STATE OF VERMONT
BOARD OF NURSING

In re: Earl Harold Dionne
License No. 025-7232

Docket No. 2008-394 (LPN)

Appearances:
Petitioner, State of Vermont: Betsy Ann Wrask
Respondent: Did not appear

Presiding Officer: Larry S. Novins

DEFAULT ORDER

The Board held a hearing on the above matter on July 12, 2010 at the National Life Building in Montpelier, Vermont. Mr. Dionne did not attend and was not represented by counsel.

Findings of Fact

1. Mr. Dionne was licensed until November 18, 2008 as a practical nurse and is therefore subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, 814(d) 26 V.S.A. § 1582(a), the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation.
2. On May 14, 2010 Mr. Dionne was sent notice of Charges in this matter by certified mail to his last known address. A copy of the Specification of Charges is attached to this Default Order.
3. OPR Rule 3.3 requires that an Answer be filed within 20 days of the date on which the notice of charges was mailed by the Director.
4. Licensees are required to notify the Board of any change of address within 30 days. 3 V.S.A. § 129a(a)(14). Former licensees are not expected to notify the Board of any change of address.
5. Stamps on the envelope indicate the notice of charges was "not deliverable as addressed."
6. Mr. Dionne has not filed an answer to the charges.
7. On June 29, 2010 a notice of the Default Hearing scheduled for this date was mailed to Mr. Dionne at that same address by certified mail. The file shows, again, that the notice was "not deliverable as addressed."
8. Mr. Dionne has still not answered the charges.
9. Upon hearing the State's presentation and taking notice of its own file, the Board finds Mr. Dionne to be in Default. The allegations contained in the State's Specification of Charges are therefore treated as the facts on which the Board's Order is based. OPR Rule 3.4, 3 V.S.A. § 809(d) and 3 V.S.A. § 814(c).

Conclusions of Law

Mr. Dionne has received adequate or constructive notice of the charges in this matter as indicated by the Board's file and the State's presentation. Because Mr. Dionne has failed to answer the charges, the State's factual allegations are treated as if proved. O.P.R. Rule 3.4. Accordingly, the Board finds, in this Default Hearing held pursuant to 3 V.S.A. §809(d), that Mr. Dionne has engaged in the unprofessional conduct alleged in the State's Specification of Charges.

Order

In accordance with the above Findings of Fact and Conclusions of Law, Mr. Dionne's license is hereby **Revoked** effective as of the date of the hearing.

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, National Life Bldg., North, FL2, Montpelier, VT 05620-3402 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.

Vermont Board of Nursing

By: _____ Date: July 12, 2010
Ellen Leff, R.N., Chair

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 7/13/10

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

IN RE:	)	
EARL HAROLD DIONNE	)	Docket No. 2008-394
License No. 025.0007232	)	

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Earl Harold Dionne:

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. Earl Harold Dionne (the "Respondent") of Vergennes, Vermont was licensed by the State of Vermont as a Licensed Practical Nurse under license number 025.0007232. This license was originally issued on or about July 25, 1995 and lapsed on or about January 31, 2010. Respondent has also been licensed as a Licensed Nursing Assistant under license number 075.0004612. Respondent's LNA license was originally issued on or about February 23, 1994 and lapsed on or about January 31, 1997.

3. By way of history, on or about November 18, 2008, Respondent's LPN license was suspended by the Board pursuant to a Stipulation and Consent Order. Attachment A. This discipline was due in part to Respondent's admission that he altered the medical assessment records of a resident who was also his mother, to show that his mother was at a higher level of assessment than was accurate, which would garner a larger State reimbursement; and for his admission that he documented incorrect medication dosage instructions for another resident. Attachment A.

4. Respondent's license is still in suspended status; he has never applied for reinstatement.

5. At all times relevant, Respondent was employed as a Licensed Practical Nurse at Spruce Gardens (the "Facility"), located in Vergennes, Vermont, and was acting as Charge Nurse for the overnight shift.

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6. At all times relevant, D.H. was a resident of the Facility with impairments of traumatic brain injury, stroke, chronic dislocated left hip, and chronic left humerus fracture. D.H. was to be administered a Fetanyl patch every 72 hours to control pain.

7. On or about the evening of September 19, 2008 and the early morning of September 20, 2009, in response to D.H.'s cries that he was in pain, Respondent locked D.H. in the day room with no attempt to provide medical treatment. Respondent refused to assess the cause of D.H.'s pain and did not call the on-call registered nurse or physician.

8. On or about August 17, 2009 in an interview with State Investigator Steve Kennedy, Resident Assistant C.S. advised that on or about September 20, 2008 at approximately 04:00, C.S. found D.H.'s Fetanyl patch mixed in with his laundry. C.S. advised the patch must have fallen off when D.H. was changed and prepared for bed the previous evening in question. C.S. advised she immediately reported her findings to Respondent.

9. On or about August 17, 2009 in an interview with Investigator Kennedy, Registered Nurse S.M. advised that she was not informed of D.H.'s increased pain status until she arrived for work on or about September 20, 2008 at 09:00.

10. On or about August 18, 2009 in an interview with Investigator Kennedy, Respondent declined to comment on the above-described incident. Respondent advised that he had no intention of renewing his license.

