview with OPR Investigator Laura Pezzulo, Respondent again insisted she had given C.W. 20 mg of Oxycodone. Respondent also maintained that she had lost the first 10mg dose of Oxycodone she pulled for P.B., and falsified her documentation to conceal this fact. Respondent denied diverting medication from the Facility.
9. The essential standards of acceptable and prevailing nursing practice call for accurate documentation of administered medications. By making false record entries, Respondent led subsequent caregivers to believe patients had received narcotics the patients had not received.
10. Prior to the narcotics documentation irregularities of November, 2011, Respondent was the subject of internal concern at the Facility that did not result in the suspension of privileges or a mandatory report to the Board of Nursing. Specifically, on June 24, 2011, the Facility issued Respondent a verbal warning for wasting drugs without a witness. On September 11, 2011, the Facility noted, in follow-up to that concern, that Respondent's documentation remained irregular, including instances where medications removed from an automated PYXIS machine were not documented as administered for intervals between thirty minutes and one-hour-forty-minutes.
11. Further to the resolution of this matter, Respondent obtained an independent evaluation from a Licensed Alcohol and Drug Counselor, gave a biographical report to the evaluator, and completed the Substance Abuse Subtle Screening Inventory (SASSI) and the Addiction Severity Index (ASI) evaluative instruments. The evaluator opined that Respondent "does not meet criteria from DSM IV for abuse." The evaluator did recommend as a matter of course that Respondent provide one clean drug screen. Respondent has provided such a screen, and the results were negative for all illicit substances.

Violations

12. 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 performing unsafe or unacceptable patient care pursuant to ARBN Rule 11.2(b)(1) and failing to conform to the essential standards of acceptable and prevailing nursing practice pursuant to ARBN Rule 11.2(b)(2));

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- b. 26 V.S.A. § 1582(a)(7) (Engages in conduct of a character likely to deceive, defraud, or harm the public, which includes falsifying or altering clinical records or making inaccurate or misleading entries pursuant to ARBN Rule 11.2(d)(3));
- c. 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);

Understandings

- 12. Respondent admits that the facts above are true and that the conditions below are necessary to protect the public.
- 13. 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.
- 14. Respondent specifically waives any claims that any disclosures made to the full Board during its review of this agreement have prejudiced her rights to a fair and impartial hearing in future hearings if this agreement is not accepted by the Board.
- 15. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
- 16. Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation and Consent Order.
- 17. 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.
- 18. Respondent voluntarily waives her right to a contested hearing before the Board of Nursing and waives any right to appeal from this Stipulation and Consent Order.
- 19. 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 **REPRIMANDS** Respondent's license.
- B. The Board of Nursing hereby **CONDITIONS** Respondent's license to practice nursing **FOR TWELVE (12) MONTHS** from the date of entry below pursuant to the conditions enumerated below:

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(1) 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 twelve (12) months** of practice under conditions, during which she works at least eighty (80) hours every calendar month as a nurse. Part time hours of less than eighty (80) hours every calendar month shall be credited on a prorated basis. Respondent shall be prohibited from working more than sixty (60) hours per week.

(2) Completion of Courses in Ethics and Documentation

Respondent shall, within ninety (90) days of this Order, complete a course pre-approved by the Board as reasonably related to nursing ethics. Within six (6) months of this Order, Respondent shall also complete a course pre-approved by the Board as reasonably related to documentation. Failure to complete such courses within the prescribed timeframe shall constitute a violation of this Order.

(3) 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 submit to the Board an employer agreement form approved by the Board, 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 submit to the Board a nursing program agreement form approved by the Board, 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.

(4) Reports from Employers/Program Director; Medication Audits.

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. These reports shall be submitted in writing on forms issued by the Board. All employer reports shall indicate satisfactory performance (i.e., consistently meeting all standards of nursing practice) and attendance.

Every second employer report must indicate that an appropriate sample of Respondent's medication administration records from the preceding sixty days has been audited by a registered nurse in good standing with the Board and that Respondent's charting has been found by the auditor to comply with applicable practice standards.

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 her performance and attendance. These reports shall be submitted in writing on forms issued by

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the Board. All nursing program reports shall indicate satisfactory performance (ie., consistently meeting all standards of nursing practice) and attendance.

(5) Types of Employment Prohibited.

Respondent shall work only in institutional practice settings where on-site supervision is available by a registered nurse in good standing with the Board. On-site supervision means that a registered nurse aware of this Order shall be physically present at the facility and afforded an avenue by which to report concerns about Respondent's practice without fear of retaliation or other adverse employment action. 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.

(6) Interview with the Board or its Designee.

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

(7) 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.

If the Respondent receives discipline on a nursing license held in another state during the conditioned period, the Respondent must inform the Board of such, in writing, within ten (10) days of receiving such discipline.

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

Within ten (10) days of the date of entry of this Consent Order, 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 (including resignation or termination), personal address, or telephone number.

(9) Notification to Other States.

In the event that the Respondent is licensed in nursing in any other state(s), she must inform the nursing licensing board of the state(s) in which the Respondent is licensed of the conditional status of her 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.

(10) 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,

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

(11) Costs.

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

(12) 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.

(13) 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 demonstrate, to the satisfaction of the 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 licensed nurse.

- 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: 5/29/13

By: 
Gabriel M. Gilman
State Prosecuting Attorney

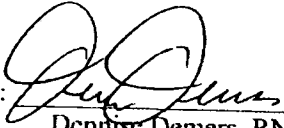
DENNISE DEMERS, RN
RESPONDENT

STATE OF VERMONT



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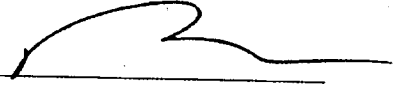
Dated: 5/23/13

By: 
Denise Demers, RN

APPROVED AS TO FORM:

Dated: 5/23/13

ATTORNEY FOR RESPONDENT

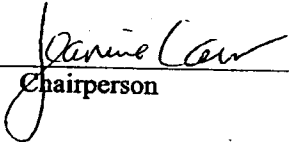
By: 
Brooks G. McArthur

APPROVED AND SO ORDERED:

Dated: 6/10/13

Date of Entry: 6/11/13

VERMONT BOARD OF NURSING

By: 
Chairperson

STATE OF VERMONT



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