Charges

11. 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 care pursuant to ARBN Chapter 4, Subchapter 4, Rule II(A)(1); and failure to conform to the essential standards of acceptable and prevailing nursing practice pursuant to ARBN Chapter 4, Subchapter 4, Rule II(A)(2);

b. 26 V.S.A. § 1582(a)(7) (Engages in conduct of a character likely to deceive, defraud, or harm the public) which includes aiding, abetting or assisting any person in any act in violation of this chapter or acts against the best interest of the public pursuant to ARBN Chapter 4, Subchapter 4, Rule II(D)(10);

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.

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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

d. 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).

Relief Requested

WHEREFORE, the license of Earl Harold Dionne should be revoked, suspended, reprimanded, conditioned, or otherwise disciplined.

DATED at Montpelier, Vermont this 5th day of May, 2010.

STATE OF VERMONT
SECRETARY OF STATE

By: _____
BetsyAnn Wrask
State Prosecuting Attorney

nu.dionne2.soc

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

IN RE: EARL HAROLD DIONNE License No. 025-0007232	)))	Docket No. NU67-0108

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, by and through State Prosecuting Attorney Edward G. Adrian, and the Respondent, Earl Harold Dionne, L.P.N., 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 ("ARBN"); and the Rules of the Office of Professional Regulation.

Statement of Facts

2. Earl Harold Dionne (the "Respondent") of Vergennes, Vermont is licensed in the State of Vermont as a licensed practical nurse under license number 025-0007232. The license was originally issued on or about July 25, 1995 and is currently set to expire January 31, 2010.

3. At all times relevant, the Respondent was employed as a licensed practical nurse at Spruce Gardens, Inc. (the "Facility") located in Vergennes, Vermont.

4. On or about January 15, 2008, the Respondent altered Resident R.D.'s medical assessment records by removing and replacing certain pages; the Respondent included a copy of the original signature page containing the signature of C.C., the R.N. who was authorized to sign the records, but changed the dates of the signatures on that page. The Respondent then destroyed the original assessment record.

5. R.D. was the Respondent's mother and the assessment records were used to determine the amount of monetary aid given to the Facility by the State. The Respondent changed the records to show R.D. was at a higher level of assessment

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Attachment A

than was accurate, which would garner a larger State reimbursement than the original, valid assessment.

6. On or about March 27, 2008 by letter to OPR, and on or about March 28, 2008 by telephone with State Investigator Mark Jacobs, the Respondent admitted to the actions described above in paragraphs (4) and (5).

7. On or about March 19, 2008, the Respondent entered incorrect medication dosage instructions on the MAR of Resident D.H. As a result, D.H. received the incorrect dosage for nine days. On or about April 23, 2008 in an interview with Investigator Jacobs, the Respondent took full responsibility for the error.

Charges

8. 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. 3 V.S.A. § 129a(a)(7) (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);

   b. 26 V.S.A. § 1582(a)(7) (Engages in conduct of a character likely to deceive, defraud or harm the public) which includes, but is not limited to, falsifying or altering clinical records or making inaccurate or misleading entries pursuant to ARBN Chapter 4, Rule IV(II)(D)(3);

   c. 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);

   d. 3 V.S.A. § 129a(b)(2) (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 failure to conform to the essential standards of acceptable and prevailing practice); and

   e. 3 V.S.A. § 129a(a)(3) (Failing to comply with the provisions of state statutes or rules governing the practice of the profession).

Understandings

9. Respondent admits the facts above are true and that the conditions below are necessary to protect the public.

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10. 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.

11. 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.

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

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

14. 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.

15. 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.

16. 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 **SUSPENDS** the Respondent's license to practice nursing for a **MINIMUM OF SIX (6) MONTHS from the date of entry below**. Before applying for reinstatement, Respondent must 1.) successfully complete (i.e., receive a passing grade, if applicable) one (1) course on legal issues 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; and 2.) successfully complete (i.e., receive a passing grade, if applicable) two (2) courses on ethics with prior approval by the Board or its designee, and then submit written documentation of completion (certificates of completion, etc.) to verify the same to the satisfaction of the Board or its designee. The Respondent's license shall not be reinstated until these prerequisites are met, regardless of whether more than six (6) months have passed since the suspension went into effect. Once reinstated, Respondent's license will be **CONDITIONED FOR ONE (1) YEAR.** The conditions will be as follows:

(1) Re-issue of License.

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

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(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 Respondent shall be prohibited from working more than forty (40) hours per week during the conditioned period.

(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 during the conditioned period 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 Respondent is attending a nursing program which has a clinical portion which 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 ability of the program to comply with its conditions during clinical experience.

(4) Reports from Employers.

Within one (1) month of the date of entry of this Order and **monthly** thereafter, Respondent shall cause every nursing employer Respondent has worked for during the conditioned time period to submit to the Board an evaluation of Respondent's 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 submit to the Board, on a monthly basis, a written evaluation of Respondent's 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.

(5) Practice Under Supervision.

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

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

(7) Out of State Practice/Residence.

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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.

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

Within five (5) days of the date of entry of this 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.

(9) 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 he has otherwise complied with the requirements for license renewal.

(10) Costs.

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

(11) 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.

(12) 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.

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.

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AGREED TO:

Dated: 10/3/08

STATE OF VERMONT
SECRETARY OF STATE

By: _____
Edward G. Adrian
State Prosecuting Attorney

Dated: 9/26/08

EARL HAROLD DIONNE
RESPONDENT

By: _____
Earl Harold Dionne

APPROVED AND SO ORDERED:

Dated: 10-30-08

VERMONT BOARD OF NURSING

By: _____
Chairperson

Date of Entry: 11/18/08

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